

TANZANIA / JUDGMENT

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (BUKOBASUB-REGISTRY) AT
BUKOBASUB (PC) CRIMINAL APPEAL NO. 22375 OF 2024 (Arising from Criminal Appeal No. 12 of2024
of the District Court of Muieba, Original Criminal Case No. 35 of2024 Muieba Urban Primary
Court) SULEIMAN MAHAMUDU..... APPELLANT VERSUS BRYSON
RAMTUMBA..... RESPONDENT

JUDGMENT

18 & 28/02/2025 KIWONDE, J. In this appeal, the appellant, one Suleiman Mahamudu, being
aggrieved by the decision of the first appellate court, has appealed to this court armed with four
(4) grounds of appeal namely:

1. That the first appellate court erred in law and facts by relying on the contradictory evidence
of the respondent adduced at the trial primary court.
2. The District Court erred in law and fact for failure to consider strong evidence tendered (sic)
by the appellant which proved the case beyond reasonable doubts at the trial primary court.
3. That the Honourable Senior Resident (sic) erred in law and fact for failure to uphold the
conviction and sentence entered by the trial court against the respondent despite of strongly
adduced evidence (sic) without any justifiable reason.
4. That the first appellate court erred in law and fact by failure to consider the reality that the
respondent was red-handed found and caught with a stolen animal (sheep) and the same
was tendered before the trial court. The appellant, thus, prayed this court to allow the
appeal, convict the respondent, quash and set aside the judgment and order of the District
Court of Muleba, order cost of this appeal and any other reliefs deemed fit and just to grant.
The background of this appeal is that the respondent was arraigned before Muleba Urban
Primary Court facing a charge of stealing animals contrary to sections 258 (1) and 268 (1)(3)
both of the Penal Code, Cap 16 (R. E 2022). In the particulars of the offence, the charge
indicated that the respondent stole from the appellant one white ram valued at TZS 100,000/
=. The respondent denied the offence. But after a full trial, he was found guilty, convicted
and sentenced to serve imprisonment 2 in jail for five (5) years because the offence falls
under the Minimum Sentences Act, Cap 90. This dissatisfied the respondent who
successfully appealed to the District Court of Muleba which overturned the decision of the

trial court, set aside the sentence and acquitted the respondent. Hence the present appeal. During hearing of the appeal, the appellant appeared in person while, the respondent was represented by Ms. Gisera Maruka, learned counsel. The appellant asked this court to adopt the grounds of appeal in /ieuQf oral submissions, which prayers were allowed. In reply, the counsel for the respondent opposed and argued the grounds of appeal generally and together. She did not argue each ground of appeal separately. According to the learned counsel for the respondent, the first appellate court did not base its decision on the evidence of the respondent. She submitted that there was no contradictory evidence on the part of the respondent. Besides that, the counsel argued that the first appellate court was correct to re-evaluate the evidence of the trial court according to the legal principles and acquit the respondent. The evidence showed that the witnesses, at the trial, explained different mark, (K) on the leg of 3 the ram, so, the charge was not proved at the required standard as the discrepancy went to root of the prosecution case. The appellant was duty bound to prove the case beyond reasonable doubts. The counsel prayed that the appeal be dismissed and this court uphold the decision of the first appellate court. In his brief rejoinder submissions, the appellant argued that all of his witnesses stated the colour of the ram to be white with K-mark on the leg. So, there was no contradiction and the stolen ram was found with the respondent. From the petition of appeal, subordinate court records and the oral submissions, the main issue for determination is whether the appeal is meritorious. In the first ground of appeal, it is complained that the first appellate court wrongly relied on the contradictory evidence adduced by the respondent at the trial. It should be borne in mind that the respondent was the accused person at the trial court. In law, the accused person has no legal duty to prove his innocence. He has just to raise doubts on the prosecution evidence. In Emmanuel Magesa Chacha and another Versus Republic, Criminal Appeal No.538 of 2020 [2024] TZCA 295 (2nd May 2024) TanzLII, it was held //7te/"a//athat: 4 "The prosecution is under duty to prove the case beyond reasonable doubt. Failure to achieve that affords the accused benefit of doubts. The burden of proof never shifts. It is a cardinal principle that unless it is otherwise stated, the accused has no duty to prove his innocence at most; he can raise doubts by poking holes in the prosecution case. Conviction, should in no way be based on the weakness of the accused's case." Therefore, even if there would be some contradictions in his evidence, this could not form the basis of the respondent's conviction. The trial Magistrate, in her reasoning said the accused failed to produce the purchase agreement of the stolen ram found with him. This was improper to shift the burden of proof to the accused person (the respondent). For that matter, the first ground of appeal is devoid of merits. I will determine the second and fourth grounds of appeal together as they are related. The appellant, in these grounds of appeal said the first appellate court failed to consider strong evidence adduced at the trial by the appellant and his witnesses and that the respondent was red- 5 handed found with the stolen property, the ram; so, there was sufficient evidence to prove the case beyond reasonable doubts. The records show that there was no eye witness of the said stealing as it happened at dawn and when the prosecution witnesses woke up at 5: 00 hours, discerned that the kraal was broken into and the ram and ewes had been stolen. So, the prosecution evidence was that of the respondent being found

