IN THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MOSHI SUB-REGISTRY

AT MOSHI

CRIMINAL APPEAL NO. 52 OF 2023

(C/F Criminal Case No.188 of 2022 in the District Court of Moshi at Moshi)

MARK JAMES CHILA @ MAKI…….…… APPELLANT

VERSUS

REPUBLIC…….…… RESPONDENT

JUDGEMENT

Date of Last Order: 18.03.2024
Date of Judgment: 15.04.2024

MONGELLA, J.

The appellant herein was arraigned in the district court of Moshi at Moshi (henceforth, the trial court) for armed robbery contrary to **Section 287 A of the Penal Code** [Cap 16 R.E. 2019]. The particulars of the offence, as reflected in the charge, were that: on 02.05.2022 at Njoro area within Moshi district and Kilimanjaro region, the appellant stole a weighing scale *(mizani*) worth Tanzanian Shillings One Hundred Eighty Thousand (TZS. 180,000/=), property of one Mwajuma Hussein Njuki and immediately before stealing the said property threatened her in order to obtain and retain the said property.

The appellant denied the charge levelled against him and the matter proceeded to trial. The prosecution paraded four witnesses who tendered three exhibits to wit, a certificate of seizure admitted as Exhibit P1, a weighing scale admitted as exhibit P2 and a knife with wooden handle admitted as exhibit P3. The evidence of the prosecution was that, on the material day of 02.05.2022 at morning hours, the victim, Mwajuma Hussein Njuki (PW2), was cleaning her shop. The appellant, who was her neighbour, approached the shop holding a knife. He demanded that PW2 gives him money. PW2 ran inside her house and informed her husband (PW3)on what had transpired. They both came back to the shop and noticed that the weighing scale had gone missing. It was observed that the appellant accessed the same through an open space in the window of the shop which they used to serve the customers.

PW2 and PW3 alleged to have seen the appellant running with the scale almost three paces from where they were. They shouted for help and people suddenly appeared and chased the appellant. The appellant was then caught and found in possession of the scale and a knife. PW4, a militia man on patrol, arrested the appellant and took him to Majengo police station. At the station, the scale and knife were seized by PW1, an investigator, a certificate of seizure was filed and signed by PW1, PW2 and PW4. The appellant was then placed on remand custody. After investigation was complete, the appellant was arraigned before the district court and charged.

The trial court found the prosecution had established a *prima facie* case against the appellant. He was thus required to enter his defence. In his defence, the appellant alleged that he was in police custody on the material day of 02.05.2022. That, he was arrested on 29.04.2022 at Mbuyuni Cape Town for being suspected to possess narcotic drugs "mirungi," though he was found with sugar and rice. That, on 30.04.2022, he was taken out of custody and shown a woman whom the police asked if he knew but he denied knowing her. On 01.05.2022 his statement was recorded and he was required to sign the same but he was not afforded the opportunity to read it. On 18.05.2022 he was arraigned for armed robbery.

After observing the evidence of both parties, the trial court found the appellant guilty of armed robbery and convicted him serve thirty (30) years in prison. Aggrieved by the said conviction and sentence, the appellant preferred this appeal on six (6) grounds as follows:

1. *That, the learned successor trial Magistrate grossly erred both in law and fact in flouting the mandatory provisions of section 214(1) of the C.P.A, Cap 20 R.E 2019, since there were no reasons recorded for the reassignment or change of the trial Magistrate*

2. *That, the learned successor trial Magistrate grossly erred both in law and fact in convicting and sentencing the Appellant*

using weak, tenuous, contradictory, incredible, uncorroborated and wholly unreliable prosecution evidence.

