

TANZANIA / JUDGMENT

20101025 TZHC Dar es Salaam

COURT
TZHCDECIDED
25 October 2010

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

1. • \ IN THE HIGH COURT OF TANANIA w • AT DAR ES SALAAM CRIMINAL APPEAL NO. 173 OF 2008 (Originating from Criminal Case No. 860 of 2005 of District Court of Jemeke at Temeke before Hon. Mungifora, RM.) HUSSEIN SELEMANI APPELLANT VERSUS THE REPUBLIC RES PON DENT Date of last order 22/10/2010 Date of Judgment - 25/10/2010

JUDGMENT

Shangwa, J. On 25 th November, 2005, the Appellant Hussein Selemani and one Rajab Omary were jointly and together charged with the offence of Armed Robbery c/s 287 (A) of the Penal Code Cap 16 R.E. 2002 and the offence of Indecent Assault c/s 135 (1) of the Penal Code Cap 16 R.E. ,

2002. After full trial, Rajab Omary was acquitted and the . • I -~' .; , 2 Appellant Hussein Selemani was convicted and sentenced to 30 years imprisonment for the offence of Armed Robbery (1st count) and 30 years imprisonment for the offence of Indecent Assault (2 nd Count). It was ordered that both sentences should run concurrently. Having been dissatisfied with both conviction and Sentence, he appealed to this Court. Let me state at once that the learned State Attorney, Mr. Mwakanyamale did not support conviction which was imposed against the Appellant on both counts. He conceded with the Appellant on his first ground of appeal that the evidence of P.W. 1, P.W.2, P.W.3 and P.W.4 who claimed to have seen the Appellant committing the offences charged is not ~ watertight. He submitted that the offence was committed during the night at 9 .00 p.m. and that the aforesaid witnesses did not tell the Court as to how bright was the 3 electric light at the scene of crime which could enable them to identify the Appellant properly. In support of his submission, he cited the case of Waziri Amani V. Republic 1980 TLR in which it was held that where the quality of identification evidence is poor, the Court should acquit. In my opinion, I think it is correct as submitted by Mr. Mwakanyamale that the evidence of P.W.1, P.W.2, P.W.3 and P.W.4 is not watertight. I opine so because the said witnesses did not well establish before the trial court that there was sufficient light at the scene of crime to enable them to identify the Appellant properly. Mr. Mwakanyamale also conceded with the Appellant on the second ground of appeal that the trial court erred in 4 law in convicting him of the offences charged basing on uncorroborated evidence of P.W. 1, P.W.2, P.W.3 and P.W.4. I also agree

with the Appellant and Mr. Mwakanyamale that the evidence of the aforesaid witnesses needed corroboration before acting on it. For instance, before the trial Court, it was alleged that on 4th September, 2005 at Tandika Market, Temeke Municipality in Dar es Salaam City, the Appellant robbed a mobile phone make Nokia valued at Tshs.80,000/=, a gold ring valued at Tshs.33,500/= and one pair of sandals valued at Tshs.9 ,000/= the property of Fatuma Mohamed (complainant). However, there was no evidence to show that the Appellant was searched in his house and found with any of the said properties which would have corroborated the evidence given by P.W.1, P.W.2, P.W.3 and P.W.4. 5 Furthermore, Mr. Mwakanyamale conceded with the Appellant on the third ground of appeal that the trial Magistrate erred in law in convicting him of the offences charged without any evidence to show that investigation was conducted and revealed that the Appellant was involved in committing the offences charged. He said that convicting the Appellant of the offences charged without any investigation was contrary to S. 1 O (1) of the Criminal Procedure Act [Cap 20 R.E. 2002]. The above cited provision of law lays down the procedure to be followed by a Police Officer in cases where he gets information that an offence has been committed or where he apprehends a breach of the peace. In my view, it does not bring any legal sense to charge someone of an offence without prior investigation of the offence charged against him or her such as it was done in 6 this particular case. Similarly, it does not bring any sense to convict any person of an offence without any investigation having been made as it was done in this case. Thus, the trial court erred in law in convicting the Appellant of the offences charged without evidence to show that there was prior investigation upon which his charges were based. In general, I agree with both the Appellant and Mr. Mwakanyamale on the fourth ground of appeal that the prosecution did not prove the offences charged beyond reasonable doubt. For these reasons, I quash the trial court's conviction, set aside the total sentence of 60 years imprisonment which was imposed on the Appellant on the Count of Armed Robbery and on the Count of Indecent Assault. Consequently, I order that the Appellant should be set at liberty and be released from prison unless otherwise is . ' 7 lawfully detained therein on another matter. A.Shangwa JUDGE 0 25.10.2010 _ I Delivered in open court this 25 th day of October, 201 0 in the presence of the Appellant and Mr. Mwakanyamale for • the Respondent. ~ A.Shangwa 0 JUDGE 'I ' 25.10.2010

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/341683/
source_file/299e886f678e0ebc/20101025_TZHC_Dar_es_Salaam.pdf](https://media.tanzlii.org/media/judgment/341683/source_file/299e886f678e0ebc/20101025_TZHC_Dar_es_Salaam.pdf)

CASE PAGE [https://chat.esheria.ai/case-law/tanzania/hussein-selemani-v-the-republic-armedrobbery-
tzhc-2010](https://chat.esheria.ai/case-law/tanzania/hussein-selemani-v-the-republic-armedrobbery-tzhc-2010)

Prepared on 14 October 2026 · Esheria