

**IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA**

(CORAM: MUNUO, J.A., KILEO, J.A., And MANDIA, J.A.)

CRIMINAL APPEAL NO. 309 OF 2009

DAUDI THOMAS..... APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

**(Appeal from the decision of the High Court
of Tanzania at Arusha)**

(Mmilla, J.)

dated the 24th day of August, 2009

in

Criminal Appeal No. 39 of 2008

JUDGMENT OF THE COURT

24th & 29th February, 2012

MUNUO, J.A.:

In Arusha District Court Criminal Case No. 736 of 2007 the appellant was convicted with the offence of armed robbery c/s 287A of the Penal Code, Cap 16. R.E 2002. It was sentenced to a term of 30 years imprisonment. Aggrieved, he lodged Criminal Appeal No. 31 of 2008 in the High Court of Tanzania. Mmilla, J. dismissed the appeal giving rise to this second appeal.

On the night of the 24th August, 2007 at Sabasaba Road area in Arusha City, the complainant Robert Laizer was walking home with his wife, Flora Robert around 20.00 hours. On the way, they were attacked by 2 bandits. One of the bandits wounded P.W.1 Flora Robert on the head as evidenced by her PF3, Exhibit P1 which shows that she was wounded on her right thumb and on the head (occipital) by a sharp weapon. During the attack, the bandits seized P.W.1's plastic bag which contained a cadet trouser, sandals and table clothes. P.W.2 Robert Laizer reported the armed robbery to the police where a PF3 was issued to his wife for treatment. Neither P.W.1 nor P.W.2 could identify the bandits but the vigilantes commonly known as **sungusungu** waylaid the suspects at the river.

The appellant and a co-suspect passed by the river whereupon the sungusungu trailed them to a house. The co-suspect entered the house. The sungusungu pounced on the appellant who was carrying a bag on his back. The cadet trouser, sandals and table clothes which had been seized from P.W.1 about two hours earlier, were allegedly found in the appellant's bag. Subsequently, the appellant was turned over to the police and prosecuted for armed robbery.

The appellant denied the charge. He wondered how he could have been found in possession of the stolen property when the complainant tendered the said property in court as Exhibits. The appellant categorically denied being found in possession of the complainant's property.

Mr. Zakaria Elisaria, learned Senior State Attorney, supported the conviction on the strong evidence adduced by the five prosecution witnesses. He urged us to uphold the conviction on the doctrine of recent possession for the reason that the stolen property was found in the appellant's bag two hours after the armed robbery. On this, the learned Senior State Attorney cited the case of **Abdi Julius @ Mollel Nyangusi and Another versus Republic, Criminal Appeal No. 107 of 2009**, Court of Appeal of Tanzania at Arusha (unreported) which he submitted is similar to the present case.

With respect, **Abdi's** case is distinguishable because in that case four eye witnesses who visually identified the suspects led the police to their residence because they knew them before. At their residence, the police found the first appellant (Abdi Julius) hiding on

the ceiling of the house in possession of two radios and a bag which had been stolen from the complainant a few minutes before.

In **Abdi Julius' case** the court referred to the case of **Joseph Mkumbwa and Samson Mwakajenda versus Republic, Criminal Appeal No. 94 of 2007 (unreported)** in which the court observed that:

".....Where a person is found in possession of property recently stolen or unlawfully obtained, he is presumed to have committed the offence connected with the person or place wherefrom the property was obtained. For the doctrine to apply as basis of conviction, it must be proved, first, that the property was found with the suspect, second, that the property is positively proved to be the property of the complainant, third that the property was recently stolen from the complainant, and lastly, that the stolen thing constitutes the subject of the charge against

the accused.....The fact that the accused does not claim to be the owner of the property does not relieve the prosecution of their obligation to prove the above elements.....”

The Court allowed the appeal in **Abdi Julius**' case because for unexplained reasons, the complainant Jumanne Ramadhan did not give evidence at the trial.

In this case, the complainant's stolen but recovered property was tendered by P.W.1 at the trial as Exhibit P1. One of the **sungusungu** who recovered the property from the appellant two hours after the robbery, deposed as P.W.4 saying that the appellant was arrested and turned over to the police on that same night. The investigating officer, P.W.5 E 3775 Detective Constable Elisante stated that he started investigating the case on the 27th August, 2007, three days after the alleged robbery. As the record stands, neither P.W.4 nor P.W.5 stated where the stolen property went after it was recovered from the appellant two hours after the robbery. Was the said property restored to the complainant, was it turned over to the police? If it was turned over to the police where did the

complainant get the property she tendered as Exhibit P1? In view of these discrepancies in the prosecution evidence, the doctrine of recent possession was erroneously imported into the case. Under the circumstances, we find it unsafe to uphold the conviction. We accordingly quash the conviction and set aside the sentence. The appellant should be released forthwith if he is not detained for other lawful cause.

We accordingly allow the appeal.

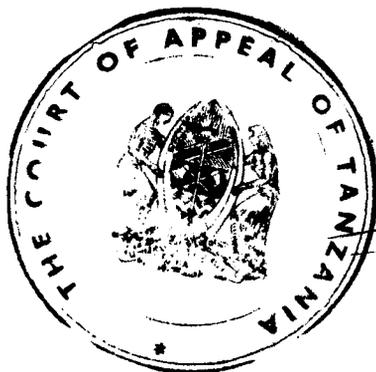
DATED at ARUSHA this 27th day of February, 2012.

E. N. MUNUO
JUSTICE OF APPEAL

E. A. KILEO
JUSTICE OF APPEAL

W. S. MANDIA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.




E. Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL