IN THE COURT OF APPEAL OF TANZANIA
AT DODMA

(CORAM: KILEO, J.A., ORIYO, J.A., And JUMA, J.A.)

CRIMINAL APPEAL NO. 410 OF 2015

MOHAMED HASSAN @SAID.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

(Appeal from the decision of the High Court of Tanzania at Dodoma)

(Sehel, J.)

dated 8th day of July, 2015
in
Criminal Appeal No. 40 of 2014

JUDGMENT OF THE COURT

12th &19th April, 2016

ORIYO, J.A.:

The appellant, Mohamed Hassan and one Iddi Juma Marusu were prosecuted in the District Court of Kondoa with the offence of armed robbery contrary to section 287A of the Penal Code, Cap 16 R.E 2002. They were both convicted and sentenced to thirty (30) years imprisonment. Dissatisfied, the appellant unsuccessfully appealed to the High Court (Sehel, J.). Still protesting his innocence, the appellant has filed this second appeal fronting one ground of appeal. His basic complaint is that his conviction was based on weak prosecution evidence and failure to consider his defence.

Briefly, the evidence upon which the conviction of the appellant was founded arose from the events of the 2nd day of October, 2012, at around 19:15 hours when he went to buy petrol at PW1's shop. After he bought the petrol he asked if he could get transportation to Salanka area. PW1 called PW2 who had a motor cycle to transport the appellant. PW2 evidence was to the effect that, he picked the appellant from PW1's shop and headed to Salanka area. While on their way, PW2 felt like petrol pouring on his back. He asked the appellant as to what was going on and the appellant told him the bottle cap was loose. They continued with the journey but later on PW2 felt the petrol flowing from his head to his shoulders. Suddenly, the appellant took an iron bar from his coat and hit PW2's forehead. PW2 fell down and tried to raise an alarm but was in vain. Then another person appeared at the scene and vanished with the appellant on his motor cycle. The matter was reported to the police by PW4 and PW5 on the same day. The appellant was arrested with the said stolen motor vehicle.

In his defence, the appellant admitted to have hired PW2 on the material day but he was surprised when they reached at Mrijo area at around 20:00 hours a group of people came and beat him up on the

allegation that he stole the motorcycle. He further stated, in that fraction he lost his money amounting to Tshs 500,000/=.

At the hearing of the appeal in this Court, the appellant was unrepresented, he appeared in person. His memorandum of appeal contained seven (7) grounds of appeal which can conveniently be grouped into four major complaints:-

1. He was wrongly convicted on weak identification evidence;
2. The evidence upon which his conviction was grounded was the same upon which the acquittal of one Idd Juma, his co-accused was based;
3. The two courts below wrongly relied on his cautioned statement, and
4. His defence was not considered.

The appellant thus urged us to allow the appeal for these reasons. The respondent/ Republic was represented by Ms Chivanenda Luwongo, learned State Attorney, who supported the conviction and sentence imposed on the appellant.

Understandably, the appellant, being a layman preferred the learned State Attorney to make submissions first while he reserved his right of reply thereafter, if necessary.

On her part, Ms Luwogo, urged us to dismiss the appellant's first and third grounds of appeal on the reason that these were already discussed and determined by the first appellate court and the conviction of the appellant was grounded on the doctrine of recent possession.

Concerning the **doctrine of recent possession**, Ms Luwogo submitted that the evidence adduced by PW1, PW3, PW4 and PW5 **sufficiently proved that the appellant was found with the property which was recently stolen.** She further submitted, that the stolen motorcycle which was found in possession of the appellant was the same which was referred to in the charge laid against him. She referred us to the case of **Ally Bakari and Pili Bakari versus Republic, (1992) T.L.R 10;** in support.

In view of the submissions by the respondent Republic in support of the conviction and sentence, the appellant had nothing useful to add save to pray that the appeal be allowed.

This being a second appeal, the Court does rarely interfere with concurrent findings of fact by the lower courts, unless there is serious misapprehension of the nature, quantity and quality of the evidence, or a breach of some principle of law; see **Salum Mhando versus R (1993) T.L.R 170 and Director of Public Prosecutions vs. Jaffari Mfaume Kawawa (1981) T.L.R 149.**

We agree with the learned State Attorney that the conviction of the appellant was basically grounded on the doctrine of recent possession. For the **doctrine of recent possession** to apply it must be established that; **Firstly,** that the property was found with the suspect; or there should be a nexus between the property stolen and the person found in possession of the property; **Secondly,** that the property is positively the property of the complainant, **thirdly**, that the property was recently stolen from the complainant; and **lastly,** that the stolen property in possession of the accused must have a reference to the charge laid against him, see **Mustapha Ramadhani versus Republic, Criminal Appeal No. 242 of 2008** (unreported).

In the present case, it is not in dispute that the appellant was found in possession of the motorcycle which was recently stolen as evidenced by PW3, PW4 and PW5.

The possession by the appellant of the property proved to have been very recently stolen may support the charge. But in order for the principle to apply, the one who claimed ownership of that property, must show through evidence that the property belonged to him. In the presence case, the said motorcycle was sufficiently and positively identified by PW2, PW3, PW4 and PW5 as recently having being stolen. Also on record, there is sufficient evidence from PW2 that the recovered

appellant.

Concerning the appellant's claim that his defence was ignored, we agree with Ms Luwongo that the record clearly shows how the judgment of the trial court considered the defence of the appellant, and found the claim baseless.

In the circumstance of this case, it was correct on the part of the two courts below to find the appellant guilty of the offence of armed robbery relying on the **doctrine of recent possession**.

In our evaluation of the evidence as a whole, and for the reasons stated, we are satisfied that this second appeal has no merit, as we see no reason to fault the two courts below. We accordingly dismiss it.

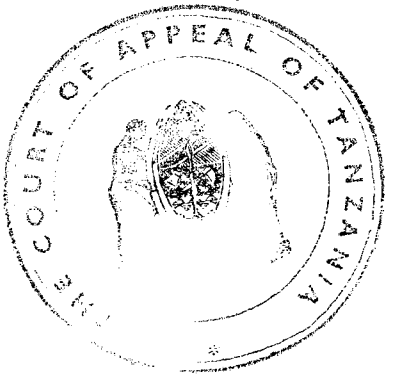
DATED at **DODOMA** this 18th day of April, 2016.

E.A.KILEO
JUSTICE OF APPEAL

K.K. ORIYO
JUSTICE OF APPEAL

I.H. JUMA
JUSTICE OF APPEAL

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



E.F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL