IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: MMILLA, J.A., NDIKA, J.A., AND KITUSI, J.A.)

CRIMINAL APPEAL NO. 3 OF 2018

SELEMAN NASSORO MPELI ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

(Appeal from the decision of the High of Tanzania at Dar es Salaam)

(Munisi, J.)

dated the 13th day of June, 2011
in
HC. Criminal Appeal No. 144 of 2010

.....

JUDGMENT OF THE COURT

13th & 29th July, 2020

MMILLA, J.A.:

The appellant, Selemani Nassoro Mpeli @ Ngorogoro, is appealing against the judgment of the High Court of Tanzania at Dar es Salaam vide which the conviction and sentence which were entered by the District Court of Rufiji at Kibiti (the trial court), were upheld. Before the trial court, the appellant was charged with the offence of armed robbery contrary to section 287A of the Penal Code as amended by Act No. 4 of 2004. Upon conviction, he was sentenced to thirty years' imprisonment.

The facts of the case were not complicated. Salum Bakari Mchuchuli (PW2), was a resident of Mtawanya village in Rufiji District in Coast Region. He was ordinarily carrying out a business of ferrying people to different places for hire at Kibiti using a motor cycle and was routinely parking at Zebra Bar at Mtawanya. By October, 2009 he was riding a motor cycle with Registration No. T. 322 BAW make SANLG, the property of Shaban Ramadhani Kondo (PW1), also a resident of Mtawanya.

On 28.10.2009 in the morning, PW2 was at Zebra Bar area. At about 10:00 hours, he was approached by one Selemani Nassoro Mpeli @ Ngorogoro (the appellant), who asked to be taken to Mchukwi area at which he intended to collect mangoes. They went to Mchukwi and returned at around 18:00 hours. Thereafter, the appellant asked PW2 to take him to Ikwiriri area, but the latter declined on account that it was awkward hours, after which they parted ways.

At about 22:00 hours, the appellant returned at Zebra Bar and asked PW2 to take him to Kinyanya Kwa Mkengerwa. PW2 agreed and demanded to be paid Tzs. 8,000/=, which the appellant agreed. They proceeded to Kinyanya Kwa Mkengerwa. On arrival at that place however, the appellant asked to be taken to a place beyond that point, that is, Kinyanya

Magengeni. Hesitantly though, PW2 proceeded to that new destination. On arrival at that place, and immediately after stopping, the appellant produced a big knife with which he threatened him. He instantaneously launched a surprise attack by hitting him with something heavy in the head, resulting into PW2 falling down. Upon that, the appellant took the motor cycle and fastly rode away. The baffled PW2 contacted his friend who went there and picked him, and also reported the incident to police who began making a follow-up.

No. F. 4281 PC Edwin (PW4) and No. F. 8575 PC Elisikia (PW5) were on duty at Vikindu Weigh-Bridge area, and had received information about a robbery in that locality which involved theft of a motor cycle. Around 22:00 hours, they saw a motor cycle without lights forcefully coming and ordered the rider to stop. That person defied orders to stop and slipped away. They quickly boarded a motor vehicle and chased him. They succeeded to arrest him and took him back to Vikindu Weigh-Bridge location. PW4 and PW5 contacted their colleagues at Rufiji Police Station who went there and took the appellant to that Police Station. As aforesaid, the appellant was eventually charged with the offence of armed robbery as it were.

The appellant had all through maintained his innocence. He contended that he was mistakenly arrested at Kilwa Road for having escaped and taken to Kibiti at which he was framed up to have committed the alleged robbery. He emphasized that he never went to Kibiti on that day as was alleged; also that PW2, PW4 and PW5 were not credible witnesses.

As earlier on pointed out, the trial court did not accept his defence. It convicted and sentenced him of that offence. He filed this second appeal to the Court upon dismissal of his first appeal to the High Court of Tanzania at Dar es Salaam.

On 15.01.2018, the appellant filed a seven (7) point memorandum of appeal which was supplemented on 11.06.2020 by another which raised seven (7) other grounds, thus making a total of fourteen (14) of them.

