

TANZANIA / JUDGMENT

abiud denis maugo vs republic

2022 tzhc 11368 29 july 2022

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IN THE HIGH COURT OF TANZANIA IN THE DISTRICT REGISTRY OF DODOMA AT DODOMA DC.
CRIMINAL APPEAL NO. 85 OF 2021 ABIUDI DENIS MAUGO.....
APPEALANT VERSUS THE REPUBLIC..... RESPONDENT
(Arising from the judgment of the Resident Magistrate Court of Singida, Massawe-SRM) Dated the
8th of June, 2021 In Criminal Case No.122 of 2020

JUDGMENT

17thMay&29thJuly,2022 MDEMU, J.: This is an appeal from the decision of the Resident Magistrate's Court of Singida which convicted and sentenced the Appellant herein on three counts of theft contrary to the provisions of sections 258, 265 and 264 of the Penal Code, Cap. 16. According to the particulars of offence and the evidence in the trial court, the Appellant did steal one mobile phone make Itel, one tittle deed to plot No.257 Block D, Letter of appointment, birth certificate, sale agreement to plot No. 257 Block D, letter of promotion, i employers introduction letter to Ikungi NMB, rent assessment and salaried workers loan agreement, the property of Elizabeth George Bayuni in the first count. In the second count, the Appellant did steal a sale agreement between Msutha Peter Alphonse and Richard Nipson which was under the custody of Elizabeth George Bayuni. The last third count was stealing a birth certificate of one Fatuma Abeid Ally which was also under the custody of the said Elizabeth George Bayuni. The series of offences were committed to the Appellant's wife one Elizabeth George Bayuni on 15th of July, 2020 at Ikungi area. The trial court having heard all ten prosecution witnesses and the Appellant's case, convicted the Appellant in all the three counts and sentenced him to four years' imprisonment in each count. This was on 8th of June, 2021. Aggrieved by the said conviction and sentences, the Appellant appealed to this court by filing his petition of appeal comprising of twenty- one (21) grounds of appeal. In all grounds of appeal, the main area of complaint is that, the prosecution case was not proved to the required standard. I heard parties on 17th of May, 2022 in which the Appellant appeared unrepresented whereas the Respondent Republic had the service 2 of Ms. Bertha Kulwa, learned State Attorney. In support of the appeal, the Appellant simply adopted his grounds of appeal and promised to re-join after hearing first the Respondent's version. In reply, the learned State Attorney argued all the grounds of appeal as one by not resisting the appeal. Her stance was that, the prosecution case was not proved beyond reasonable doubt as to entitle

conviction and sentence met by the trial court to stand. She commented first on the charge regarding duplicity that, items alleged to be stolen by the Appellant such as title deeds and certificates appear in all counts. She thought this was wrong, so being stealing a title deed which wasn't proper to deploy a provision on general theft instead of a specific provision to that effect. Her second comment was that; the stolen articles were found in the custody of a legal officer but only a seizure certificate was tendered in court. In her view, it was relevant to tender them in evidence to establish what the prosecution alleged that the Appellant was in the process of disposing that land through sale. Her third observation was that, all the stolen properties were not described in evidence and or even the charge of theft. She thus submitted that, want of such description on the stolen properties create doubts which should favour the Appellant. Her last observation was on non-consideration of the defence case in which, the court ignored that defence benchmarking on misunderstanding of the couples. This was her reasons for not supporting conviction and sentences. In rejoinder, the Appellant reiterated his position to adopt the contents of his grounds of appeal. He also added that, PW 10 DC. Rehema testified but her name was not listed as a witness of the prosecution. He thought this evidence was prejudicial to the Appellant thus asked in all to have the appeal allowed. This marked the end of submissions from parties. In resolving this appeal, I have taken into account submissions of parties and the record as a whole. Asking one question is whether there is evidence on record to sustain conviction and sentence of four years' imprisonment met by the trial court in three counts of theft against the Appellant. This is what Ms. Bertha Kulwa thought exploration to determine if the prosecution case was proved beyond reasonable doubt. This being a charge of theft, the principle is this that, theft is committed where a person, without any claim of right, takes or converts property capable of being stolen aiming at depriving the owner of the property in issue. See Leonard Zedekia Maratu vs Republic [2008] T.L.R. 229. Being a criminal case, it is a cardinal principle of law that, the burden lies upon the prosecution to 4 prove the case beyond reasonable doubts that the Appellant herein committed the offence of theft. See Charles Ndabahagati & Yusuph Issa vs. Tofilo John [2008] T.L.R. 106. Applying that principle in the instant case, the entry point as observed by the Learned State Attorney is the charge. In the charge, the Appellant, among others, was charged to have stolen birth certificate and sale agreement in all the three counts. Stealing a birth certificate appearing in the first and third counts whereas the offence of stealing a sale agreement appears in the first and second counts. Charging the Appellant in this style defeats the purpose of a charge to inform the Accused with clarity the offence stands charged. It was stated in the case of Issa Juma Idrisa & Another vs. Republic [2020] T.L.R.365 that: (Hi) The charge is the foundation of all criminal trials. To ensure that a trial is fair, any person accused of committing an offence is entitled to know the nature and substance of the accusations levelled against him so as to enable him arrange for a focused defence. 5 The second item to look at is want of any stolen property tendered in evidence in the circumstances of this case. It is not a requirement of the law that in every theft case, a stolen property have to be tendered in evidence. However, in the circumstances of this case where all the stolen properties were found in the custody of PW5 one Ombeni Komba as testified by him at pages 33 to 36 of the proceedings, for proof of theft thereof, it was mandatory for the stolen properties to be tendered in evidence. In this therefore, there is no anyone deprived permanently the thing thereof. Regarding the defence

case, Ms. Bertha Kulwa said, the learned trial magistrate did not consider the defence case. I have gone through the judgment in which at page 11 to 12, it is recorded as hereunder: In the case at hand, the accused takes the bag that contains PW1 several documents and give them to PW5 without any shadow of right to do so. No iota of justification was provided by the Accused on the reasons to take the documents in question out of the house they were living and give them to PW5. At the same time, the accused was negotiating of passing the tittle which he was in the PW1 names to PW4 which shows his intention of permanently deprive PW1. Given the foregoing, in my view, the defence of the Appellant was considered. The problem arising in that consideration is shifting the burden of proof to the Appellant to provide justification of having such documents. As said, there is no proof that any document was stolen. It was not also legally safe in criminal jurisprudence for the learned trial magistrate to require the Appellant to establish his innocence. On that stance, and as observed by the leaned State Attorney, the prosecution case was not proved to the required standard. That said, the appeal is hereby allowed. The conviction and sentence of the trial court is hereby quashed and set aside. I order release of the Appellant from prison, unless helddawful. It is so ordered. Gerson J. Mdemu JUDGE 29/07/2022 IA this 29th day of July, 2022. Gerson J. Mdemu JUDGE 29/07/2022 7

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