

IN THE COURT OF APPEAL OF TANZANIA

AT ARUSHA

(CORAM: MUSTAFA, J.A., OLAR, J.A. And MTALILA, Ag. J.A.)

CRIMINAL APPEAL NO. 86 OF 1986

YUSUFU MSAINGI.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

(Appeal from the conviction of the
High Court of Tanzania at Arusha)
(Chua, J.) dated the 14th day
of May, 1986

in

Criminal Appeal No. 40 of 1986

JUDGMENT OF THE COURT

OLAR, J.A.:

The appellant was charged before the Resident Magistrate's Court in Arusha of attempted robbery contrary to sections 237 and 381 of the Penal Code. It is the prosecution case that on 3.12.82 at 11 a.m. appellant and his colleague attempted to steal a motor vehicle driven by P.W. 1 latata Sanoti. Appellant and his colleague jumped into this motor vehicle as it was being parked and ordered P.W.1 the driver at gun point to drive on. P.W.1 drove on as ordered and when he saw a police motor vehicle coming from the opposite direction he stopped in front of it and jumped out and ran; the two robbers inside the vehicle also jumped out and ran. The police chase but one of the robbers managed to escape. The police however were directed by P.W.4 who saw the appellant running to a certain house and entering it. The police approached this house whereupon the appellant dashed out and ran and was soon apprehended by people nearby. Appellant was found guilty of the offence of attempted robbery of the vehicle and sentenced to 8 years imprisonment. His appeal to the High Court was dismissed. He now appeals to this Court on a purported point of law. Mr. Mwale, Counsel for the appellant argues that the first appellate court failed in applying principles of law relating to visual identification.

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He cited cases which decided that a fleeting glance of a stranger in a bad light was not a good identification. Obviously the cases cited were at variance with the facts of this case and therefore could not help his client one bit.

Appellant was identified by P.W.1 the driver of the vehicle who sat beside him in broad day light and also by P.W.4 a woman who knew appellant long before that day. P.W.2, a police man in the police vehicle which stopped, who also knew the appellant, saw him. The question of the identity of the appellant was resolved in the courts below and this was an issue of fact.

We are concerned at this stage only with questions of law, and we can discern no such question of law in this appeal.

We accordingly dismiss this appeal in its entirety.


DATED at ARUSHA this 17th day of September, 1987.

A. MUSTAFA
JUSTICE OF APPEAL

A. R. A. CILE
JUSTICE OF APPEAL

D. M. IFALILA
Ag. JUSTICE OF APPEAL

I certify that this is a true copy of the original.


(J. H. MOFFE)
DEPUTY REGISTRAR