When his appeal was called on for hearing on 13.7.2020, the appellant was not physically present in Court but was linked through video conference facility and had no legal representation. At the outset, he prayed to adopt those memoranda of appeal and the written submissions

he filed on 11.6.2020. Also, he elected for the Republic to respond first, but reserved the right to make his submission thereafter if need would arise.

On the other hand, Ms Subira Joshi and Ms Neema Mbwana, learned State Attorneys, represented the respondent/Republic. We invited them to respond to the appellant's complaints.

To begin with, Ms Mbwana contended that after going through the 14 grounds of appeal raised by the appellant, they noticed that all of them are new because they were not raised before the first appellate court. She nonetheless sought leave to discuss the ground touching on failure to comply with the provisions of section 312 (1) of the Criminal Procedure Act Cap. 20 of the Revised Edition, 2002 (the CPA) in view of it being a legal point.

On Court's probing however, she admitted that the cliché of the second and third grounds of appeal in the memorandum which was presented in the High Court appearing at page 29 of the Record of Appeal suggest that the 14 grounds filed in this Court are not new as she thought.

Basically, the grounds raised in this Court are not new as was purported by Ms Mbwana. We have noted however, that those 14 grounds

are circuitous and/or meandering and repetitive. Thus, for the sake of convenience and exactitude, we found it desirable to condense them into five of them as follows: **one** that, the judgment of the trial court was deficient in that it did not meet the requirements set out under section 312 (1) of the CPA; **two** that, he was not correctly identified in that PW2 and PW6 did not explain the aids which enabled them to identify him; **three** that, the evidence of PW4 and PW5 as well as exhibit PA (the motor cycle), was unreliable because they did not tender in court the certificate of seizure of the said motor cycle; **four** that, the doctrine of recent possession was wrongly invoked in the circumstances of this case because PW1 and PW2 did not identify the allegedly stolen motor cycle; and **five** that, the prosecution did not prove the case against him beyond reasonable doubt.

We crave to begin with the first ground which, as already pointed out, queries that the first appellate court wrongly upheld the judgment of the trial court which did not meet the prerequisites envisaged under section 312 (1) of the CPA. In this regard, the appellant submitted that the judgment of the trial court was no judgment at all because it did not contain reasons to support the conclusion that he was guilty as charged.

On the other hand, Ms Mbwana supported the appellant's concern. She submitted that the judgment of the trial court was not a judgment in the eyes of law because it did contain the points for determination, and the reasons on the basis of which it held that the prosecution proved the case against the appellant beyond doubt. She added that the trial court did not address the issue whether or not the appellant was identified by the two eye witnesses, PW2 and PW6. In the circumstances, she urged the Court to allow this ground, resulting into allowing the appeal. She pressed the Court to release the appellant from jail.

We have intensely considered the submissions of both, the appellant and Ms Mbwana on the point. Certainly, when one reads the judgment of the trial court, it becomes clear that it did not contain the points for determination and the reasons on the basis of which it held that the prosecution proved the case against the appellant. The most that court did was to reproduce the evidence of the witnesses after which it came up with the verdict that the appellant was guilty and convicted him. That was erroneous, and it amounted to failure to meet the requirements of section 312 (1) of the CPA. That section provides that:-

"S. 312 (1): Every judgment under the provisions of section 311 shall, except as otherwise expressly provided by this Act, be written by or reduced to writing under the personal direction and superintendence of the presiding judge or magistrate in the language of the court and shall contain the point or points for determination, the decision thereon and the reasons for the decision, and shall be dated and signed by the presiding officer as of the date on which it is pronounced in open court."

