

TANZANIA / JUDGMENT

james michael vs republic

2013 tzhc 2083 10 june 2013

COURT
TZHCDECIDED
10 June 2013

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IN THE HIGH COURT OF TANZANIA AT TABORA APPELLANT JURISDICTION (Tabora Registry)
(DC) CRIMINAL APPEAL NO. 5 OF 2013 CRIMINAL CASE NO 466 OF 2011 OF THE DISTRICT
COURT OF KAHAMA BEFORE: F.K. NYALADA RESIDENT MAGISTRATE JAMES
MICHAEL..... APPELLANT (Original Accused) VERSUS THE
REPUBLIC.....RESPONDENT (Original Prosecutor) 4/6/2013- 10/6/2013

JUDGEMENT

HON.S.B. LUKELELWA,J. - The appellant James Michael on 6/9/2012 convicted by Kahama District Court on a charge of fair Counts namely two counts of House breaking contrary to section 294 (1) of the Penal Code, and two counts of stealing contrary to section 265 of the Penal Code. The appellant was subsequently sentenced to serve five years imprisonment on the first count one year imprisonment on the 2nd Count, five years imprisonment on the third count and one year imprisonment on the fourth count, it was ordered that 1st and 2nd Court to run concurrently and 3rd and 4th Count to run concurrently. The appellant was aggrieved by both the conviction and sentence imposed on him and has preferred this appeal. It was common ground at the trial that the house belonging to one Mathew Mutare at Nyahanga are within Kahama township was broken into twice and several household articles stolen there from. The first incident occurred on 10/11/2011 while the second incident took place on 14/11/2011. According to PW2 Anna Constantine a relative and neighbour of the sound Mathew Mutare, the was away to a college in Morogoro. The house was being taken care of a tenant PW1 Madirisha Mathias, who, testified that Mathew Matare was the of their Land Lord. PW1 testified that on 10/10/2011 at about 10.00 a.m. he received a telephone call from his young brother informing him that the house had been broken into. He came back home and found the house broken into and Radio Sony, Deck DVD Bed sheet and Twitter were missing. He reported the incident to the Police Station. Qn 14/11/2011 in the morning PW1 returned from a shop, and when he reached home, he noticed that three doors had been broken and a man was inside the house. He sought an assistance to arrest the man, he telephoned his young brother, meanwhile . the man noticed his presence he broke out of the house and took on his heels. PW1 mounted a chase while raising an alarm. PW2 heard the alarm and saw PW1 in a hot pursuit of a fleeing man she also raised an alarm and her children went to offer an assistance.

- .. j i The alarm was also heard by PW3 Inspector Hatari Kisumo a Police Officer, and neighbour of the said Mathew Mutale who on 14/11/2011, was at home at 11.00 a.m. as he was indisposed. PW3 testified that he had seen the appellant running while people chasing him until he was arrested. They led the appellant back to the house, where they found a parcel covered in a blue bed cover, where they found one DVD player, one picnic bag, one pair of trousers, three speakers of sub woofer, one AID kit and one speaker of a computer. PW5 Subira Zuberi, testified that the appellant was the friend of the son of her sister called Zuberi. PW5 went in ti state that on 10/11/2011 at 2.00 P.M. the

; TU .. appellant brought one radio, deck and two speakers wrapped in a bed sheet. He out the load outside saying that it belonged to one 3 Zengo, and he was going back to bring more then it started raining and he put off the idea of going back. PW5 went on to state that on 14/11/2011 a Police Car pulled to a stopp at his door, and a Police Officer asked her whether she was familiar with the appellant he admitted. They searched the house and took a radio twitter a bed sheet, and a deck. The appellant was sent to the Police Station where he was received by PW4 E 1998 D/Cpl Emmanuel. He interrogated the appellant who admitted committing the offence, and revealed that it was the second time to break into that house. PW4 took the appellant to the home of PW5 where a search in the house was conducted. Upon return to the Police Station, he recorded a caution statement of the appellant. The same was admitted in court without objection from the appellant and marked exhibit "P4". The search at the home of PW5 was also witnessed by PW6 Grace Ihema. The appellant told the Court in defence that he was arrested at Kivulini and sent to the scene of crime. Further that PW1 and one Mama Neema were making business and that he had been called to convey the goods on a motorcycle. 4 On the following day PW1 madirisha stopped him and took him to his home where he called people and told them that he did break there and stole which he disputed. The learned trial Resident Magistrate having analysed the evidence adduced before him found that the prosecution has proved the case beyond any reasonable doubt. The appellant is challenging that conviction. Among the ground raised in the appellant's seven ground petition of appeal was that he did not understand well the language used by the District Court of Kahama, English Language, as he is an illiterate, citing the case of B. Pinga V. Republic (1983) TLR No. 166. With due respect to the appellant the prosecution evidence was cogent and straight forward, the appellant having been caught in a "flaggarant delicto" on 14/11/2011. No room was left to doubt the prosecution evidence, I find that the appellant richly deserved the conviction. I therefore dismiss the appeal on conviction, accordingly. Coming to the sentence imposed on the appellant, the sentences were the statutory minimum sentences. . 1 i X 5 However the learned trial resident Magistrate erred to order the sentence in count I to run concurrent with the sentence in Count 2. Further sentences in count 3 to run concurrent with sentence in count 4. This resulted in appellant being obliged to serve a sentence of ten years imprisonment. There were no reason or compelling aggravating circumstances which forced the learned trial Resident Magistrate to make that orders. I therefore set a side the orders and substitute thereto an order that the sentences shall run concurrently, as a result the appellant shall serve a sentence of five (5) years years only. . Save for variation of the order regarding the

sentence imposed on the appellant the appeal is dismissed. Order accordingly. JUDGE 10/6/2013 6
Date: 10/6/2012 Coram: Hon.S.B. Lukelelwa, Judge Appellant: Absent Respondent: Mr. Nestory
Paschal- State Attorney who is present. B/Clerk: Mary Mpululu Order:- Judgement delivered in
Court this 10th June, 2013 JUDGE 10/6/2013 7

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