

TANZANIA / JUDGMENT

julius juma others vs republic

2017 tzhc 2167 24 may 2017

COURT
TZHCDECIDED
24 May 2017

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IN THE HIGH COURT OF TANZANIA AT DODOMA (APPELLATE JURISDICTION) (DC) CRIMINAL
APPEAL NO. 123 OF 2016 (ORIGINAL CRIMINAL APPEAL CASE NO. 41 OF 2016 OF THE DISTRICT
COURT OF SINGIDA DISTRICT AT SINGIDA) JULIUS JUMA & 2 OTHERS.....
APPELLANTS VERSUS THE REPUBLIC..... RESPONDENT

JUDGMENT

08/3/2017 & 24/5/2017 H. H. KALOMBOLAJ.: JULIUS JUMA MDULO, PAULO IRUNDE and JOEL JACOB were convicted and sentenced to imprisonment for five years per each count i.e three offences of STEALING OF ANIMALS contrary to Section 265 and 268 (1) and (3) of the Penal Code, Cap 16 R.E. 2002. They were dissatisfied and lodge a joint appeal as follows:- 1

1. That the District Court trial Magistrate erred in Law and in fact by determining the case and finally convicting the appellants without following procedures as to ingredients of judgment as provided by the Laws of Tanzania.
2. That the trial Magistrate erred in Law and in fact by properly failing to record the witnesses according to the chronological order as to record DW1 as Julius J. Mdulu the same as DW1 Paulo Irunde the fact which shows that she misrecorded the court proceedings.
3. That the trial Magistrate erred in Law and in fact by refusing to hear the key witnesses to adduce their evidence such as District Commissioner, Ward Counselor, OCD from Hanang and Singida District Police stations who are the supervisors of the said forest reserve and the supervisors of the accused persons, by saying that those witnesses would delay the case proceedings knowing that she denied the appellants/ accused persons their right to be heard.
4. That the Magistrate erred in Law and in fact by considering the testimony of the prosecution witnesses PW1 and PW4 who were not present in the locus in quo, and relied on their evidence which was purely hearsay as the livestock alleged stolen were not counted in the place.

5. That the trial Magistrate misdirected herself by convicting the appellants by reason that the prosecution proved the case beyond reasonable doubt knowing that their key witnesses was the grazing man who was no called to witness in court, the facts which make that prosecution not proving the case beyond reasonable doubt.
6. That the trial court erred in Law and in fact by holding that the victim was the resident of Pohama, the fact which is not true as he was immigrant from unknown area, failure to go to locus in quo by the court meant the prosecution failed the prove the case.
7. That this appeal is within time limit the judgment having been delivered on the 31st day of August 2016. Appellants enjoyed legal services of Mr. Kitope who on the day of hearing submitted on the 1st ground of appeal that Section 312 of the Criminal Procedure Act was not adhered to by the trial court as it did not determine the issues. On the 2nd ground of appeal it is submitted witnesses were not marked chronologically (see page 4 of the judgment, 3rd and 5th paragraphs). That the trial magistrate misrecorded proceedings. 3rd|y the trial magistrate refused appellants to call their key witnesses for a reason that it was going to cause delay. One of the witnesses was Diwani. 4th|v the trial magistrate erred in relying on PW1 and PW4 evidences (see page 3 of the proceedings) who gave hearsay evidence. The counsel dropped 5th ground of appeal and submit on the 6th ground of appeal that appellants did not steal the cows in dispute and there is no evidence that Kamara Ta rim o (P W l) happened to own those cows. It is submitted prosecution side failed to prove case against appellants beyond all reasonable doubt. Appellants did not have an intention to steal. They pray appeal be allowed and appellants be released. Ms. Mgoma State Attorney appeared for Republic/ Respondent argued the 1st and 2nd grounds of appeal that trial magistrate did not make any error as each be it a judge or magistrate has own style of writing judgment (see the case of AMIRI MOHAMED VRS REPUBLIC TLR 1994 at page 139). So in the present case, trial magistrate wrote a judgment of her own style and consider the ingredients. It is their submission in the 3rd ground of appeal that there is nothing in the record shows appellants asked for leave of the court to call rejected. As in the 4th ground of appeal they agree PW1 and PW4 were not present at the scene but these witnesses followed VEO in the office, counted the cows and detect them to be less. Therefore it is not true they gave hearsay evidence as explained to court that the cows were counted and were found to be less. On the 6th ground it was submitted that even if the victims resided in Pohama or not it cannot make appellant's action correct i.e stealing cows from victims. They found all the grounds of appeal devoid of merits. Mr. Kitope rejoined that the cited case has no relevancy to the present case. There is no documentary proof that the victim owned cows. The case was not prove beyond reasonable doubts. They insist their appeal be allowed. At this juncture let me start discussing the 1st ground of appeal. Appellants through their advocate submitted procedure of writing judgment was not followed in that Section 312 of Criminal Procedure Act, Cap 20 R.E was not complied. It is the view of this court that this was not the case and agree with respondent's submission that a judge or magistrate may have own style of writing judgment only should bear in mind giving reason for such a decision i.e ingredients. I subscribe a decision in the case ot AMIRI MOHAMED VRS REPUBLIC [1994]

