

TANZANIA / JUDGMENT

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- IN HIGH COURT OF TANZANIA. - AT TANGA. - IN MATTER OF JURISDICTION HIGH COURT CRIMINAL APPEAL NO. 77 CF 1979
- ORIGINAL: C. J. LILAL CASE NO. 1120 OF 1978 OF THE DISTRICT COURT OF MOSHI URGENT AT MOSHI BEFORE J. L. C. MASAI: C. E. ESQ., DISTRICT/RESIDENT
- HABIB O., O. APPELLA ITT VERSUS THE _ Ri3: .00000..0. RESPONDENT ci U DG BEFQHE: . L7SIO::O ; JUDGE. CD4th JLL; 1979 while on High Co. . Sessions at Tanga 2 . I allowed t l' one Rabieli s/c . ierel cuesued the con cti..;i ' oct aside the. sentoi.ico..f six years LnpriSonani -'. on Lim aud directd it a telegram be sent to MoshJ. r:i.sn (Iranga) to them of his imiediate relca ::co that prison vtherin to that date he was rept:d1, otli languishing. however, reserved y reasons f::r o Lrerin and now I fc'i1. dis1:.c:sed of to outline them Li . cou±se of this judcient which I pr'mised to deliver in du c.urse . On 30th March 1979 Rabieli s/ c Shadr was fomad guilty and convicted of aling contrary to. ctns 265 and 269 of the Penal Cod, it having been particarized that the 1rscn chad on h14th April 1978. •a.t a at g3.30 hours at. Moshi Hotel ..!:J.n the •Tonship and. J riC p Moshi, Killanjaro Rci u. did ste-al one Motor V::ile a Dauzi Registration No. URP 095 valued at shs.G5 ; 000/ the property of one •LTLI.nd Seki Kiwia. Upon c; TictiOn he was sentenca to o is riurisonaent to i cnfirmed by this o o urt. Agrieve bj ,th&t:.d.ecision the ccx. tG a eale4..to this court through r7ices cf. his learn cotns1 Mr. P. Msiska 2 agains3 t.. von and sentc.iaoe.
- . • c. • e • o0 o.a, • .72 I For the ap..clit it wq contended before this court that there was ac proper identification that the motor vehiole belonEod. o the complainant one Kine for asstedl the Rgistratiun nurnbers were missing frm both the front and rear sections. This. argument ,cold easily.be explained away for apart from theregistratjnnuibers which are fixed to a motor vhcile and which can, admittedly be vera easily removed, there...are engine .nd chasis number which :are engr&ved on
- tñë' relevant ts oL...the motor car. and the same numbers S are also recQrd - i in the Regi.stration c'rciof the said tor vehic1. In the instant case olJinant successfully seccrod and tonderd the re±stration card of that motor vehic1- o the trial court which had a.pJ,e opportunity o c etc them and the said i tcr vehicle wa\$ brought to the c.ur.t compound and the rtal 'bi± took opportunity to obsoi've the sae. •: -. Under thoec circumstances this courtis satisfied that t. he trial courtr - erty satisfied itslf ato the identity and ownership

Consequent1 - this first ground of appeal is discarded as being of no substance at all. As regards battery it is true that batteries are common items which can be both an advantage and unless identified by their serial numbers it is difficult to say any one of them belonging to a certain type. It can easily be singled out from the rest of the same type. Thus the identification of the battery in this case left a lot to be desired, and for in the decision of RV Heniy Thrahim (Mzavas J) this feels that the identification of the Cifu 40 battery in this case did not exclude clear possibilities of, mistaken identification. To support his contention on this point the learned counsel for the appellant cited cases of RV Adam Iddi and Another (1976) L. R.T. 18(P.56) and 110hedismilv..1197LL. R. T. 31 1441 The 3rd ground of appeal: which is very crucial in the decision of this case is an assertion by the learned judge (12) that the learned judge of the first instance erred in law and fact on the question of finger print evidence on record. It was submitted for the appellant that the evidence was not credible. It was urged to show that the left thumb allegedly said to be that of the appellant was not the L.J.L. on a small window on the driver's side of the motor vehicle. It was further contended that there was a probability that it was found outside. Two witnesses, P. 1.2 P. 103 according to appellant's learned counsel suggested that the impression of the finger on the door handle and, that each contrary opinion was overlooked by the trial judge. Stanslaas 9 equally 9 stated that the small side window on the right driver's side was broken and the learned counsel for the appellant contended that if that was broken then finger prints would not have been found on that central window glass. On the other hand there is the evidence of Wilfred who said at page 8 of the proceedings that right side small window had some finger prints and the learned judge did not make a finding of fact whether the fingerprints were outside or inside. A reading of the evidence of Wilfred and the learned counsel for the appellant admitted that as he was unable to secure the conviction of the appellant that he was not in agreement with the learned judge in the case and the evidence called for closer scrutiny before a conviction was pronounced on it and so the Paulo Mrithi V. R (1977) I.R.T 34 was cited in support of this argument. A reading of the evidence of the fingerprint expert one Nwanakizile was tendered in his absence under section 154 (2) of the Criminal Procedure Code the learned counsel for the appellant submitted that it is mandatory for the trial judge to inform the accused person that he had the right to be represented by counsel for the purpose of cross-examination on his evidence but in instant case such a right was not disclosed to the appellant. To support this the appellant cited two cases of V.I.O.W two cases of C&SOS in the case of Jcho Desas VS. V.N. -L.J.934) Vol. 1 C 9 13 and also cited (1954) Vols 21 and 22 that, court of Appeal held that the

----- 4 - competence of the witness should be shown before the trial court. And yet the learned counsel for the appellant said that the fingerprints could have been on the outside and if so the touch could be accidental especially so when there was only finger print and cited the case of Nazir (V.R.1962) E.A. 346 to support that contention. Two ladies were called to have seen the person who had driven the motor vehicle to where P.W.2 eventually saw it but for legal reasons none of the two ladies were called before the court to testify as to the identity of that person. On his part the learned State Attorney who appeared for the Respondent (Republic) did not support the conviction due to insufficiency of evidence to link the appellant with the alleged offence of vehicle theft. For similar reasons currently by both sides of this appeal that the case against the appellant was not proved beyond all reasonable

doubt. it is for th reasons that this c'uit allowed the ap:.eal of the appo'ant as, indicated abv,..
0 Delivered ju& .n'court at is day of . by.. * . . as writ.:a by E.A.IUTJO JIE0(N.B
written Q.L 10.10. 1979) For Appellant: or Respondent .i'ubJJc): Date: 23. 7.1936. Corain:
E.M.K. Rut DR. Appellant: Absnt. Resp'ondent:Absen -;;. Both duly served. "Court.: Judgennt
of the court •delivred in (pCn court in the absence of counsel for, both sides duly served, this
23rd day of July 2 J98.6. . E. 23, 7., 1986. 0

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