3. *That, the learned successor trial Magistrate grossly erred both in law and fact in failing to note that, PW2 and PW3 gave a very highly suspicious and improbable evidence against the Appellant. Since it is inconceivable in one's mind for a person to invade and rob his/her neighbour whom they well knew each other without any attempt to hide his face.*

4. *That, the learned successor trial Magistrate grossly erred both in law in finding and holding that the Appellant was chased and arrested as a culprit, despite being highly possibility for the PW2, PW3 and PW4 arrested a wrong person.* (sic)

5. *That, the learned successor trial Magistrate grossly erred both in law and fact in failing to note that, the chain of custody of the alleged exhibits P2 and P3 were irretrievably broken. Since there is no explanation on how the said exhibits found its way back to the hands of PW1 who tendered the same in evidence as exhibits.*

6. *That, the learned successor trial Magistrate grossly erred both in law and fact in convicting and sentencing the Appellant despite the charge being not proved beyond reasonable doubt against the appellant and to the required standard by the law.*

The appeal was argued by written submissions whereby the appellant fended for himself, while the Republic was represented by Ms. Bertina Tarimo.

The appellant collectively submitted on all grounds. He averred that the successor of the trial magistrate took over the case and proceeded to hear the same without recording reasons for succeeding the former magistrate. He considered the conduct being contrary to **Section 214 (1) of the Criminal Procedure Act** [Cap 20 RE 2022]. He contended that it is now settled that where there is re-assignment or change of magistrates in trial, reasons should be recorded in proceedings. That, in trial court proceedings it was only shown that the case file was re-assigned to Hon. S. Mshasha under permission of the Hon. Judge in Charge. However, he said, when the successor magistrate took over from one Hon. N. Mwerinde- SRM, who conducted the preliminary hearing, she did not state the reason why the former magistrate failed to continue with the case.

Citing the case of **Abdi Masoud @ Iboma & Others vs. Republic** (Criminal Appeal 116 of 2015) [2015] TZCA 7, he averred that the omission to state the reason why another magistrate succeeded the former occasioned miscarriage of justice against him.

Addressing the prosecution evidence, he alleged that there were contradictions on the evidence adduced by prosecution witnesses. Explaining the contradictions, he contended that PW2 testified that

while in her shop, the appellant appeared and threatened her with a knife. She then ran inside the house to seek assistance from her husband (PW3) and together they went to the shop and saw the appellant had taken the weighing scale. That they ran after him and eventually caught him in assistance with other people. On the other hand, he contended that PW3 testified that while in his room he heard PW2 asking for help and when he went outside to see what was going on, he saw a young man trying to take the weighing scale from the shop, but the man dropped it and ran. As for PW4, he alleged that PW4 testified that while on his duties he heard screams and decided to follow the voice whereby he met he appellant while in possession of the weighing scale and arrested him.

Pointing further contradictions, he argued that while both PW2 and PW3 testified to identify or recognize the appellant at the crime scene; PW3 changed later testifying that he identified him (the appellant) after he was arrested by PW4. In that respect, he alleged to have been arrested out of a mistaken recognition. Considering the fact that he was neighbours with the victim, he further contended that it was improbable and inconceivable in one's mind that a person could invade his neighbour without any attempt to hide his face. He cited the case of **Julius Mwanduka @ Silah vs. Republic** (Criminal Appeal 322 of 2016) [2019] TZCA 45 TANZLII to support his averment.

The appellant further alleged that PW1 who tendered the weighing machine (Exhibit P2) and the knife (Exhibit P3) testified that after seizing the same he handed them to the exhibit keeper for safe keeping. He challenged the admission of these exhibits on the ground that there was no any explanation as to how the exhibits found their way back to PW1. In his view, this was a fatal anomaly in the dictates of the decision by the Court of Appeal in the case of **Twalib Omary Juma @ Shida vs. Republic** (Criminal Appeal 262 of 2014) [2014] TZCA 183 TANZLII.

The prosecution opposed the appeal. In reply to the 1st ground, Ms. Tarimo acknowledged that the record reveals that the appellant stood trial before two magistrates whereby the predecessor, Hon. Mwerinde, SRM, only took part in preliminary hearing while the successor, Hon. Mshasha, PRM, received evidence of all prosecution witnesses. She conceded that the successor magistrate did not state the reason of re-assignment.

