

TANZANIA / JUDGMENT

20091026 TZCA Dar es Salaam

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1 ' ' i IN THE COURT OF AP i EAL OF TANZANIA ~ .. '• ATTANGA . . I . (CORAM: RAMADHANI, C.J: MBAROUK, J.A And MANDIA, J.A) . CRIMINAL APPEAL NO. 23 OF 2009 SHAIBU JUMA · SAID ISMAIL BUGHE } VERSUS REPUBLIC RESPONDENT (An Appeal from the Decision qt the Resident Magistrate's

- . I Court at Tanga (Lema, PRMIExt. Jur.} th dated the 11 day of;September, 20(0)8 : · in I ! Criminal Appeal No. 58 of 2007 JUDGEMENT O l THE COURT th 10 July, 2009 .RAMADHANI, C.J The appellants were convicted by the I istrict Court of Muheza in Criminal ·case No. 310 of 2004 and were sente1ced to imprison;ent Their appeal.·: before LEMA, PRM (Ext. Jur.) _was d1s 1ssed and henie this secon_d one_·:'. befor~ us. They were present m perso 1 an_d the respo~dent/Republ1c had . Mr. Vicent Tangoh, learned State Attorney. 1 · ,l 2 (\ I • , • Each appellant was given an opportunity to add a ground or grounds of < · . I . . '·. st appeal to his memorandum of app~al. The 1 , appellant gave an · : . I . explanation which boiled down to the de~~nce of autrefois acquit which was.·. __: ignored in the first appeal. I 11 It is true that there was Criminal Case No. 335 of 2Q04 before Tanga i District Court with ten accused persons/ but only the two appellants were I, . convicted of the charge of armed robbefy c/s 287 of the Penal Code, Cap -i'
- 16. It was claimed that they robbed on~ Albert Vanharts on 11 th August, 2004, and that they used fire arms to d~ so. Among the things they were 11 alleged to have robbed was one revolver with registration number SCA . I i 7780 made in the USA: which was found ,in their possession. These two appellants appealed to the IHigh Court and MKWAWA, J., tn :~ Criminal Appeal No. 61, 62 of 2005, acqtitted them. So, they wanted to rely 1 on that acquittal to set them free in this !appeal, too. We bought their story I and adjourned to write a ruling discharging them because of autrefois 1. acquit but in the process we found that ~he two cases are not one and the . ' same thing. So, we re-opened the hear1lg.) In the current appeal the appellants were charged with three counts: One, r . . armed robbery c/ss 285 and 286 off, the Penal Code. Two, unlawful !i possession of fire arms c/ss 34(1), (2) a9d (3) of Arms and Ammunition Act, Cap 223. Three, unlawful possession cif ammunition c/ss 4 and 34(1), (2) ' . and (3) of the same Act, Cap 223. 3 I \ . I . . th It was alleged that on 29 August, 2004:, they robbed Charles Kihoyo and his wife (PWs 1 and 2). It was also 61aimed that they were found in . , - : i possession of a revolver registration No~ BCA 7180 USA and a short gun .) with registration No 337166. . . Mr. Tangoh, and rightly so, did not suppi;>rt

convictions on counts 2 and 3, that is, unlawful possession of firearms and bullets. He said that the prosecution of those two counts required the written assent of the Director of Criminal Investigation or they had to be tried in Economic Crimes Court. None had been done. Therefore, those charges were illegal. It was held by this Court in *Robi and Two Others, v. R.* Criminal Appeal I No. 152 of 2005 (Mwanza Registry, unreported) that the trial was a nullity because of a similar oversight and the proceedings and the sentences meted out were set aside. What remained is count 1, robbery with violence. Here the question is: purely the credibility of PWs 1 and 2. We agree with Mr. Tangoh that PWs 1 and 2 were honest when they admitted that there was a third person, whom they did not recognize but they identified the two accused persons as the ones who broke into their shop. Admittedly, PW 1 was terrified and hid himself but came out when he was ordered by the 1st appellant and he gave them the money they demanded. The whole saga took about thirty minutes while there was a 'chemical' lamp in the room. There was also a lot of conversation, in the course of the incident, between the two PWs and the appellants when demanding money. "that same morning PWs 1 and 2 immediately reported the matter to the Police and at about 0730 hours the two 1st appellants were brought to the Police Station after they had been arrested. We are satisfied that the appellants were duly identified. Therefore, we dismiss the appeal in its entirety. It is DATED in DAR ES SALAAM, in this 26th day of October, 2009. A. S. L. RAMADHANI CHIEF JUSTICE M. S. MBAOKU JUSTICE OF APPEAL, W. S. MAJIDIA JUSTICE OF APPEAL I certify that this is a true copy of the Original. I, N. N. CUSI DEPUTY REGISTRAR, do hereby certify that this is a true copy of the

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