TLR at page 139 where it was held:- “Every Magistrate or Judge has got his or her own style of composing a judgment and what vitally matters is that the essential ingredients should be there, and these include critical analysis of both the prosecution and the defence.” I find ingredients as required by Law are there in the judgment. Therefore 1st ground of appeal has no merit. It goes without saying that the 2nd ground of appeal for this reason lacks merit as the magistrate wrote the judgment of her own style, there is nothing fatal in doing so. The record before me convinces to find the 3rd ground of appeal has no merit. Record does not show that trial court refused to hear appellants witnesses. At page 32 of the proceedings the appellants said:- “1st Accused I think the witnesses are enough I pray case be closed. 2nd Accused The witnesses are enough let our case be closed. 3rd Accused The witnesses who appeared are enough we pray our defence case be closed. Going by appellants words as hereinabove quoted, court did not deny them right to call their key witnesses. Appellants said on the 4th ground of appeal that trial court erred to rely on PW1 and PW4 evidences who were not present at locus in quo so their evidence were hearsay. It is a fact that PW1 was not present at time his cattle were taken by VEO as he was on safari. As well PW4 was on safari. Therefore evidence is very clear both PW1 and PW4 were not present at time cattle were seized, hence their evidence on this point was hearsay. And on point that cattle were not counted at the place, it is the view of this court that a person who took them for grazing is the one who is in position to explain. PW1 and PW4 were in a position to say about the cattle when they went to the office, they counted them and find them to be less. Together with the 5th ground of appeal that key witness who is a grazing man was not called as a witness hence prosecution case was not proved beyond reasonable doubt. In regard to this witness, I find it was important for this witness to have been called in order to know a number of cattle which were seized at the locus in quo although I am aware Law does not put it mandatory for prosecution to call a certain number of witnesses, (see Section 143 of Tanzania Evidence Act [Cap 6 R.E. 2002]. It is the view of this court that failure to have a grazing man as witnesses it is not certain exact number of cattle that were taken by the appellants so as for this court to say number of cattle taken from grazing man were the numbers which were mentioned by PW1 and PW4, worth to say a number of cattle stolen as it is stated in the charge sheet. It is from this point that I find prosecution case was not proved beyond reasonable doubt. It is not answered how many cows were seized compared to number as stated by PW1 and PW4. I find the 6th ground of appeal needs no attention of this court as issue before court was not about victim’s residence but was on stealing cattle. Since it is not certain how many cattle were seized and if the number stated by PW1 and PW4 was correct or proved, this court finds appeal has merit, it is allowed. Appellants be set free from jail unless otherwise held for a lawful order. It is ordered. DATE: 24/05/2017.

Coram: Hon. D.R. Lyimo-Dr. 1st Appellant: n 2nd Appellant: v Mr. Kitope Adv. 3rd Appellant: j Respondent: Ms. Magesa State Attorney. C/c: Ijinji MS. MAGESA STATE ATTORNEY The case is coming for Judgment and we are ready. d. r T l y i m o DEPUTY REGISTRAR 24/5/2017 COURT Judgment delivered on this 24th day of May 2017 in the presence of Ms. Magesa State Attorney for the respondent and in the presence of Mr. Kitope advocate for the appellant. Court clerk Ijinji present. c D. R! LYIMO DEPUTY REGISTRAR 24/5/2017

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