She averred that while she understood the appellant's concern, **Section 214 (1) of the Criminal Procedure Act** addresses circumstances where a successor magistrate takes over the case when evidence has been recorded. That, as such, the successor magistrate has to assign reasons for the re-assignment and if necessary, re-summon witnesses and recommence the trial. However, she said, in the case at hand, the successor magistrate took over the proceedings at a stage where only the preliminary hearing had been conducted by the predecessor magistrate. She

further argued that the appellant was present when the prosecution paraded its witnesses and had the right to cross examine each witness. She challenged the appellant for failure to explain how non-compliance with **section 214(1)** materially prejudiced his rights. She held the stance that non-compliance with the said provision did not prejudice the appellant's rights. She fortified her averments with the case of **Charles Yona vs. Republic** (Criminal Appeal 79 of 2019) [2021] TZCA 339 TANZLII.

Addressing the 2nd ground, Ms. Tarimo considered the alleged contradictions as minor. She had such stance arguing that PW3 himself testified that they caught the appellant while he was in possession of the weighing machine and knife. She added that such fact was also stated by PW2, the victim and PW4, the militia man who arrested the appellant. She thus found the alleged contradictions not going to the root of the case. She bolstered her stance with the case of **John Makuya vs. Republic** (Criminal Appeal 62 of 2022) [2022] TZCA 264 (12 May 2022) TANZLII.

On the 3rd ground, Ms. Tarimo averred that the court ought to believe every witness unless there is a reason not to believe him or her. She supported her contention with the case of **Mathias Bundala vs. Republic** (Criminal Appeal 62 of 2004) [2007] TZCA 16 TANZLII. Further, she averred that it was evident that PW2 an PW3 were the appellant's neighbours, but the appellant was arrested by PW4, a militia man. That, even if there were doubts on the evidence of PW2 and PW3, it was not disputed that the appellant was found in

possession of Exhibit P2 and PW3 which were identified before the trial court. Further, that, it was in such circumstances that the trial court did not find a reason to doubt PW2 and PW3's testimony despite the appellant being their neighbour and him invading their shop without covering his face.

Replying on the 4th ground, Ms, Tarimo argued that the appellant's arrest was proper as PW2 identified the appellant as he threatened her with a knife. That, upon seeking help from PW3, they both saw the appellant three paces from their shop before shouting for help and chasing him. The appellant was caught shortly while in possession of the weighing machine and knife. She had the view that, if the appellant was wrongly arrested then he would not have been found in possession of stolen property immediately after being chased and caught.

With regard to the 5th ground, Ms. Tarimo contended that the chain of custody was never broken because when the appellant was arrested in custody of Exhibits P2 and P3, the exhibits were taken to Majengo police station and handed to PW1. That the exhibits were tendered before the court by PW1 who received the same and they were properly identified by PW2, PW3 and PW4. That, these witnesses testified that the exhibits were found with the appellant and handed to PW1 at the police station.

On the final ground, Ms. Tarimo had the stance that the prosecution proved the offence of armed robbery against the appellant to the

hilt. She was convinced that all the ingredients of the offence, as established in the case of **Shabani Said Ally vs. Republic** (Criminal Appeal 270 of 2018) [2019] TZCA 382 TANZLII, were proved. She maintained that the appellant threatened PW2 with a knife. That, PW5 called PW3 whereby two saw the appellant at three paces from the shop. That, PW2 and PW3 called for help and the appellant was arrested by PW4 while in possession of both the knife and weighing machine. Ms. Tarimo finalized her submissions by praying for the appeal to be dismissed for lack of lack merit.

The appellant did not rejoin on Ms. Tarimo's submission leading me to proceed to determine the appeal after thorough consideration of the grounds of appeal, the submissions by the parties and the trial court record.

