

TANZANIA / JUDGMENT

20140818 TZHC Mwanza

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TZHCDECIDED
18 August 2014

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/ 'i (f':,;_-' y '\ Ii ,.• .f IN THE HIGH COURT OF TANZANIA AT MWANZA CRIMINAL APPEAL
NUMBER 56 OF 2014 .. (Originating from Criminal case Number 109 of 2010 of the District Court
of Bunda at Bunda) MASUMBUKU MUSIMU ----- APPELLANT VERSUS
REPUBLIC -----,,----- RESPONDENT JUDGMENT· r I. 23/07 & 18/08/2014
S.S. MWANGESI J.: At the District Cou_rt of Bunda in Mara Region, the appellant herein, stood
charged with the offence of shop breaking contrary to the provision of section 296 (1) of the Penal
Code, Cap 16 Volume 1 of the Laws Revised Edition of 2092. The particulars. of the offence ·were
to. th~ effect that, on th~ 24th day of March 2010 during night time, at Bomq Road within Bunda
District in the Region of Mara, the accused did br~ak and enter into the shop of one Julius
Seyiriruyu and stole from therein cash amount of TZs . . 50,000/=, six (6) boxes of Konyagi valued
at TZs 75,000/=, four (4) boxes 1 of Dollars valued at TZs 20,000/= and six (6)-boxes of Zed ·valued
at TZs 15,000/=, aU tot~I valued at TZs 157,000/=, the property of the said Julius Seyiriruyu. Upon
the charge being resisted by the accused/appellant, the prosecution lined up three witnesses to
establish the commission of the . . offence by the accused. And in resisting the charge against
him, the accused/appellant did depend on his own testimony. At the end of the day _after the
learned· trial Resident Magistrate had analyzed the evidence placed on his table, was of the view
that, it had been established beyond doubt that, the accused · had committed the charged
offence. The accused/appellant_ was thus convicted to the charged . offence and sentenced to go
to jail for a period of seven (7) years. Additionally,. the accused/appellant was ordered to
compensate the de facto complainant · the val~e of the stolen properties. . . In this appeal the
appellant is challengin·g the conviction and the senten½e. His appeal is founded on about seven
grounds of appeal. However, all the grounds of appeal hinge on the issue of th~ evidence th_at
was relied upon by the learned trial Resident Magistrate to found conviction 2 . . to him. It has
been· the general averment of the app~llant that, there wa·s no cogent evidence to justify
conviction. For instance, it has been the argument ·of· th~ appe_llant that, he was never found in
possession. of anything connected with the properties alleged to have been burgled from . the
shop of the victim. The appellant has thus requested this Court to quash.the finding of the trial
Court and release him from prison . .The appeal by the appellant has been supported by Mr.
Emanuel Luinga learned State Attorney. In his submission to challenge the. conviction, the·
learned State Attorney has argued that, there was no direct evidence to implicate the appellant to
the offence of theft because there was nobody, who did see him committing the theft. The
evidence implicating the appellant was just circumstantial, which however,_ was not .

corroborated by any concrete evidence as he was not found in possession of any of the stolen properties. Furthermore, the circumstance leading to the arrest of the appellant and being connected to the commission of the offence, which he stood charged with, was never made clear. With regard to the caution statement alleged to have been obtained from the appellant, which was admitted and acted upon by the trial Resident Magistrate, was admitted in contravention of the law in that, after it had been retracted by the appellant, the learned trial Resident Magistrate was legally required to conduct an inquiry to establish if it had been obtained voluntarily or not. However, such procedure was not adopted, which rendered the evidence from the said caution statement to be of no legal effect. The learned State Attorney has therefore, urged the Court to allow the appeal by the appellant. In the light of the foregoing, the issue for determination by this Court is whether the appeal by the appellant is sound. I have faced no difficulties in allying with the submission which has been in support of the appeal by the appellant. As it has been argued on behalf of the appellant, from the record of the proceedings of the trial Court, there has never been any evidence to establish that, the appellant was found in possession of any of the alleged stolen properties. And as if that was not enough, there is no iota of evidence to establish, how the appellant was arrested and implicated to the charged offence. The scenario has just started with the appellant giving caution statement at the Police Station. The proceeding is silent as to how he got arrested and connected to the charged offence. Without any ado, I find the appeal by the appellant to be meritorious and therefore, has to sail through. The conviction of the appellant to the charged offence is hereby quashed and the sentence of seven years, which had been imposed to him is set aside. It is ordered that, he be set at liberty forthwith unless there are other legally grounds to continue keeping him in prison. Order accordingly. I JUDGE ' I i 5 I ! \ t ' I

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Prepared on 14 October 2026 · Esheria