

TANZANIA / JUDGMENT

SAMWEL KULWA NYAMBO

COURT
TANZLIIDECIDED
12 June 2024

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IN THE HIGH COURT OF TANZANIA (MOROGORO SUB-REGISTRY) AT IJC MOROGORO
CRIMINAL APPEAL NO. 10882 OF 2024 (Originating from the decision of the District Court of
Kilombero in Criminal Case No. 97 of 2023.) SAMWEL KULWA
NYAMBO.....APPELLANT VERSUS REPUBLIC.....
RESPONDENT

JUDGEMENT

12th June 2024. MANSOOR, J, The appellant Samwel Kulwa Nyambo was charged under section 287 A of the Penal Code [Cap 16 R: E 2022] for Armed Robbery before Kilombero District Court. He was convicted and sentenced to serve a jail term of 30 years. He was aggrieved by the conviction and sentence, thus the filed an appeal raising five grounds. Page 1 of 3 The Learned State Attorney Josbert Kitale State Attorney supported the appeal for the reasons that the appellant was not properly identified, and that there was contradiction between the evidence of PW1, the victim, and the evidence of PW5. It is true that the evidence of PW1 was shaky as he did not explain how long he interacted with the appellant as he said he was attacked by a different person who was holding a machete, and that the appellant appeared after wards. He also did not explain the intensity of the light coming from his phone, and the type of phone he was holding. Also he could not explain if he continued holding his phone even after he was attacked by the machete and injured. He did not say if he knew the appellant before the incidence, this notwithstanding the evidence of PW1, the victim, and since the appellant was a stranger to PW1, the possibly of mistaken identity was not ruled out by the prosecution evidence in the totality, taking into account that the incident occurred at night in the dark. I also agree that PW1 was a hostile witness but proceedings to eliminate his evidence was not followed, hence the evidence contradicted that of PW1 regarding the identification of the appellant doing the incident. Page 2 of 3 That said, the prosecution failed to discharge the burden of proving the ingredients of the offence of Armed Robbery beyond reasonable doubt. Consequently, the appeal is allowed the conviction and sentence passed by the Trial Court is quashed and set aside. The court orders immediate release of Samwel Kulwa Nyambo, unless held for any other lawful cause. It is so ordered. DATED AND DELIVERED AT MOROGORO THIS 12th DAY OF JUNE 2024. L.MANSOOR
JUDGE 12/06/2024 Page 3 of 3

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