The point under discussion cropped up in **Hamisi Rajabu Dibagula v. Republic** [2004] T.L.R. 181 in which it was found that the judgment did not sufficiently meet the requirements of the provision reproduced above. Relying on its earlier decision in **Lutter Symphorian Nelson v. The Attorney General & Another** [2000] T.L.R. 419, the Court restated the qualities of judgment that:-

"... A judgment must convey some indication that the judge or magistrate has applied his mind to the evidence on the record. Though it may be reduced to a minimum, it must show that no material portion of the evidence laid

before the court has been ignored. In ***Amirali Ismail v Regina****, 1 T.L.R. 370, Abernethy, J., made some observations on the requirements of judgment. He said:*

'A good judgment is clear, systematic and straightforward. Every judgment should state the facts of the case, establishing each fact by reference to the particular evidence by which it is supported; and it should give sufficiently and plainly the reasons which justify the finding. It should state sufficient particulars to enable a Court of Appeal to know what facts are found and how.'"

Also, basing on **Wily v. John v. Rex** (1956) 23 E.A.C.A. 509, the Court exemplified in **Hamisi Rajabu Dibagula's** case that failure to comply with the relevant statutory provisions as to the preparation of a judgment **will be fatal to a conviction only where there is insufficient material** on the record to enable the appeal court **to consider the appeal on its merits**.

As earlier on pointed out, the judgment of the trial court did not adequately comply with the provisions of section 312 (1) of the CPA in that

the said judgment did not contain the points for determination, and the reasons for holding him guilty leading to his conviction. Fortunately however, the first appellate court rectified the mistake. It weighed and freshly evaluated the evidence on record, and satisfied itself that it established beyond doubt the appellant's commission of the offence he was charged with. Thus, because the error was rectified, this ground is devoid of merit and is accordingly dismissed.

Next is the appellant's complaint in the second ground of appeal that he was not correctly identified because PW2 and PW6 did not explain the aids which enabled them to identify him. The appellant submitted in both his oral and written submissions that PW2 and PW6 erroneously identified him because they did not name him at the earliest possible opportunity. On this, he cited the cases of **Marwa Wangiti Mwita and Another v. Republic** [2002] T.L.R. 39 and **Anael Sambo v. Republic,** Criminal Appeal No, 274 of 2007 (unreported). He also emphasized that those two witnesses did not describe him, for example the type of clothes he wore on that day, and his physical appearance and/or any special marks, if he had any. He likewise said that because the incident occurred at night, those witnesses ought to have told the trial court how they managed to see and

identify him. Failure to give such details, he went on to explain, is sufficient indication that he was not correctly identified.

Ms Mbwana was fully in agreement with the appellant that he was not correctly identified because PW2 and PW6 did not describe him. She referred us to the case of **Horombo Elikaria v. Republic**, Criminal Appeal No. 50 of 2005 (unreported) in which she said, it was emphasized that the circumstances of the identification of the suspect must be clearly explained. Like the appellant, she urged us to allow this ground.

In **Waziri Amani v. Republic,** [1980] T.L.R. 250, **Philipo Rukandiza @ Kichwechembogo v. Republic,** Criminal Appeal No. 215 of 1994 and **Issa Mgara @ Shuka v. Republic,** Criminal Appeal No. 37 of 2005 (both unreported), among others, the Court restated that in order to guarantee a correct identification of a suspect, a witness is required to mention all the aids to unmistaken identification like proximity to the person being identified, the source of light, its intensity, the length of time the person being identified was within view and also whether the person is familiar. In fact, it is not enough for the witness to say that there was light at the scene of crime, emphasis has always been that he/she should give

sufficient details, where circumstances so require, regarding the source of light and its intensity.

All considered however, the circumstances in the present case are different when one takes into consideration how and where the appellant was arrested. As will be appreciated, on 28.10.2009 PW2 spent a long time with the appellant in the first assignment when he took him to Mchukwi. The second encounter was at 22:00 hours when he again hired him to be taken to Kinyanya Kwa Mkengerwa, at which he yet again asked to be taken to Mkengerwa Magengeni. PW2 reluctantly agreed. On arrival at that second destination however, the appellant attacked him, picked the motor cycle and sped away living PW2 helpless at the scene of crime. It was then that PW2 contacted the police who spread the news of the said incident in that vicinity. On the basis of such an account, we are confident that PW2 knew the appellant very well.

