

**IN THE HIGH COURT OF TANZANIA
AT MTWARA**

**IN THE DISTRICT REGISTRY AT MTWARA
APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 66/2006
(ORIGINAL CRIMINAL CASE NO. 29/2005
OF NACHINGWEA DISTRICT COURT**

BEFORE: HON. D.B. NDUNGURU – RM)

MUSSA ATHUMANI -----APPELLANT

VERSUS

THE REPUBLIC -----RESPONDENT

Date of Last Order: 9/10/2007

Date of Judgement: 23/11/2007

JUDGEMENT

SHANGALI, J.

The appellant MUSSA S/O ATHUMANI was charged before Nachingwea District Court with the offence of stealing by Agent contrary to section 273(b) of the Penal Code, Cap 16. He was found guilty of the offence and sentenced to serve five (5) years imprisonment term. The appellant was aggrieved by the decision of the trial District Court and has now filed this appeal attempting to impugn it.

Let me give a brief account of the case at the trial which led to the appellants being convicted and awarded an imprisonment sentence.

Sometimes in 2001, the appellant and the complainant, PWI namely MOHAMED ABDALLAH were close buddies sharing and lending Assistance of life to each other. At that time the appellant was also

making and dealing with bricks business at PWI's house. On a date not quite clear to the PWI, but during the months of July 2001 at about 10.00 hrs, PWI was at his place of work with the appellant and one Abdallah Hamisi (PW2). According to the evidence of PWI and PW2, the appellant had gone there to borrow PWI's bicycle make phoenix for his water business. Since that was not the first time for the PWI to lend his bicycle to his good friend, the appellant and since he used to return it safely, PWI decided to hand over his bicycle to the appellant in front of PW2.

It is on the evidence of PWI and PW2 that, from that time and date the appellant was never seen again and all efforts made by both of them to find him ended in vain. The appellant simply disappeared with PWI's bicycle valued at Tsh.50,000.00.

Then, suddenly on 5th February 2005, PWI met the appellant at Nachingwea township and queried him about his bicycle but the appellant had nothing substantive to offer. In the assistance of militiamen, PWI arrested the appellant and took him to the Police Station and later charged with the present offence.

In his sworn defence before the trial Court the appellant claimed that he went to Tunduru Village at Nachingwea from Masasi on 14th August 2001. That at Tunduru village he was dealing with bricks business until 11th September 2001 when he was arrested, charged before a Primary Court and sent to prison. He claimed that after that case he went back to Masasi and later to Nachingwea where he was arrested again on 5th February 2005. The appellant denied to have committed the offence.

In his well composed judgment, the trial Resident Magistrate calmly analysed and evaluated the evidence and convicted the appellant as charged.

In his memorandum of appeal the appellant has raised very flimsy complaints centred on one ground of appeal namely whether the case against him was proved beyond reasonable doubt.

During the hearing of the appeal, he insisted on his innocence but this time he changed his directions of defence and claimed that he was claiming his Tsh.3000/= from PWI having sold bricks to him.

Mr. Hyera, Learned State Attorney who appeared for the respondent/Republic unfeignedly supported the decision of the trial Resident Magistrate and stated that the evidence against the appellant was water tight. He submitted that the appellant was a familiar person and a friend to both PW1 and PW2 and that it was the appellant's custom to borrow PW1's bicycle for his water business. Mr. Hyera, argued that the defence of the appellant that he was claiming some money from PW1 is an afterthought because the issue was not raised during the trial or cross-examinations. Mr. Hyera urged this Court to dismiss the appeal for lack of merits.

On my side I have no reason whatsoever to differ with the decision of the trial Resident Magistrate nor the submission made by the Learned State Attorney. The case against the appellant was simply proved beyond all reasonable doubts. The evidence of the two prosecution witnesses was reliable and credible. The appellant totally and completely failed to account for the PW1's bicycle which he borrowed and disappeared with it only to be arrested some years later.

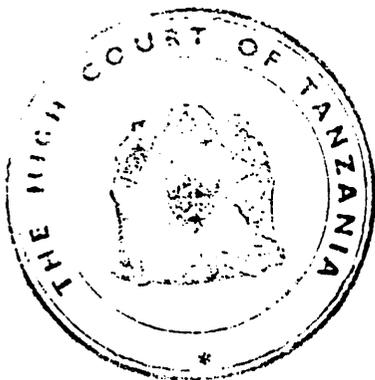
Having said so, I am satisfied that the case against the appellant was proved conclusively to the required standard and the appellant was correctly found guilty and sentenced.

In the event, this appeal has not merits whatsoever, and it is hereby dismissed with contempt.

It is so ordered.


M.S. Shangali
JUDGE
23/11/2007

Judgement delivered todate 23rd November 2007 in the presence of Mr. Luena, Learned State Attorney for the respondent/Republic and the appellant in person.




M.S. Shangali
JUDGE
23/11/2007.