

TANZANIA / JUDGMENT

20181228 TZHC Mwanza

COURT
TZHCDECIDED
28 December 2018

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

.. IN THE HIGH COURT OF TANZANIA IN THE DISTRICT REGISTRY AT MWANZA . HIGH COU:t:t
CRIMINAL APPEAL NO. -155, 156, 157, 158, 159, 160 AND 161 OF 2017 (Original Criminal Case No.
06 ·of 2016 of the District Court of Chato at Chato)

1. MAG·ERE MARWA @ CHACHA · 2. JOHN SIBORA SENG'ENGE,
3. DOTTO ISSA,
4. TIMOTH KASOBI, ~■ a ■■■■ S ● ■■ a~ ■ ● W 1111 a ■ APPELLANTS
5. CHARLES MASALA,
6. MAPAMBANO KAKUMBO
7. KULWA LEONIDAS VERSUS THE REPUBLIC 11.....
RESPONDENT

JUDGMENT

. 27 /08 & 28/12/2018 RUMANYIKA, J.: Appeal Nos. 155, 156, 157, 158, 159, 160 and 161 of 2017 (pursuant to my reasons and order _of 27/09/2018 cons·olidated and as such determined), are _against the 29/11/2016 conviction and· a 30 years custodial sentences. The appellants are, for ease of reference; Magere Marwa, John Sibora Seng'enge,. Dotto Issa, Ti moth Kasobi, Charles Masala, Mapambano Kakumbo and Kulw.a Leonidas· (the 1 st , 2 nd 3rd ' ' '4 th 5th 6th ' th and 7 appellants) respectively. They appeared in person. 1 However, when the appeals were called on for hearing on () 27/09/2018, Ms. Gisela Alex learned State Attorney for the respondent - Republic, but for some reasons readily supported the 6th and 7th appeal!~nts 1 appeals. I allowed the appeals, quashed conviction, set aside sentence, . . acquitted and set them free forthwith. I reserved reasons. I will shortly hereinafter give some. With respect to all, the common seven (7) grounds of appeal revolve around four (4) points. To be rephrased as hereunder:-

1. That the learned trial Resident Magistrate erred in law and fact not . holding that appellants were not properly identified.
2. That the learned trial Resident Magistrate improperly evaluated the . evidence.

3. That the learned trial Resident Magistrate admitted the appellant's cautioned statements but improperly.
4. That the learned trial Resident Magistrate improperly invoked the doctrine of recent possession. Ms. Gisela Alex learned State Attorney as said only, supported appeals of the 6th and 7th appellants. Much as they were not touched by evidence materially. I promised, with respect to the two, to give reasons for the 27/09/2018 acquittal orders. Not only the victim generally identified them (no description made) but also, she did not mention name of a person to whom at the earliest possible opportunity named the two appellants (if at all were properly identified). Much as mandatorily the 21st implicating evidence by co-accused as matter of principle, required, but there was no single piece of corroborating evidence. It is trite law that evidence by co-accused founds conviction but cautiously. I found nothing additional upon which to convict the 6th and 7th appellants. It is for this reasons that I allowed appeal Nos. 160 and 161 of 2018. Now back to the remaining 5 appeals: Ms. Gisela Alex learned State Attorney submitted that a.s were now having super, but without aid of electric lights, PW1 and PW2 credibly and reliably identified appellants armed. Having stormed in and robbed them some items and cash (criteria of the famous case of Waziri Amani Vs. Rep. (1980) TLR 250). That is why the victims named them to policemen and no identification parade was mounted. Secondly, that criteria of the doctrine of recent possession were all met: One; although no certificate of seizure was in court. produced, the property was found in possession of the 1st appellant. Two; the property belonged to the complainant (though no description was made, no cash sale receipt or something was produced). Three; the property was recently stolen (case of AlhaJi Ayoub Msumari & Others Vs. Rep., Criminal Appeal No. 136 of 2009 (CA) unreported. That, with cautioned statements of the 1st, 3rd and 4th appellants, the rest were implicated and arrested (see PW8' evidence). Also Exhibit PE2 3 j and PE4 not objected to. That accused who confesses to the charges was a best and reliable witness (case of Abdallah & 2 Others Vs. Rep., Criminal Appeal No. 384 of 2008 (CA) - unreported. Questioned for clarification by court, the learned State Attorney - submitted that indeed no evidence from Vodacom Company was given to substantiate that indeed the mobile number belonged to none other the 2nd appellant. That although the 1st accusee; J was arrested on 30/12/2015, he was arraigned in court on 06/01/2016. Very briefly, the evidence runs thus:-
 - PW1 Leah Said stated. that as was, at the material time just at home, the appellants stormed in armed with machetes and demanded money. That she surrendered cash. Then also, appellants took with them a radio and a video deck. That by aid of electric lights she identified all. That later on she identified the TV screen at the police station. PW2 Veronica Tanesco stated that as was, at the material time with members of the household having super, the appellants just broke into and robbed them. PW3 Ernest Vicent, stated that he knew the appellants before. That from his home, he learnt about the 12/12/2015 incident (his home broken into and robbed). Only that on 31/12/2015 he identified his TV at police station. PW4 G. 8334 D/C. Muhi_dini stated that with regard to the scene, but having been duly assigned, he recorded a cautioned statement of the 4th I t I (1). 3rd appellant. Whereby