Amongst those who received the information about that incident were PW4 and PW5. Those two witnesses testified in common that while they were at Vikindu Weigh Bride area at around 2:00hours, they heard and saw a motor cycle hastily cruising in their direction, but the rider had not put on lights. They stopped him, but he defied orders, passed them

and sped away. They fired a warning shot in the air to enforce their command, still he did not stop. Unprepared to accept defeat, they boarded a motor vehicle and gave a chase. They caught up with that person and arrested him. Together with the motor cycle in question, they took him back at Vikindu Weigh Bridge area and contacted the police at Rufiji who went there and took him to that station. In such circumstances, it is obvious that he being the person whom PW2 says attacked him and took away his motor cycle; and because the appellant was the person who was arrested by PW4 and PW5 with that motor cycle, the appellant's claim that he was not correctly identified is baseless.

The third ground alleges that the evidence of PW4 and PW5 as well as exhibit PA (the motor cycle), was unreliable because they did not tender in court the certificate of seizure of the said motor cycle. Unfortunately, Ms Mbwana did not discuss this ground.

In this regard, the appellant's contention is that under section 38 (3) of the CPA, PW4 and PW5 ought to have tendered before the trial court a certificate of seizure to prove that they arrested him in possession of the said motor cycle. The absence of that important document, he argued, created grim doubts that he was ever found with the alleged motor cycle.

It is certain that sections 38 to 40 of the CPA address the question of search warrants and seizure. Generally, one of the demands under those provisions is that a search warrant should be issued to a police officer or any other person so authorized before such officer executes a search – See **Seif Salum v. Republic**, Criminal Appeal No. 150 of 2008, **Maluqus Chiboni @ Silvester Chiboni and Another v. Republic,** Criminal Appeal No. 8 of 2011. It is also a requirement of the law that where such officer seizes anything pursuant to powers conferred by section 38 (1) of the CPA, he is required to comply with the provisions of subsection (3) of that Act. That section provides that:-

> *"(3) Where anything is seized in pursuance of the powers conferred by subsection (1) the officer seizing the thing shall issue a receipt acknowledging the seizure of that thing, being the signature of the owner or occupier of the premises or his near relative or other person for the time being in possession or control of the premises, and the signature of witnesses to the search, if any."*

Notwithstanding what we have just said however, there is an exception to that general rule based on section 42 of the CPA under which, in emergency circumstances, a police officer or any other person so

authorized, is permitted to search and seize anything relevant in any particular case without warrant. Section 42 (1), (a), (b), (i) and (ii) of the CPA provides that:-

> *"(1) A police officer may–*
>
> *(a) search a person suspected by him to be carrying anything concerned with an offence; or*
>
> *(b) enter upon any land, or into any premises, vessel or vehicle, on or in which he believes on reasonable grounds that anything connected with an offence is situated,*
>
> *and may seize any such thing that he finds in the course of that search, or upon the land or in the premises, vessel or vehicle as the case may be–*
>
> *(i) if the police officer believes on reasonable grounds that it is necessary to do so in order to prevent the loss or destruction of anything connected with an offence; and*
>
> *(ii) the search or entry is made under circumstances of such seriousness and urgency as to require and justify immediate search or entry without the authority of an order of a court or of a warrant issued under this Part."*

See also the cases of **Chacha Jeremiah Murimi & 3 Others v. Republic**, Criminal Appeal No. 551 of 2015 and **Moses Mwakasindile v. Republic**, Criminal Appeal No. 15 of 2017 (both unreported).

In the case of **Moses Mwakasindile** (supra), a police officer who testified as PW6 and his colleague (PW8) were instructed by the Regional Police Commander of Mbeya Region to waylay and arrest a passenger who was travelling to Mbeya from Iringa in a motor vehicle with Reg. No. T.664 BXT make Fuso bus, on account that he was carrying marijuana on board that motor vehicle. That person was arrested and subsequently charged. That person unsuccessfully appealed to the High Court. On appeal to the Court, he challenged that the said stuff was unprocedurally seized because PW6 had not complied with the demands of section 38 of the CPA. The Court held that:-

> *"According to PW6, the search he supervised at Inyala was an emergency search under section 42 of the CPA, because it was not possible, in the circumstances of the case, to secure a search warrant and execute the search in terms of section 38 (1) of the CPA. We note that the iearned trial Judge ruled at page 77 of the record . . . that the*

search was carried out as an emergency search under section 42 of the CPA. On our part, we wholly endorse the view of the learned trial Judge and find that in the circumstances, the search was rightly . . . (regarded) as an emergency search under section 42 of the CPA."

