

TANZANIA / JUDGMENT

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ATMWANZA MSOFFE, J.A., MBAROUK, J.A. And BWANA, J.A.) f CRIMINAL APPEAL NO. 64
OF 2006 MASUNGA JOHN @ NERA APPELLANT ·. VERSUS
THE REPUBLIC ~ RESPONDENT (Appeal from the
Judgment of the High Court of Tanzania -at Mwanza) (Rweyemamu, J.) th dated the_ 12 day
of October, 2005 in HC Criminal Appeal No. 178 of 2004 JUDGMENT OF THE COURT 12 & 13
May, 2010 _MSOFFE, J.A.: PW1 Kidumu Fundikira and PW2 · John Mganga told the trial
District Court of Mwanza (Magafu, PDM) that on 31/1/2003 at about (, ·,J 3.00 a.m. bandits
broke into their house and stole an assortment of articles including / a radio and
cassettes. The bandits were wielding a . . . spear and machetes. They reported the incident
to the police on the same night. In the meantime, in _the early hours of the morning_ of that
same night the police were on patrol duty· .at Rufiji · area near Nyakabungo Hill in Mwanza.
While there they saw a number of people carrying luggages on their heads. They suspected
them. They followed them on foot. As they approached them the said people decided to flee.
In the ensuing chase they arrested the appellant, who on seeing the police threw the luggage
he was carrying, to the ground. They took the appellant and the luggage to· the police station
where PW1 identified a radio and cassettes as being among the properties · stolen. on that
fateful night. Indeed, the cassettes, which were (': produced and admitted in evidence at the
trial, had her name Kidumu Fundikira inscribed on them. On the basis of the above
evidence, the trial District Court invoked the doctrine of recent possession and accordingly
convicted the appellant of armed robbery contrary to Sections 285 and 286 of the Penal Code
as amended by the relevant provisions of Acts No. 10/89, 27 /91, 6/94 and 12/98, and
sentenced .him to a term of imprisonment for thirty years. The .. ··· ··· ···~..... ·
··appellaht's. flrsf ... appear ·to the "High. ·cou·rt (Rweyemamu, .J.) was dismi\$sed, hence
this second appeal. · .In tne memorandum of appeal there are two basic complaints. One,·
the eyidence of visual identification in the case was insufficient 2 · to ground the conviction.
Two, it was wrong for the courts below to invoke the doctrine of recent possession because
the radio and the cassettes were not sufficiently identified by PW1. Mr. Victor Kahangwa,
learned Senior State Attorney appearing on behalf of the respondent Republic, urged mainly
that the courts below were justified in invoking the doctrine of recent possession in the

circumstances of this case. With respect, we agree with him for reasons which we will state hereunder. - . The first complaint has no basis. The conviction was not based on the evidence of visual identification. Both PW1 and PW2 were positive that they did not identify the appellant at the time of the incident. The judge on first appeal addressed the second .complaint thus:- ..-..... The appellant was- in fact caught "red handed"~ . The proximity in time between . . commission of the offence and the appellant's arrest; circumstances of possession i.e. why would the appellant be carrying luggage at that 3 time of night/ his failure to explain possession; all indicate that the articles found on the . appellant must have been unlawfully obtained Regarding identification of property by the owner, the evidenc(!= clearly shows that . PWJ the complainant and PW2 had already reported missing items at the police station when by coincidence PW3 turned up with the appellant, and some of the stolen article~ which the victim identified to be hers - one article had her name on it With respect, we are .in entire agreement with the appellate judge in her assessment of the evidence in relation to the doctrine of recent possession. We will only add by way of emphasis that when the cassettes bearing the na.me of PW1 were produced and admitted in evidence the appellant did not object. In fact, the assertion that PW1 () did not sufficiently identify the articles, particularly the cassettes, is a clear afterthought because the appellant did not canvass the point at the trial and in the first appeal. 4 We are of the settled view that the appeal has no merit. Indeed~ this is a case in which, if we had wanted, we could have easily invoked our jurisdiction under Section 4 (4) of the Appellate Jurisdiction Act, 1979, as amended by the Appellate Jurisdiction (Amendment) Act No. 17 of -1993, and summarily reject the We hereby dismiss the appeal in its entirety. DATED at MWANZA this 13th day of May, 2010. J. H. MSOFFE JUSTICE OF APPEAL M.S.MBAROUK JUSTICE OF APPEAL S. J. BWANA JUSTICE. OF APPEAL . c-: .. ,,,_~: ~ :-I(' MGSi (J. s. EPUTY REGISTRAR 5

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