

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA
AT MWANZA
CRIMINAL APPEAL NO. 129 OF 2023**

JUMA ALLYAPPELLANT

VERSUS

REPUBLICRESPONDENT

JUDGMENT

18/4/2024 & 10/5/2024

ROBERT, J:-

The appellant, Juma Ally, was convicted and sentenced at the District Court of Sengerema to serve 20 year's imprisonment for burglary contrary to section 294(2) of the Penal Code, (Cap. 16 R.E. 2022). Aggrieved, the appellant preferred this appeal challenging both conviction and sentence.

The appellant and two others were charged with burglary, alleged to have occurred on 30th April, 2023, at Ibisabageni village within Sengerema District in Mwanza region. The prosecution's case rested on the allegation that the appellant and his companions broke into a workshop building and stole various items belonging to Mr. Mbelwa Felix (PW1). These items included two iron beds, three drilling machines, a pipe ranger, among others.

The trial Court convicted the appellant based on the testimony of several witnesses, including PW1 Mbelwa Felix, PW2 Mathias Kazimiri, PW3 Fred Josephat, PW4 A/INSP. David Shayo, PW5 Claud Bujiku, and PW6 Boniphace Bigambo. Their testimonies provided a detailed account of the events surrounding the burglary, the discovery of the stolen items, and the subsequent arrest of the appellant.

The appellant challenges his conviction and sentence citing: Poor evidential value of visual identification by PW2; wrongful invocation of the recent possession doctrine; the nullity of the certificate of seizure and search; and failure by the prosecution to prove the offence beyond reasonable doubt.

At the hearing of this appeal, the appellant appeared in person. The respondent, represented by Ms. Hellena Mabula and Ms. Neema Kibodya, State Attorneys opposed the appellant's conviction and sentence. They supported the appeal and addressed each ground raised by the appellant.

Submitting on the first ground, the appellant contested the credibility of the identification evidence, arguing that the witness (PW2) failed to provide crucial details such as the type and source of light and distance from

the perpetrator. Counsel for the respondent submitted that evidence adduced by PW2 at page 9 and 10 of the proceedings did not indicate the intensity of light at the scene, the distance between him and the culprit or the description of the appellant at the scene. Citing the case of **Chacha Jeremiah Murimi v. Republic**, Criminal Appeal No. 551/ 2015, the respondent asserted that proper identification should consider factors like time, distance, and lighting conditions, which were inadequately addressed by PW2.

The Court acknowledges the importance of proper identification, as outlined in relevant precedents. However, it finds that PW2's testimony lacked critical details necessary for reliable identification. The absence of information regarding lighting conditions and distance diminishes the evidential value of the identification. Therefore, this ground has merit.

Coming to the doctrine of recent Possession, the appellant argued that the recent possession doctrine was improperly invoked, as PW1 failed to conclusively identify the retrieved items and establish their ownership. The respondent countered that the items were found in the appellant's possession, supported by a seizure certificate (exhibit PW4 (a)), yet failed to prove their ownership.

This Court finds that, while the recent possession doctrine was considered in the trial court's decision, the prosecution failed to conclusively establish ownership of the stolen items. Without irrefutable evidence linking the appellant to the burglary, invoking this doctrine is unjustified. Thus, this ground also holds merit.

On the third ground, the appellant contended that the certificate of seizure and search were null as no search order was issued, breaching section 38 of the Criminal Procedure Act (CPA). However, the respondent argued that the exigent circumstances justified the seizure and invoked section 42 of the CPA instead.

The Court finds that, although no search order was issued, the circumstances surrounding the seizure warrant invoking section 42 of the CPA. However, the prosecution must ensure strict compliance with legal procedures to safeguard against potential abuses of power. Nonetheless, this ground is not substantial enough to invalidate the search and seizure. I therefore find no merit in this ground.

Lastly, the appellant contends that the prosecution failed to prove the offence beyond reasonable doubt. This argument is based on perceived

weaknesses in the prosecution's case, including the failure to present the investigator as a witness and the omission to tender a sketch map. The respondent rebuts these contentions, asserting that the weaknesses cited by the appellant are not substantive and do not undermine the prosecution's case. However, the prosecution concedes that considering the deficiencies in the evidence presented, particularly regarding the identification of the accused person and stolen items, the prosecution failed to discharge its burden of proof beyond a reasonable doubt.

Upon review, the Court notes significant weaknesses in the prosecution's case. Firstly, the failure to produce the investigator as a witness deprives the Court of crucial testimony regarding the investigation process, including the gathering of evidence and the circumstances of the appellant's arrest. Such testimony could have provided clarity on key issues, including the chain of custody of the alleged stolen items and the reliability of witness statements.

Moreover, the reliance on circumstantial evidence, particularly the doctrine of recent possession, necessitates a meticulous presentation of facts linking the appellant to the alleged offence. However, the prosecution's inability to conclusively establish the ownership of the stolen items and

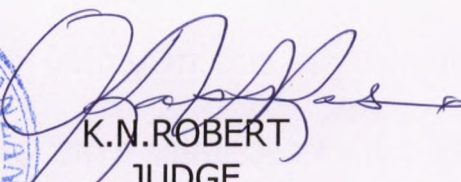
adequately address the appellant's assertion of innocence undermines the probative value of their evidence.

In light of these deficiencies, the Court concurs with the appellant's assertion that the prosecution failed to discharge its burden of proof beyond a reasonable doubt. The cumulative effect of the prosecution's shortcomings renders their case untenable and falls short of the requisite standard of proof mandated in criminal proceedings. Hence, I find merit in this ground of appeal.

In conclusion, having carefully considered the grounds of appeal and the submissions made by both parties, this Court finds merit in the appellant's contentions. The conviction and sentence imposed upon the appellant are hereby quashed and set aside. The appellant is ordered to be released from custody forthwith unless lawfully held for other reasons.

It is so ordered.




K.N.ROBERT
JUDGE
10/5/2024