See also the case of **Chacha Jeremiah Murimi & 3 Others v. Republic** (supra) in which we said that in terms of section 42 of the CPA, absence of the certificate of seizure does not lower the weight of the case that the appellant was found with the object under focus.

In the present case, the evidence of PW4 and PW5 was that after seeing a motor cycle coming, whose rider did not put on lights, they stopped that person but he disobeyed the command. They fired a bullet in the air, still he did not stop. It was then that they boarded a motor vehicle and succeeded to arrest him and seized the said motor cycle. There is no doubt that the seizure of the said motor cycle under such circumstances was an emergency within the contemplation of section 42 of the CPA. What else could PW4 and PW5 have done? Rush to Police Station to obtain a certificate of seizure and leave the culprit to vanish!? In our firm stand,

logic required them to act the way they did; hence our finding that this complaint is devoid of merit and we dismiss it.

On another point, the appellant asserted that the handling of exhibit PA did not observe the principle of chain of custody of that article from the time it was seized until the time it was tendered before the trial court. Apart from that, he challenged that PW1 and PW2 failed to give the description of that motor cycle. He referred us to the cases of **Illuminatus Mkoka v. Republic** [2003] T.L.R. 245 and **Paulo Maduka & Others v. Republic,** Criminal Appeal No. 110 of 2007 (unreported). On that basis, he requested the Court to allow this ground.

Once again, it is unfortunate that Ms Mbwana did not respond to this claim.

Generally put, exhibits in any particular case are required to be handled in a transparent way, which is what the doctrine of chain of custody is all about. As was explicated in **Paulo Maduka & Others** (supra), a case which has been followed in several other subsequent cases on the point, including that of **Joseph Leonard Manyota v. Republic**, Criminal Appeal No. 485 of 2015 (unreported), the doctrine entails the

chronological documentation or paper stream, showing the paper trail custody, control, transfer, analysis, and disposition of evidence. We offered the justification on the point in **Joseph Leonard Manyota's** case where we said that:-

> *"The reason why the evidence of this nature must be handled in a scrupulously careful manner is to prevent possibilities of tempering with it, possibilities of contaminating it, or fraudulently planted evidence. This is in the interests of justice."*

In that very case of **Joseph Leonard Manyota** (supra) however, the Court qualified that:-

> *". . . it is not every time that when the chain of custody is broken, then the relevant item cannot be produced and accepted by the court as evidence, regardless of its nature. We are certain that this cannot be the case say, where the potential evidence is not in the danger of being destroyed, or polluted, and/or in any way tempered with. Where the circumstances may reasonably show the absence of such dangers, the court can safely receive such evidence despite the fact that the chain of custody may have been broken. Of course,*

this will depend on the prevailing circumstances in every particular case."

We reiterate and affirm the validation of that proposition.

In the present case, the subject exhibit under focus was exhibit PA, a motor cycle which in our firm view, was not something which by its nature could have been easily destroyed, or polluted, and/or in any way tempered with, and in fact there was no any complaint to that effect. In the circumstances, this complaint is baseless.

Of course, it is appreciated that there was a slight difference in respect of the identity of exhibit PA. While the charge sheet indicated that the said motor cycle was Reg. No. T. 322 ABW make SANLG, its owner (PW1) and PW3, the policeman who collected it at Vikindu Weigh Bridge from PW4 and PW5, said it was Reg. No. T. 322 BAW make SANLG. Even, we are confident that the inconsistency was a minor defect and it did not cause any injustice to the appellant. Besides, this aspect was not cross examined upon, nor did the appellant raise any complaints to that effect in his defence.

