

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: Mustafa, J.A., Mwakasendo, J.A. and Makame, J.A.)

CRIMINAL APPEAL NO. 4 OF 1979

B E T W E E N

JOHN P. MWITA APPELLANT

A N D

THE REPUBLIC RESPONDENT

(Appeal from the Order of
The High Court of Tanzania
at Dar es Salaam) (Kisanga, J.)
dated the 9th day of December, 1977

IN

Criminal Appeal No. 219 of 1977

JUDGMENT OF THE COURT

MUSTAFA, J.A.:

The appellant was charged with burglary and stealing but was convicted of housebreaking and stealing in a resident magistrate's court and was sentenced to a substantive term of three years' imprisonment. His appeal to the High Court was summarily rejected and he has now appealed to this Court.

P.W.3 testified that on information received he found that a room in a hall in the University of Dar es Salaam was broken into and he discovered the appellant some distance away carrying a suit case and walking off. He accosted the appellant, who informed him that the suit case belonged to his (appellant's) wife. P.W.3 was dissatisfied with the reply and when the appellant absented himself for a short period in the meanwhile P.W.3 opened the suit case and discovered that it belonged to somebody who was then attending a conference in the University.

P.W.3 managed to have the appellant carry his case to the Police Station, and there the owner came and identified her property. P.W.4, a child of tender years, also stated, not on oath, in court that he saw P.W.3 accost the appellant and substantially corroborated what P.W.3 had testified.

The appellant, on the other hand, alleged that it was P.W.3 who was carrying the bag in question and was attempting to hold him as the man responsible because he was ill-disposed towards him. In short he alleged a frame up.

The trial magistrate dealt with the evidence of the prosecution and defence witnesses in detail, and came to the conclusion that P.W.3's and P.W.4's statements to the court were true. He disbelieved the appellant and his witnesses. He therefore convicted the appellant as stated earlier.

The first appellate judge in summarily dismissing the appeal clearly implied that he considered the theory of a frame up as completely untrue. It is true that the first appellate judge should not have summarily dismissed the appeal as there were allegations by the appellant that he was denied an adjournment when he was ill. However, on this aspect the trial magistrate had duly considered the application and gave good reasons for refusing that particular adjournment. Perhaps the first appellate judge could also have dealt with the evidence led by the appellant in support of his theory; but it is clear that the first appellate judge was duly satisfied that the prosecution evidence was true, and that the defence account was not credible.

Since both the courts below have found as a fact that the appellant was found in possession of stolen property shortly after a breaking, we cannot interfere on a question of fact,

since there was more than sufficient credible evidence to support the conviction. No question of law has been raised in this second appeal. The appeal is devoid of merit and is dismissed.

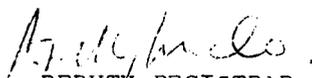
Dated at Dar es Salaam this 25th day of October, 1979.

A. MUSTAFA
JUSTICE OF APPEAL

Y.M.M. MWAKASENDO
JUSTICE OF APPEAL

L.M. MAKAME
JUSTICE OF APPEAL

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


DEPUTY REGISTRAR