

TANZANIA / JUDGMENT

NHATI

COURT
TANZLIIDECIDED
24 March 2025

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IN THE HIGH COURT OF TANZANIA (MWANZA SUB-REGISTRY) AT MWANZA CRIMINAL
APPEAL NO. 31540 OF 2024 (Arising from Criminal Case No. 230 of 2023 in the Nyamagana
District Court at Nyamagana) ROBERT LEONARD @NHATI.....1ST
APPELLANT AZIZ MASOUD MBUGA @MAJESHI.....2ND APPELLANT VERSUS
THE REPUBLIC.....RESPONDENT

JUDGMENT

17th & 24th March, 2025 KAMANA, J. On 17th March 2025, this court quashed and set aside the conviction and the sentence meted out against the appellants who were convicted of armed robbery contrary to section 287A of the Penal Code, Cap. 16 [RE.2022]. It reserved its reasons for the decision which are now given. When the appeal came for a hearing, Ms. Stella Minja, learned State Attorney, conceded to the first ground of appeal in which the appellants assailed the trial court's decision for convicting them on evidence that differed from what was stated in the charge sheet. In her concessions, Ms. Minja contended that while the charge sheet states that in the course of stealing various properties belonging to Rahma 1 Kudra @Nuru, the appellants threatened her with a screwdriver, Rahma Kudra testified that she was threatened by a spanner. In that context, the learned State Attorney held the view that the prosecution failed to prove the offence to the hilt. Law is trite that when there is a variance between the charge sheet and the evidence adduced, the offence stands unproven. See: *Matera Simango @Masana v. Republic*, Criminal Appeal No. 517 of 2019-CAT (Unreported). With the variance as to the substance that was used to threaten Rahma Kudra as raised by the appellants and conceded by Ms. Minja, this court found that the offence of armed robbery was not proved beyond a reasonable doubt. It was for that reason, the appeal was allowed. DATED at MWANZA this 24th of March, 2025. KS
KAMANA JUDGE 2

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