

TANZANIA / JUDGMENT

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THE JUDICIARY OF TANZANIA IN THE HIGH COURT OF MOROGORO AT MOROGORO
CRIMINAL APPEAL NO.000021859 OF 2024 JOHN S/O JOHN MAGAGA AND ANOTHER
COMPLAINANT / APPELLANT / APPLICANT VERSUS REPUBLIC RESPONDENT/DEFENDANT

JUDGMENT

L. A. MANSOOR,J

JUDGEMENT

John John Magaga and Godfrey Ubaya Mahonda were charged for the offence of Armed Robbery c/s 287A of the Penal Code, they were convicted and sentenced to 30 years' imprisonment. They were aggrieved; thus, they filed an appeal before this Court challenging the decision of the trial Court, during the hearing of the appeal, the Learned State Attorney did not oppose the appeal stating that there were irregularities in their identification by the victim, to buttress his arguments, he cited the decisions by the Court of Appeal in the case of Anaeli Sambo vs Republic Criminal Appeal No 274 of 2007 and the case Chacha Jeremiah Murimi and 3 others Criminal Appeal no 551 of 2015 CA sitting at Mwanza. I have heard the Counsel for the State, and I agree that the only evidence that implicated the accused persons who are the appellants herein is the evidence of victim who said that he had identified one appellant in his names as Godigodi, Godigodi never appeared in court as the appellant, the victim also claimed he had identified godigodi through the electricity light but never stated the intensity of the light. It is the established principle that visual identification is not the best evidence, and in relying to visual identification the Magistrate ought to have ruled out the possibility of mistaken identity. As held in the case of Omary Said @ Habibu vs R(CAT)Arusha, Criminal Appeal No.302 of 2014 (unreported), the Court held that: "the evidence of visual identification is the one of the weakest kinds and should only be relied upon when all possibilities of mistaken identity are eliminated, and the court is satisfied that the evidence before it is absolutely watertight." Although the victim had said there was electricity light, and he was beaten and assaulted by the bandits using a machete, and so he was in close contact with them, the victim did not describe the physical features of the culprits such as their body size, complexion, or voice or the garments they wore during the incident. The victim also did Page. 1 Hon.. LATIFA MANSOOR not tell the court as to how long was the attack, to be able to identify the bandits. This was not done, and hence the conviction based on visual identification was weak and could not be based in sustaining the conviction. As there are no any

other evidence adduced by the prosecution for proving the offence of Armed Robbery there was no recovery of the deadly weapon used so as to satisfy the ingredients of the offence of robbery. As held in the case of Nathaniel Alphonse Mapunda & another vs R» 2006 TLR, the Court of Appeal had insisted that in criminal trial the burden of proof always lies on the prosecution, and proof is beyond reasonable doubt. Indeed, as submitted by the Counsel for the Republic, the prosecution failed miserably to discharge their duty of proof of beyond reasonable doubt particularly on an important issue of visual identification or recognition. That being the case, the conviction and sentence passed by the Trial Magistrate in Criminal Case No. 102 of 2021 against the appellants herein is quashed and set aside. The Appellant JOHN JOHN MAGAGA and GODFREY S/O UBAYA @MAHONDA are acquitted of the charge, and shall be released from imprisonment forthwith, unless they are kept there for any other lawful cause. It is so ordered. L MANSOOR JUDGE 13 NOVEMBER 2024 Dated at MOROGORO ZONE this 13th of November 2024. L. A. MANSOOR, J JUDGE OF THE HIGH COURT Page. 2 Hon.. LATIFA MANSOOR

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