To follow is the fourth ground asserting that the doctrine of recent possession was wrongly invoked in the circumstances of this case because PW1 and PW2 did not identify the allegedly stolen motor cycle. In support of this complaint, the appellant stated in both his oral and written submissions that PW1 who was the owner of that motor cycle, and PW2 who was its in-charge at the time it was allegedly robbed, did not describe that property. Relying on the case of **Joseph Mkumbwa and Another v. Republic,** Criminal Appeal No. 97 of 2007 (unreported), the appellant stressed that PW1 did not produce the motor cycle's registration card or the receipt which was issued to him at the time he purchased it. It was held in **Joseph Mkumbwa's** case that:-

> *"Where a person is found in possession of a property recently stolen or unlawfully obtained, he is presumed to have committed the offence connected with the person or place where from the property was obtained. For the doctrine to apply as basis for conviction, it must be proved:*
>
> *First: That, the property was found with the suspect.*
>
> *Second: That, the property is positively proved to be the property of the complainant.*

Third: That, the property was recently stolen from the complainant.

Fourth: That, the stolen property constitutes the subject of the charge against the accused.

Once again, Ms Mbwana was silent on this aspect.

Admittedly, PW1 and PW2 did not produce in court the registration card of the said motor cycle, or the receipt which was issued to PW1 at the time he purchased it. However, as we stated when discussing the third ground, PW1 said his motor cycle was Reg. No. T. 322 BAW, a fact which was supported by PW3 who collected it from PW4 and PW5 at Vikindu Weigh Bridge. In our view, that was sufficient identification of that property, particularly so when it is considered that the appellant did not claim its ownership. He completely distanced himself from it, and maintained all through that he did not know anything about that motor cycle.

Apart from that however, the upholding of the appellant's conviction by the first appellate court did not depend entirely on the doctrine of recent possession, but hugely rested on the testimonies of PW2, PW4 and PW5. While PW2 was the victim of robbery who detailed how he met the

appellant and how the robbery happened; PW4 and PW5 were the police officers who arrested and seized the said motor cycle from him, and subsequently handed it to PW3, a policeman from Rufiji Police Station at which charges were drawn with the eventuality of his being sent to court. In the circumstances, this complaint too is devoid of merit and we dismiss it.

Finally is the appellant's complaint that the prosecution did not prove the case against him beyond reasonable doubt. In this regard, apart from the appellant's general concern that the evidence of PW2, PW4, PW5 and PW6 was not credible, he in particular contended that the evidence of PW4 and PW5 ought not to have been relied upon because it was loaded with contradictions. He cited the case of **Michael Haishi v. Republic** [1992] T.L.R. 92. He further claimed that his defence was not given deserving consideration. He banked on the case of **Shija Masawe v. Republic,** Criminal Appeal No. 158 of 2007 (unreported), whereby the Court said that in the course of writing a judgment, it is the duty of the trial judge to look at the evidence as a whole instead of evaluating the case for the prosecution in isolation to that of the defence side.

We have carefully read the judgments of both courts below. While it is plain that the trial court magistrate did not analyze the evidence on record and draw conclusions to justify the conviction he entered; it was fortunate that the first appellate court rectified that deficiency in as much as it dutifully reconsidered and evaluated the evidence which was before the trial court in order to determine whether it justified the conviction, of course, taking into account that it never saw the witnesses as they testified – See the cases of **Audiface Kibala v. Adili Elipenda & others,** Civil Appeal No. 107 of 2012, **Maramo Slaa Hofu & others v. Republic,** Criminal Appeal No. 246 of 2011 and **Armand Guehi v. Republic,** Criminal Appeal No. 242 of 2010 (all unreported). The immediate issue however, is whether the first appellate court correctly found that the prosecution evidence was strong enough to sustain the appellant's conviction.