the latter implicated fellows. That eventually the 1st accused kept the items with him. PWS G. 8336 D/C Said stated that he interrogated the 3rd appellant (who also implicated and named fellows (copy of the cautioned statement- . . Exhibit PE3). PW6 F. 7817 Mhando stated that for this case he recorded the 1st accused's cautioned statement on _30/12/2015. That the latter implicated fellows (copy -Exhibit PE4). PEW? A/Insp. William Mbona stated that with respect to the incident ,he interrogated and recorded the 5th appellant's cautioned statement on 02/01/2016 at police station. Whereby he implicated fellows (Exhibit PES). PW8 Inspector Maro Kenyako of anti-robbery unit - ~CO's Office Geita stated that through mobile number 0766 356108, .the 2 nd accused threatened i.e. with menaces demanded money from a different victim of robbery and rape. That the Vodacom Bukombe people identified the 2 nd appellant of Runzewe the subscriber and arrested him on 29/12/2016. That he interrogated him, the latter confessed and also implicated fellows. Then led to arresting the 1st and 3rd appellants and recovered the property in issue. That the two also named and implicated fellows. So were the 4 th and 6th appellants arrested. Then in common appellants basically denied the charges and liability. In fact they stated when exactly each one of them was, with respect to the case arrested. That the policemen interrogated them but denied all. Yet were arraigned in court. That is all. . 5 The central issues are whether appellants were properly identified by pwl and pw2 at the material 20:30hrs and whether their cautioned statements were properly recorded. The victim (pwl) may have, at night been invaded by appellants and by aid of electric lights identified them, but not properly. I am saying so because it was not stated as to whom, at the possible and earliest opportunity she named them. Until at a later stage to policemen. The victim may have not known the culprits before yes! But now in absence of . . a subsequent identification parade out of which one may have identified at least any one of them, it cannot be said that appellants were properly identified. Ground one of appeal is allowed. Secondly, through the said mobile No. 0766 356108 the 2nd appellant may have been easily tracked and traced, then if at all named and implicated the fellows yes! . But in absence of the company's evidence (inclusive of copy of a print out) that indeed the mobile number belonged to non-other than the 2nd appellant, evidence remained, but merely unproved allegations. Leave alone, as the learned State Attorney conceded, that there was, with respect to the recovered items, no copy of a certificate of seizure be it against the 1st appellant or anybody else. The evidence therefore was improperly evaluated and analyzed. Grounds 2 and 4 of appeal succeed. Lastly, taking into account of all the aforesaid, it cannot be said that the appellants' cautioned statements hold water any further. Ground 3 of the appeal also succeeds. 6 .t In upshot, the conviction and sentence are quashed and set aside respectively. The five (5) appeals are hereby allowed. Unless were legally held further, appellant Nos. 1, 2, 3, 4 and 5 also be released forthwith from prison. Ordered accordingly. Right of appeal explained. S~-.,..... uY1-.YIKA -25/12/2018 ~~~~ ~~~~ O.H. KINGWELE DR 28/12/2018

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/346819/source_file/c093b3d8db37860b/20181228_TZHC_Mwanza.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/magere-marwa-chacha-v-the-republic-identificationevidence-tzhc-2018>

Prepared on 14 October 2026 · Esheria