On the 1st ground, the appellant faulted the trial court for failure to comply with the requirement under **Section 214 (1) of the Criminal Procedure Act** as the successor magistrate, Hon. S. Mshasha did not provide reasons for the being assigned the case which was formerly assigned to Hon. N. Mwerinde. According to him, this omission was incurably fatal. On the other hand, Ms. Tarimo, while acknowledging the omission, maintained the view that the omission was not fatal as the appellant was not prejudiced.

Foremost, I find it convenient to reproduce the provision on which this ground is based. That is, **Section 214 (1) of the Criminal Procedure Act** which states:

> "**214.-(1)** Where any magistrate, after having heard and recorded the whole or any part of the evidence in any trial or conducted in whole or part any committal proceedings is for any reason unable to complete the trial or the committal proceedings or he is unable to complete the trial or committal proceedings within a reasonable time, another magistrate who has and who exercises jurisdiction may take over and continue the trial or committal proceedings, as the case may be, and the magistrate so taking over may act on the evidence or proceeding recorded by his predecessor and may, in the case of a trial and if he considers it necessary, re-summon the witnesses and recommence the trial or the committal proceedings."

Observing the trial court proceedings, I find it evident that the successor magistrate never assigned any reason as to why the case file was assigned to her. The only available content in regard to the transfer of the file refers to the permission of the Judge in charge. The same is found on page 4 to 5 of the typed proceedings whereby it is stated:

> Date 11/07/2022
> Coram E. Y. Philly-DRM i/c
> For Pros. Absent
> Accused: absent
> B/c Leila kessy
> **Court:** Under permission of Hon. Judge i/c the matter is re-assigned to Hon. S. Mshasha -PRM,
>
> **Sgd. E.Y. Philly, DRM i/c**
> **11/07/2022**

On the next hearing date, which was on 13.07.2022, the matter came before Hon. Mshasha, but she did not assign any reason for the file being transferred to her. Having noted that indeed the successor magistrate did not assign reason for the transfer, the nagging question is whether in the circumstance the same was fatal?

Section 214 (1) of the Criminal Procedure Act is applicable in circumstances where one magistrate records part of the evidence in trial or takes up part of proceedings in committal and another magistrate takes over. The provision is set to give the succeeding magistrate the forum to either re-summon witnesses and recommence trial where he or she finds it justiciable to do so. The provision also requires the successor magistrate to assign reasons for the transfer or re-assignment. See, **Director of Public Prosecutions vs. Laurent Neophitus Chacha & Others** (Criminal Appeal 252 of 2018) [2019] TZCA 367; **Bashiri Ibrahim @ Joseph vs. Republic** (Criminal Appeal No 464 of 2015) [2017] TZCA 350; **Mashaka Pastory Paulo Mahengi @ Uhuru & Others vs. Republic** (Criminal Appeal No 61 of 2016) [2016] TZCA 2060 and; **Shabani Seif & Another vs. Republic** (Criminal Appeal Case 215 of 2015) [2015] TZCA 470 (all at TANZLII)

In this case, at trial, when Hon. Mshasha took over the matter, there was no any evidence recorded yet by the trial court. Clearly, the provision is inapplicable in the circumstances as the circumstances set under **Section 214(1) of the Criminal Procedure Act** relate to matters partially heard. This position was further cemented by the Court of Appeal in the case of **Priscus Kimario vs. Republic** (Criminal

Appeal 301 of 2013) [2015] TZCA 13 (25 February 2015) TANZLII, whereby it was stated:

> "We are of the settled mind that where it is necessary to re-assign **a partly heard matter to another magistrate**, the reason for the failure of the first magistrate to complete the matter must be recorded. If that is not done it may lead to chaos in the administration of justice. Anyone, for personal reasons could just pick up any file and deal with it to the detriment of justice. This must not be allowed."