In its analysis of the evidence on record, the first appellate court considered PW2's testimony on how he met the appellant at about 10:00 hours on 28.10.2009 at Zebra Bar at Kibiti when the latter hired him to be taken to Mchukwi area to collect mangoes, from where they returned at 18:00 hours. It also considered PW2's evidence that after returning from

Mchukwi, the appellant unsuccessfully requested to be taken to Ikwiriri, after which they parted ways. It further considered the complainant's narration about the appellant's return at around 22:00 hours when he successfully asked him to be taken to Kinyanya Kwa Mkengerwa, at which again on his request, he reluctantly took him to Mkengerwa Magengeni area whereat, immediately after stopping, the appellant produced a big knife and threatened to stab him, simultaneous to which he launched a surprise attack by hitting him on the head with a heavy object, resulting into his falling down. That paved way for the attacker to grab the motor cycle and hurriedly rode away. As it were, PW2 contacted and informed his friend of the tragic incident who followed him at the scene of crime, and laid information to the police.

Likewise, the first appellate court considered the evidence of PW4 and PW5, the policemen who were on duty at Vikindu Weigh Bridge who, as earlier on explained, saw a person riding a motor cycle at a terribly high speed towards their direction but without putting on light. After defying their order to stop, they boarded a motor vehicle and successfully chased and arrested that person and seized the motor cycle he was riding. That

person was none other than the appellant, and the motor cycle he was found with was received as exhibit PA.

It is similarly important to point out that, contrary to what the appellant asserts, in an endeavour to correct the mistakes of the trial court, the first appellate court considered the appellant's defence in which he denied involvement in the commission of the charged offence. Although his advocate at that level contended that the prosecution evidence was tainted with inconsistences and contradictions, that court found that there were no any significant contradictions. It was similarly satisfied that the prosecution evidence was credible, strong and believable, and that it proved the case against him beyond reasonable doubt. In the end, it dismissed his appeal.

We have carefully considered the analysis made and the reasoning of the first appellate court in coming to the conclusion that the conviction was justified. In essence, it based on the way the appellant was found and arrested by PW4 and PW5 with that motor cycle. We agree with the first appellate court that PW2 having been with the appellant from 10:00 hours to 18:000 hours when the later first hired him to be taken to Mchukwi area to collect mangoes, and subsequently from 22:00 hours when he contracted him for the second time, it is obvious that he knew him well.

Besides, as was pertinently summarized by the first appellate judge at page 41 of the Record of Appeal, the unbroken chain of events from the time of his arrest to the point when he was sent to court leaves no doubt that he was not mistaken for some other culprit. At page 41 of the Record of Appeal, the first appellate judge said that:-

> *"In the final analysis I am satisfied that the evidence before the trial court was cogent and consistent from the time the appellant hired PW2 for the first errand to the time he was arrested with the motorcycle by PW4 and PW5 at around 2 am.* ***The chain of events did not break to allow somebody else to come in between so as to allow the proposition that it was somebody else who robbed and got arrested with the motorcycle by the said witnesses.***"

As already pointed out, we are in full agreement with her.

For reasons we have just given, we are firm that the complaint that he was not correctly identified, or that he was mistaken for some other culprit is baseless. This goes also to answer his complaint that PW2, PW4 and PW5 were not credible witnesses, which we find, like the first appellate court, to be unsubstantiated.

That said and done, we find and hold that the appeal lacks merit, in consequence of which we dismiss it in its entirety.

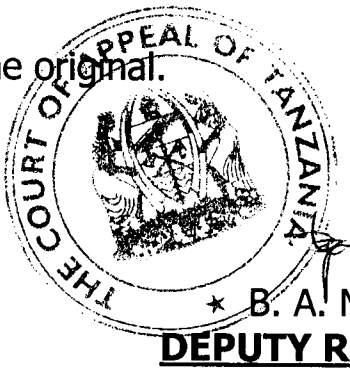
DATED at **DAR ES SALAAM** this 27th day of July, 2020.

B. M. MMILLA
JUSTICE OF APPEAL

G. A. M. NDIKA
JUSTICE OF APPEAL

I. P. KITUSI
JUSTICE OF APPEAL

The Judgment delivered this 29th day of July, 2020 in the presence of the Appellant in person linked via video conference at Ukonga and Ms Monica Ndakidemi, State Attorney for the Respondent/Republic is hereby certified as a true copy of the original.



B. A. MPEPO
DEPUTY REGISTRAR
COURT OF APPEAL