with recently stolen property. It is apparent from the evidence that the stolen ram was found in the kraal of the respondent (then accused person). Though he denied that it was not the same with mark 'K'. But PW3 one Ismail Suleiman testified that he found the stolen ram to the respondent with the mark 'K' and it is the same ram which was tendered and admitted at the trial as exhibit Pl. In law, there is a rebuttable presumption that a person found with the recently stolen property is deemed to have stolen himself unless he gives reasonable explanation as to how he came into possession of the same. In *Juma Marwa Versus Republic*, Criminal Appeal No. 71 of 2001 (unreported) and *Godfrey Lucas Versus Republic*, Criminal Appeal No. 23 of 2013 [2013] TZCA 269 (5th December 2013), the Court of Appeal of Tanzania stated among other things that a person found in possession of the property recently stolen is presumed to have committed the offence himself unless he offers reasonable explanation of how he came into its possession. However, in this case, the respondent in his defence said he bought the ram from another person. Also, DW2 one Anestella Petro said she sold the respondent the ram and the ewes and she said at the police station she identified the ram she sold to the respondent. The respondent said it was his ram he bought and it had no such mark, but when PW3, Ismail Suleiman took the stolen ram, it was brought back marked 'K' and tendered in court as exhibit. From such evidence, it is apparent that the ram came into possession of the respondent by purchasing it from Anestella. There is no evidence that the respondent, at the time of purchasing the said stolen ram, had knowledge that it was stolen from the appellant. Therefore, even if it would have been proved that it was the same stolen ram from the appellant, the offence of stealing cannot stand for lack of mens rea on the part of the respondent. It follows therefore that the trial court Magistrate wrongly invoked the doctrine of recent possession of the stolen property hence reached to erroneous conclusion. Apart from that, I am in one accord with the first appellate court's reasoning that the charge laid down against the respondent described the stolen ram to be only white in colour, but in the course of trial, the witnesses testified of the ram with brown colour on its head and marked 'K' on its leg. This means that the particulars of the offence did not expressly disclose the kind of animal stolen regarding the brown colour and the mark 'K'. Therefore, the appellant and his witnesses did not prove the charge as it stood against the respondent. For that matter, the second and fourth grounds of appeal lack merits. The foregoing discussion answers the third ground of appeal that the first appellate court was justified not to uphold the conviction and sentence of the trial court. Thus, the third ground of appeal is short of merit too. Consequently, the entire appeal lacks merits and it hereby dismissed. The decision of the first appellate court is upheld. Dated at Bukoba this 28th February 2025. F. H. K[^]/ONDE JUDGE 28/02/2025 8 Court: Judgment is delivered in the open court in the presence of the appellant, the respondent and Grace Mutoka this 28th February 2025 and further right of appeal is explained. 28/02/2025 9

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