A similar stance was held in the forecited decisions which purely addressed scenarios where part of the evidence had been heard. In the premises, I hold the view that since the matter had not yet been heard and that the district resident Magistrate in charge had noted that the case file field had been re-assigned, the appellant was not in anyway prejudiced. Preliminary hearing, which is the stage reached before the case was re-assigned to another magistrate, does not involve tendering of evidence to prejudice the appellant's rights on change of magistrates. In the foregoing, I find this ground without merit.

As to the 2nd ground, the appellant challenged the trial court's decision for being founded on contradictory prosecution evidence. He claimed that the contradictions lied with the testimony of PW2, PW3 and PW4. This assertion was in fact admitted by Ms. Tarimo, though she defended that the same were minor and not going to the root of the matter.

It is well settled that where there are contradictions, the court has the duty to weigh whether the same are material or minor. Material contradictions affect the root of the case while minor contradictions do not. Emphasizing on this stance, the Court of Appeal in the case of **Mzee Ally Mwinyimkuu @ Babu Seya vs. Republic** (Criminal Appeal 499 of 2017) [2020] TZCA 1776 TANZLII stated:

> "We have, times and again, dealt with complaints of this nature and its effect on the prosecution's case. In all those cases, the Court has been firm that minor contradictions, inconsistencies or discrepancies in evidence from the prosecution will not dismantle its case. The reason for this stance is not hard to seek; minor contradictions, inconsistencies or discrepancies in evidence for the prosecution do not corrode the strength of its case as do material contradictions, inconsistencies and discrepancies."

Going through the trial court record, I find that indeed, there are contradictions between the evidence of PW2, PW4 against that of PW3. PW2 stated that after she was threatened by the appellant with a knife, she ran inside the house and called PW3. That she and PW3 saw the appellant running with the weighing scale on his hand and was arrested in possession of the weighing scale and a knife. For ease of reference, her exact words were:

> *"On 2/5/2022 at morning hours, after opening the shop, I started cleaning the shop, that's when, the accused appeared; he was holding a knife, threatening me demanding that I should give him*

money. He threatened me with a knife. I then ran inside the house and told my husband of what happened. He and I came out and proceeded to the shop where we found that the accused has taken the weighing scale. The scale was in my shop.

….We saw him running away carrying the scale. We were not far from the shop about 3 paces from where we were. We shouted for help while chasing him and suddenly we got help people started chasing him and we were able to catch him. He was caught at a distant place as he was running. He was caught, while in possession of weighing scale and a knife."

PW4 as well, testified to have met the appellant running while carrying a weighing scale and upon approaching him he noted he had in his possession, a knife. His exact words were:

"I heard a cry for help saying "wii mwizi" "uwii mwizi". I decided to go on the direction where, the said voice was coming from, but before I reached there, I met the accused person "Mark", he was running and he was carrying a weighing scale. I ordered him to stop otherwise I will injure him with the customary weapons I had carried. He complied and put the weighing scale down and raised his hands up. I approached him and I noted he had a knife with him and I asked him to take it and put it down."

On the other hand, PW3 initially testified that he found the accused holding the machine and knife. He later testified to have seen the appellant intending to take it out of the shop and when he saw him, he dropped the same and took off. He then testified that together

with assistance of neighbours, the appellant was arrested by PW4 and found with a weigh machine and knife. His exact words were:

> *"When I got outside that's when I saw a young man carrying a weigh machine and a knife. The weigh machine is the one that was inside the shop. So, I found the accused holding the machine intending to take it out of the shop so when he saw me he dropped it and took off.*
>
> *…I chase after him, while shouting thief so I can get assistance from neighbours. Some of them came out and started chasing the accused person. We were able to catch him after we got help from a militia man."*

Cleary, PW3's initial statement contradicted with that of PW2. However, I find the contradiction minor. This is because, PW3 rectified his statement immediately afterward by stating that the appellant was caught with help of a militia man (PW4) and was in possession of a weighing scale and a knife. On cross examination, PW3 also maintained the same statement that the appellant had taken the weighing machine. He further mentioned PW4's name as the militia who arrested the appellant. In the foregoing circumstances, I agree with the learned state attorney that the contradiction did not go to the root of the case. I thus find the 2nd ground without merit as well.

