

TANZANIA / JUDGMENT

charles so majija salum vs republic 2007 tzhc 251 4 july 2007

COURT
TZHCDECIDED
4 July 2007

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF TANZANIA AT TABORA APPELLATE JURISDICTION (Tabora Registry)
(DC) CRIMINAL APPEAL NO. 10 OF 2004 ORIGINAL CRIMINAL CASE NO. 158 OF 2003 OF THE
DISTRICT COURT SHINYAGA DISTRICT AT SHIYANGA Before: RUTH R. MASAM..Esq, RESIDENT
MAGISTRATE CHARLES S/O MAJIJA @ SALUM..... APPLICANT Versus THE
REPUBLIC..... RESPONDENT

JUDGMENT

7th May 07 & 4th July,07. MZIRAY. J. The appellant Charles Majija @ Salum appeals to this court against the decision of the District Court of Shinyanga given at Shinyanga on 9/5/2003 where the appellant was convicted of cattle theft in breach of section 268 (1) of the Penal Code and sentenced to serve five years imprisonment. The appeal is against both conviction and sentence. The appellant did not wish to be present at the hearing of the appeal. The appellant presented four grounds of appeal in his Memorandum of appeal. In principal he has criticized the trial court on relying on the admission allegedly made by the appellant to the sungusungu that he stole the cow; asserting that the induced by threats followed by beatings he suffered from the sungusungu. The other ground of appeal raised is that the complainant did not testify in this case on allegation that he was sick but no medical evidence which was produced, to support this assertion. It is the contention of the appellant that failure to call the complainant to testify denied him the opportunity to cross-examine him so as to test his credibility. Briefly the evidence was that on 7/2/2002 at around 3.00 a.m, PW1 Luchanganya Ngasa and PW2 Mohamedi Kayange with other sungusungu of Mwamangushuli Village in Shinyanga district were on patrol when they came across the appellant driving one head of cattle tied with a rope. On interrogation the appellant is alleged to have made an oral admission that he stole the cow but could not disclose from whom he stole the said cow. According to PW1 the cow was whitish in colour with some brown patches and branded with a letter 'K' on the right cheek and "DT" on its thigh. The appellant was then handed to PW3, the Village Executive Officer where he was locked in a cell for one day and then handed to the police. Later one Selemani Mwandu appeared and identified the cow PW3 supported the version that the cow had a brand mark with letters "DT" STAMPED ON ITS THIGH. Another witness who gave the identify marks of the stolen cow is PW4 Peter Dotto. He is the brother-in-law of Selemani Mwandu the alleged owner of the stolen cow. He said that the stolen cow had

white skin with brown patches on the head, face and stomach and a brand mark with letters "DTK" inserted on its right thigh. It was alleged in the Prosecution case that the whereabouts of this Selemani Mwandu was unknown, then a notice to produce was given and his statement was tendered and admitted as exhibit in terms of section 34 (B) (2) of the Tanzania Evidence Act. The appellant denied the offence. He disputed the evidence by the Prosecution witnesses and contended that they all lied against him. He denied to have been found in possession of the stolen cow or to have made an oral admission of the offence before the sungusungu. That was all. In convicting the appellant the trial court believed the evidence of PW1 and PW2 to the effect that the appellant made an oral admission before them. The trial court found the witnesses who testified for the Prosecution to be credible. I will start with the admission which the appellant made before the sungusungu. I will tend to thin that such confession if believed is admissible. The trial court believed PW1 and pw2 to be truthful witnesses. The trial court had the advantage of seeing this witnesses when testifying and found them to be credible. This court will not enterfere with such finding. The appellant is not disputing to have made the admission but in his Memorandum of Appeal he is arguing that e was tortured by sungusungu to make the admission. When we revisist the record you find that the issue of torture is a new concept brought in appeal in the entire evidence to show that the appellant was tortured to make the confession. I consider the allegation that the appellant was tortured to be an afterthought. The other ground of appeal is that the complainant did not testify hence the appellant was denied the chance to cross-examine him. It is true the complainant did not testify but we have the evidence of PW4, the brother in-law of the complainant is the owner of the stolen cow. This witness gave the description and identifying marks of the stolen cow. His evidence to the identity of the cow has been corroborated by the evidence of PW3 who at the material time was the Village Executive Officer. Such evidence is further corroborated by the statement of the qomplainant tendered under Section 34 (b) (3) of the Evidence Act, 1967. as ownership and identity of the stolen cow had been established, then it was not necessary to have the evidence of the complainant. In the end, I find that this appeal is filed without sufficient cause. I dismiss it. R.E.S. MZIRAY JUDGE Right of appeal explained. R.E.S. MZIRAY JUDGE Date: 4/7/2007 Coram: S.B. Bongole, DR. Appellant: Charles Majija @ Salum, Absent. Respondent: The Republic, represented by Miss. Ndaweka, State Attorney. C.C: Mr. Nhelegani RMA. Court: Judgment delivere DISTRICT REGISTRAR 4 / 07/2007

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/187014/source_file/charles-so-majija-salum-vs-republic-2007-tzhc-251-4-july-2007.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/charles-majija-salum-v-the-republic-cattletheft-tzhc-2007>

Prepared on 14 October 2026 · Esheria