

TANZANIA / JUDGMENT

20130627 TZHC Mbeya1

COURT
TZHCDECIDED
27 June 2013

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IN THE HIGH COURT OF TANZANIA 't- 1/4 AT MBEYA I DC CRIMINAL APPEAL NOS. 62 & 63 OF 2011 (From District Court of Chunya at Chunya Criminal Appeal No. 151 of 2012) Before: M. H. M. Seenene, DM) AJUAYE MSAFIRI..... 1' APPELLANT YUSUF NGAZI 2ND APPELLANT Versus THE REPUBLIC RESPONDENT

JUDGMENT

Date of last Order 24/06/2013 Date of Judgment 27/06/2013 KARUA, J. The appellants, Ajuaye Msafiri and Yusuph Ngazi, were jointly arraigned with another person called Sensa Ngazi, before the District Court of Chunya, on one count of Armed Robbery contrary to section 287 of the Penal Code. They "pleaded" guilty, convicted and were sentenced to serve a prison term of thirty (30) years. The conviction and Is, sentence aggrieved the appellants hence, this appeal, which was not resisted by the Republic. The appellant preferred five grounds of appeal which are all based on the language barrier. The five grounds of appeal are basically that, firstly, the appellants did not understand all the element of the charge, when the same was read over to them due to the fact that they did not understand the language that was being spoken. Secondly, the appellants assert that they did not understand the nature of the offence which they were alleged to have committed because of the language hurdle. Thirdly, they contend that they were convicted because the trial magistrate believing that they were versed with Kiswahili language that was spoken at the trial while they were only versed in kisafwa language. Fourthly, that the learned trial magistrate convicted the appellant believing that they had admitted the charge while the said admission of the appellant to the charge was equivocal and lastly that the charge against the appellants was not proved on the required standard. /46 2 J ., Before me the appellant insisted that they are not 'ersed with the Kiswahili language that was spoken at the trial. Indeed, the accused are versed with Kisafwa language. This court had to secure the services of a translator in order to find a way forward. The trial court record is silent on the issue of the language that was spoken by the appellants at the trial. Neither did the trial court obtain the services of a interpreter. For those technical reasons, the appeal is allowed. The decision of the trial court is accordingly quashed and the sentence of thirty years imprisonment, imposed on the appellants, is set aside. Accordingly, I direct that this case commence a fresh before another magistrate of competent jurisdiction. /P / 'f t ' S.V G. KARUA UDGE DATED AT MBEYA 27th June, 2013. Appearances: For the appellant: Both present in person For the respondent: Ms Juliana William, SA. 3 1/4

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