

TANZANIA / JUDGMENT

osodo josiah vs ibrahim so issa 2002 tzhc 2058 3 may 2002

COURT
TZHCDECIDED
3 May 2002

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THE UNITED REPUBLIC OF TANZANIA IN THE HIGH COURT OF TANZANIA AT MV/ANZA (PC)
CRIMINAL APPEAL NO. 16 OF 2001 (From the District Court of Tarime District at Tarime
Criminal Appeal No. 32 of 2001 and Original Criminal Case No. 166/2001 of Urban Court of
Tarime) OS0D0 JOSIAH APPELLANT VERSUS IBRAHIM s/o ISSA ••» . . .
* RESPONDENT

JUDGEMENT

MLAY. J. This is an appeal from the judgement of the District Court of Tarime in PC Criminal Appeal No. 32 of 2001, which arose from the decision of the Tarime Urban Primary Court in Criminal Case No, 166 of 2001. In the primary court, the Appellant had instituted criminal charges against the Respondent, for the offence of Robbery Contrary to section 285 and 286 of the Penal Code. The Appellant gave evidence against the Respondent as FW1 in the proceedings. The primary Court found the Respondent guilty of the offence as charged and sentenced him to imprisonment for 15 years. The Respondent appealed to the Tarime District Court, which quashed the conviction of the Respondent and set aside the sentence of the Primary Court. The Appellant being dissatisfied with the decision of the District Court has now appealed to this Court. Having perused the proceeding in the primary court and the judgement¹ of both the primary court and the District Court, I am satisfied that the

- a decision of the District Court of Tarime in allowing the appeal by the Respondent was correct² The respondent was charged with robbery contrary to section 285 and 286 of the Penal Code. As the District Magistrate correctly pointed out in his judgement, the offence of robbery involves the commission of the offence of theft, as defined in section 258 of the Penal Code and the use of or the threat to use, actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained. Stealing or theft is to take anything capable of being stolen, fraudulently³ and without claim of right.” In the case under consideration it was in evidence that the appellant owed the respondent shs 5,000/=. The respondent found the appellant selling fish in a fish market and demanded payment of his debt. The appellant was not able to pay and the respondent took the appellants fish and started selling the fish at the market. The Appellant ran to the police station and reported to have been robbed by the Respondent.

Like the District Magistrate, I agree that there was no evidence that the respondent used or threatened to use any violence in order to take the fish from the appellant or to retain the same. An essential ingredient of the offence of robbery was therefore lacking. The question is whether the offence proved theft of the fish. Like the District Magistrate I think there was evidence from which it could be found that the appellant did have a claim of right through the debt which the respondent owed him. The conduct of the respondent in seizing the fish and selling the same to satisfy his debt is certainly undesirable as it may lead to a breach of the peace, but it does not constitute the offence of stealing. Accordingly this appeal is dismissed. If the appellant thinks the value of the fish sold by the Respondent was worth far more than the debt of shs 1,000/= he may resort to civil proceedings to recover the difference. J. I. MLAY J JUDGE W2002 OJie right of appeal explained* Delivered, in open court this 3rd May* 2002*-

i. i

- • \ J. I. # MLAY AT MWANZA JUDGE 3/ 5/2002

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Prepared on 13 October 2026 · Esheria