On the 3rd and 4th grounds, the appellant's general argument was that the prosecution evidence was suspicious and improbable. His base for such contention was that a reasonable man could not

show up at a neighbour's property unmasked. He also pleaded that there was a matter of mistaken identity. Ms. Tarimo, on her part, was of the view that the appellant was rightly recognized and arrested.

In observing the record, I find that the testimony of PW2, PW3 and PW4 shows consistency whereby it is seen that the appellant threatened PW2 with a knife requiring her to give him money. PW2 instead went into her house and called PW3, her husband. PW3 came out with PW2 and saw the appellant leaving with the weighing scale which caused them to raise an alarm and chase after him. He was caught by PW4, a militia man on patrol at almost 1-kilometre distance from the shop. He was also found in possession of the weighing scale and the knife. These items were properly identified by PW2, PW3 who owned the same and PW4 who found the same in the appellant's possession upon arrest.

The appellant was known to PW2 as the grandson of their neighbour for five years and he used to purchase items from her shop multiple times before. Further, the appellant was immediately arrested after fleeing the crime scene and was found in possession of items he stole, which were properly identified by PW2, PW3 and PW4. Considering these facts, it is clear that the appellant was arrested under hot pursuit. In the case of ***Joseph Munene & Another vs. Republic***, Criminal Appeal No. 109 of 2002 (CAT at Arusha, unreported), the law was settled to the effect that there is no room for mistaken identification where a person is arrested in hot pursuit. Further, in the case of **Jibril Okash Mohamed vs. Republic** (Criminal

Appeal No. 331 of 2017) [2021] TZCA 13 (11 February 2021) TANZLII, the Court of Appeal while referring to its previous decisions in **Abdallah Bakari vs. Republic**, Criminal Appeal No. 268 of 2011 and that of **Joseph Safari Massay vs. Republic**, Criminal Appeal No. 125 of 2012 (both unreported) stated:

> "The Court has taken the position that where an accused is chased from the scene of crime even in difficult condition such as at night time without losing sight of him and he is successfully arrested, that is sufficient evidence that he is responsible with the commission of the offence."

I do not subscribe to the appellant's contention that he could not attack his neighbours without putting on any face masks. The fact that the appellant was PW2 and PW3's neighbour and that he was unmasked does not mean in any way that he could not be capable of doing such act. The mere fact of being neighbours cannot omit the possibility of one harming another. The appellant's argument is grounded on speculations which cannot be acted upon by the court.

It is well settled that every witness is entitled to credence unless there are good and cogent reasons not to believe such witness. See; **Mathias Bundala vs. Republic** (supra) and; **Goodluck Kyando vs Republic** [2006] T.L.R 363. Still considering the fact that the appellant was arrested in hot pursuit and found is possession of the stolen item and the knife he used to threaten PW2, I find no reason to doubt the

testimony of PW2 and PW3. In that regard, the 3rd ground is also found without merit.

On the 5th ground, the appellant challenged his conviction on the ground that the chain of custody of the exhibits was not established. This was vehemently disputed by Ms. Tarimo, who had a firm stance that the chain of custody was duly established. In **Paulo Maduka & Others vs. Republi**c (Criminal Appeal 110 of 2007) [2009] TZHC 69 (TANZLII), the Court of Appeal stressed the importance of recording chain of custody. It stated:

> "The idea behind recording the chain of custody, it is stressed, is to establish that the alleged evidence is in fact related to the alleged crime - rather than, for instance, having been planted fraudulently to make someone appear guilty. Indeed, that was the contention of the appellants in this appeal. The chain of custody requires that from the moment the evidence is collected, its every transfer from one person to another must be documented and that it be provable that nobody else could have accessed it."

