

TANZANIA / JUDGMENT

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.c.- ,. '!'~1~.: ,. • ,t- '.....'...l ":-'~~ • . ' , -~,,.....,-~ ~ IN THE COURT OF APPEAL OF TANZANIA ATMWANZA (CORAM: MUNUO, J.A., MSOFFE, J.A., And KAJI, J.A.) CRIMINAL APPEAL NO. 14 of 1998 JUMA KIDLEMI APPELLANT VERSUS THE REPUBLIC RESPONDENT (Appeal from the conviction of the High Court of Tanzania at Tabora) (Mchome, J) dated the 6 th day of August, 1998 in Criminal Appeal No. 29 of 1998 JUDGMENT OF THE COURT MUNUO, J.A.: This is a second appeal from Criminal Appeal No. 29 of 1997 in the High Court of Tanzania at Tabora. The case commenced in the District Court at Tabora as Criminal Case No. 15 of 1997. In the trial court the appellant, Juma Kidelemi, was jointly and together charged with two others who are not parties to this appeal, with two criminal counts. Count 1: Burglary c/s 294 (1) of the Penal Code, Cap 16 for allegedly breaking into the dwelling house of one Hussein Bakari with intent to commit an offence, namely burglary on the 03.01.1997. 2 Count 2: Robbery with violence c/s 285 and 286 of the Penal Code, Cap 16 read together with Miscellaneous Amendment Act No. 10 of 1989 in that after breaking into the dwelling house of Hussein Hamisi on the material night, the appellant and his co-bandits seized assorted properties total valued at shs. 227,306/= the property of one Hussein Hamisi and the time of seizing the said property threatened one Hawa Jumanne with a panga in order to obtain and retain the seized property. The record of the trial court shows that the appellant pleaded guilty to the two charges whereupon he was convicted and sentenced after accepting the prosecution evidence. The trial court convicted the appellant and sentenced him to five years imprisonment on count 1, and to thirty years imprisonment on count 2; the sentences to run concurrently. Aggrieved, the appellant preferred Criminal Appeal No. 29 of 1998 in the High Court at Tabora. Mchome, J. dismissed the appeal giving rise to this second appeal. On the 6.1.1997, the appellant pleaded to the charges as follows:- Count 1: / agree. I broke and stole. . I 3 Count 2: It is true. As was the case in the High Court, the appellant contends that his pleas were not unequivocal so the trial court should not have entered a plea of guilty on either count. He also complains that the sentence of thirty years imprisonment on count two is excessive and ought to be reduced. Mr. Mrina, learned State Attorney, supported the conviction and sentences imposed on the appellant on either count. He observed that the plea in count 1 is unequivocal because the appellant literally pleaded guilty by stating: I agree. I broke and stole. Although the appellant pleaded "It is true" in count 2, the learned State Attorney observed, the facts which established the charges were narrated by the prosecutor. To the facts, the appellant stated:- I agree. I did so with my fellows who however ran away. 4 By so accepting the prosecution

facts which we shall reproduce below for easy reference:- Facts as stated by the P.P.:- On 3.1.97 at about 12.30 p.m. the 1st accused and others broke into the house of Hussein Hamisi with intent to commit a felony therein. After breaking they entered and began to steal. Before and after the said theft they threatened one Hawa Jumanne I beating her and threatening her by pangas. At last they parted with the items which are outlined in the charge sheet. The 1st accused was arrested after this incident which had been reported to the police. After arrest he confessed and led the police to the home of the third accused. There items outlined in the third count were found. I pray to tender the said items as exhibits. Court: Admitted as Exhibit Pl. P.P. Thereafter the 1st accused was brought to court with his fellows who have denied charges. , 5 Court: The accused is asked if he admits what has been stated by the P. P. 1st Accused: I agree. I did so with my fellows who however ran away The learned Judge considered the above facts and held that: This is a clear admission of stealing and using force immediately before and immediately after the theft to the owner of the stolen property. This admission of facts removes the equivocation in the plea "It is true"~ And the facts disclose all the essential ingredients of burglary and robbery. So the plea on both counts was unequivocal, and the resultant conviction properly arrived at. We are satisfied that the learned Judge correctly determined the first appeal because by accepting the prosecution facts, the appellant removed any ambiguity which existed in his plea to the second count in which he pleaded: It is true. . I 6 We are further satisfied that the prosecution facts constituted the offences of burglary c/s 294 (1) and robbery with violence c/s 285 and 286 of the Penal Code, Cap 16. The appellant and his co-bandits were armed with pangas so on the doctrine of common intention he was rightly found guilty and convicted on the 2nd count, i.e . .robbery with violence. The appeal, we hasten to hold, is totally lacking in merit. The sentences imposed on counts 1 and 2 are scheduled under the Minimum Sentences Act, 1972 as Amended by Act No. 10 of 1989. Under the circumstances, we dismiss the appeal. DATED at MWANZA this 6th day of March, 2006. E.N.MUNUO JUSTICE OF APPEAL J. H. MSOFFE JUSTICE OF APPEAL S. N. KAJI JUSTICE OF APPEAL I certify that this is a true copy of the original_.) RAR

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