

TANZANIA / JUDGMENT

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U., IN -'111 1 -TED HIG-H CCU°RT OF T.NZa1iIA AT DODOh.. 1 APnLiai•1 JU.IS i) IC I Oi\T High Court Criminal Appeal llo.35 of 1972 Original Criminal Case No.146 of 1971 Of the District Court of Manyoni istrict At Before; L.G.Rugimbana District Magistrate. Ashen s/o Salehe Kadernba Appellant (Original Accused) versus The Republic espodent (Original Prosecutor) çhae;- Breaking into building and committing felony c/s 296 (1) of the penal Code. J U. D G B N B N T., 4: The accused was charged with and convicted of hreaing into a building and committing a felony therein c/s 296(1) of the Penal Code and sentenced to 2 years imprisonment and 24 strokes corporal punishment. Dissatisfied with the finding of the trial Magistrate he has ap.ealed to this court. Arguing against the conviction the learned defence counsel submitted that the piece of cloth which was the subject matter of theft was not adequately identified as that of the complainant. In supDort of his argument the court was referred to the decisions in GIT3YVS971)H.CJD.casei.10, QQJL JjR (j6Jj,fl CDC.sei'To. A4 It was also argued that the doctrine of recent possession under which the learned resident magistrate relied in convicting the appellant did not apily on the facts oi this case. Finally it was. argued that the trial magistrate based the conviction on the weaknes of the accused's deence instead Of basing his finding on the strength of the prosecution evidence and the court was referred to the decision in ILBIB VS R (1971) The learned state attorney on the other hand argued that, there was sufficient identification of the items by the complainant as the same property stolen after the building had been broken into. The following facts are not seriously in dispute in this case: On 1 9/8/70 one, Bertha d/o l luko, the complainant, closed the door and windowto her class-room after office hours and went home. hen she came on duty next morning she, to her great astoni- shment, found that a piece of Kitenge cloth, three.. and half yards of cloth which was to he nade into a gown and other articles, missing from her cup-board which was inside the classroom. She reported to the police and to her neighbours what had happened. On 12/10/70 she received information that a tailor(P.4,7) was stitching a kitenge similar to the one stolen from her class-room. She visited the tailorT sishop where she identified the piece of Kitonge which had now been made into a shift-gom as similar to the Kitenge stolen from her class-room. On interrogating the tailor as to how he came to be in ossession of the Kitenge, the tailor mentioned one Salima d/o Saidi (P'T.9) as the person who - S SOS•S •..i •'. ••,•

- 2 - t the Kitenge to him to be made into a shift . alima was and apprehended and on interrogation mentioned the accused person who gave her the Kitenge. The accused was subsequently arrested and charged with the present offence. Dealing with the question of identification I tend to agree with the public that the piece of Kitenge as well as the three and half piece of cloth were amply identified as the same items stolen from the complainant's class-room. There was the testimony of Bertha (F.W.1) who identified the piece of Kitenge when she saw it at the tailor's shop as the one stolen from her class-room. Her testimony is supported by the evidence of Kartha (P.T.2) who was the owner of the Kitenge and who had sent it to F. 1,1 for stitching into a shift. This witness had earlier identified the cloth when she saw it at the tailor's shop. As to how the Kitenge cloth reached the tailor (J. 7); we have the testimony of the tailor who related to the court that the cloth was sent to him for stitching by Salima (P.7.9), alima testified to the court that the Kitenge was given to her by the accused, who she said was her boyfriend. To support her story she said the accused was her paramour she produced the accused's photograph which she said the accused had given it to her as a sign of remembrance. Here we see a view sufficient evidence to show that the accused was well known to Salima. (P.7.9). On the evidence the accused's denial that he did not know Salima is clearly inconsistent with innocence. As to the 3 yards of cloth also stolen from the class-room of F.1, there is the testimony of Bakari (F. 6), the sub-post-master who told the court that on 10/10/70 a parcel No. 206 was posted under registered cover No. 909 from his post-office to one, Lushi d/o Kapanyula of South Ulanga. According to his testimony the sender of the parcel was one A.S. Kaudiki, A.S. Kandemba was proved as the name of the accused. His first names being -sheli Salehe and his surname being Handemba. There was evidence (F.8) that Lushi d/o Kapanyula was accused's wife. Her house at Mainyi, in Ulanga District, was searched by Haruna, a police constable (F.8) and a pair of new Khanga were found in the house. Haruna also discovered that the accused's wife had sent a piece of cloth to a tailor for stitching to a gown. He visited the tailor and found a piece of cloth measuring 3 yards. He took hold of the cloth and sent it to Itigi Police station. In her testimony Asteria (F.W.3) identified the piece of cloth (exhibit B) as the same cloth she had sent to F.1 for stitching into a gown and which cloth was stolen on the same day. Furthermore, Asteria (F. 4) admitted that the piece of cloth she had sold to Asteria (F. 3), the fact that the accused posted a parcel to his wife sometime in October 1970 and the fact that during the same month a piece of 3 yards cloth was found in the possession of accused's wife in Ulanga and the further fact that this cloth has been amply identified as the same cloth stolen from F.1's class-room goes a very long way to implicate the accused with the offence charged. If I do not refer to the many cases quoted by the learned defence Counsel in detail it is not through lack of respect for the learned counsel who argued this appeal with clarity and restraint, I am satisfied however that there was ample evidence supporting the learned district Magistrate's verdict, I agree there were a few misdirections here and there but such misdirections in no way material and are curable under section 346 of the Criminal Procedure Code. On the facts I am far from being satisfied that the trial Magistrate misdirected himself on the doctrine of recent possession. In the event I have no alternative but to dismiss the appeal in its entirety. DODOMA / 3/7/72. Hangat for the Appellant/Chamakare for the

Republic. JUDEe

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Prepared on 14 October 2026 · Esheria