See also; **Moses Mwakasindile vs. Republic** (Criminal Appeal 15 of 2017) [2019] TZCA 275 (TANZLII).

According to the evidence presented before the court, PW2 was threatened by the appellant with a knife and thereafter the appellant stole a weighing scale which was witnessed by both PW2 and PW3. The Two witnesses and their neighbours immediately pursued the appellant and he was eventually found in possession

of both items by PW4, a militia man who arrested him. On the same morning, the appellant, PW2, PW3 and PW4 went to the police station whereby the items were seized by PW1 who filled a Seizure Certificate, admitted as exhibit P1. The seizure certificate contained the signature of PW1, the appellant, PW4 and PW2. The later being witnesses. According to PW1, the items were stored by the Exhibit Keeper and had been registered. Unfortunately, there were no records of how the same made their way to PW1who then tendered them before the trial court.

In **Joseph Leonard Manyota vs. Republic** (Criminal Appeal No. 485 of 2017) [2017] TZCA 261 TANZLII, the Court of Appeal, facing akin circumstances in which seized item made its way to a witness who tendered the same without paper trail, stated:

> "We similarly wish to point out that though PW1 was the owner of the m/c, and thus competent to tender it as evidence in court, we abhor the manner the m/c was handed back to her. There ought to have been a transparent way on how that handing over was done, an aspect which would be in spirit with the demands of the doctrine of chain of custody, that is, the chronological documentation or paper trail, showing the paper trail custody, control, transfer, analysis, and disposition of evidence. The reason why 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."

However, in the same case, noting the nature of the exhibit, the Court made an exception to the general rule requiring there being paper trail or oral evidence to establish chain of custody. The Court stated:

> "...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."

See also; **Stephano s/o Victor @ Mlelwa vs. Republic** (Criminal Appeal 257 of 2021) [2023] TZCA 152 TANZLII and **Onesmo Dadi @ Ndisael & Another vs. Republic** (Criminal Appeal No.283 of 2022) [2023] TZCA 17308 (both from TANZLII).

In the case at hand, while the knife might be capable of changing hands easily, the scale is an item incapable of changing hands easily. Further, apart from the fact that both items were found in possession of the appellant upon being arrested on hot pursuit; both, PW2, and PW4 appeared before the police to sign the seizure certificate on the same day the incidence took place. Both, PW2 and PW4 identified the two items at the police and before the trial court. In addition, , as detailed by PW1, both items were labelled

and kept in a sulphate bag, which in my view, eliminates the possibility of the two items being tempered with. In the foregoing, I am of the opinion that the oral evidence holds credibility and such is enough to fix the missing link on the chain of custody. In the upshot this ground as well lacks merit.

The 6th ground was couched generally to the effect that the prosecution failed to prove the case against the appellant beyond reasonable doubt. I shall not dwell much on this ground because I am of the opinion that this ground has been addressed in the foregoing grounds of appeal. Considering the observation I have made in the other grounds of appeal; I am of the considered view that the case against the appellant was well proved beyond reasonable doubt by the prosecution.

The established legal position is that the ingredients of the offence of armed robbery are: theft, use of dangerous weapon before or after such theft, and the weapon must be directed to a person. See; **Shabani Said Ally vs. Republic** (supra) and **Amos Sita @ Ngili vs. Republic** (Criminal Appeal No. 438 of 2021) [2023] TZCA 17697 TANZLII.I find the evidence of the prosecution has sufficiently established that the appellant did threaten PW2 with a knife prior to stealing a weighing scale and that suffices to prove the offence of armed robbery against him.

In the foregoing, I find the appeal without merit and hereby dismiss it. The conviction and sentence by the trial court are accordingly upheld.

Dated and delivered at Moshi on this 15th day of April, 2024.

X

L. M. MONGELLA
JUDGE
Signed by: L. M. MONGELLA