

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**(DAR ES SALAAM SUB-REGISTRY)**  
**AT DAR ES SALAAM**

**PC CRIMINAL APPEAL NO. 14 OF 2023**

*(Arising from the Judgement of Temeke District Court in Criminal Appeal No. 05 of 2023)*

**ABDALLAH SAID.....APPELLANT**

*VERSUS*

**RAHIM MAHADHI.....RESPONDENT**

**JUDGEMENT**

13<sup>th</sup> March 2024 & 15<sup>th</sup> April 2024

**RUMISHA, J.:**

The accused, standing before Temeke Primary Court, faced the charge of stealing contrary to sections 258 and 265 of the Penal Code, [CAP 16 R.E. 2002]. It was alleged that the Respondent, the accused then, had stolen various household items, namely a plate, saucepan, and cups valued at Tshs 100,000/=, belonging to the Appellant. The trial ensued, with the Appellant being the sole prosecution witness called to prove the charge against the accused. However, following a thorough trial, the court found insufficient evidence to support the charges and consequently dismissed the case, acquitting the accused.

Unsatisfied with the primary court's acquittal of the accused, the Appellant appealed to the district court. However, mirroring the primary court's decision, the district court upheld the judgement and dismissed the appeal. Displeased with the outcome of the district court appeal, the Appellant pursued a further appeal to this Court on the two grounds outlined below:

- 1. That the Temeke District Court erred in law and fact for not considering the evidence given by the appellant.**
- 2. That the trial court erred in law and fact by failure to consider the value of evidence adduced by the appellant**

Thus, the Appellant prays that this appeal be allowed, the decisions of the two subordinate courts be quashed and set aside, and any other order this court may deem fit and just to grant.

The appeal was heard by written submissions. Both the Appellant and Respondent lay persons, appeared in persons and filed their respective submissions.

In his submission, the Appellant addressed the two grounds jointly. While acknowledging the burden of proof that rested on him to prove the case against the accused, he maintained that he had presented compelling

evidence that was however disregarded by the trial court. To emphasise his argument, he stated on the first page, "**The trial court had failed to consider heavy evidence adduced by the appellant which had established reasonable doubt.**" Consequently, he prayed for this court to set aside the trial court's judgement.

In response, the Respondent was brief, like the Appellant. However, he firmly pointed out that the Appellant had not demonstrated any evidence he had presented and how the court failed to give weight to such evidence. He reiterated that the Appellant bore the burden of proving the case against the Respondent, which he failed to discharge leading to his acquittal. Therefore, he prayed for the dismissal of the appeal **with costs**.

Perhaps, I should state that this is a second appeal. As a matter of principle and practice, when two lower courts concur on facts, absent any misapprehension of evidence, the second appellate court ought not to interfere with such findings. This is a long-standing and settled position. I should state, in passing though, that in this appeal, I do not intend to reinvent the wheels.

As submitted by the Appellant, I will address the two grounds jointly. Upon revisiting the evidence presented in the primary court, it becomes evident

that the entire prosecution case rested upon hearsay evidence. No eyewitness testimony was presented, and all prosecution evidence relied on hearsay. As if to add salt to the wound, the key eyewitness referred to by the Appellant was not disclosed; his identity was withheld. Moreover, this crucial witness, who could have significantly assisted the primary court in reaching a fair decision, was not called, and no valid reason was assigned for this omission. Under such circumstances, it is logical to conclude that such a witness may not have existed at all.

I cannot agree more with the Appellant himself, who submitted that the evidence presented in the primary court established doubt. The only thing he does not seem to agree with is that such doubt in a criminal case is resolved in favour of the accused person, as the trial court rightly did. It is essential to note that what the primary court did and subsequently the district court, was in order. To put it simply, the Respondent had no duty to fill in the gaps that were left wide open by the Appellant.

Both the district court and the primary court thoroughly analysed the evidence, and there was no misapprehension of the evidence presented. Additionally, no legal issue was raised in this appeal, as can be discerned from the appellant's two grounds of appeal reproduced above.

I have highlighted the constraints placed on this Court when sitting as a second appellate court regarding appeals stemming from the concurrent findings of the lower courts. Since there is no legal issue or any misapprehension of evidence demonstrated, I find no reason to interfere with the concurrent findings of the two lower courts.

However, the Respondent made an interesting prayer about costs. Despite this being a criminal appeal and considering the familial nature of the parties involved, I see no extraordinary circumstances warranting the awarding of costs.

Therefore, I find the appeal to be without merit, and as a result, I hereby dismiss it.

**DATED** at **DAR ES SALAAM** this 15<sup>th</sup> day of April 2024.



  
A.K. RUMISHA

**JUDGE**