

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

(CORAM: MBAROUK, J.A., LUANDA, J.A. And MZIRAY, J.A.)

CRIMINAL APPEAL NO. 381 OF 2015

HAMISI YAZIDI.....APPELLANT

VERSUS

**THE REPUBLICRESPONDENT
(Appeal from the decision of the High Court of Tanzania
at Tabora)**

(Wambali, J.)

**dated the 28th day of September, 2012
in
Criminal Appeal No. 117 of 2010**

JUDGMENT OF THE COURT

13th & 17th October, 2016

MZIRAY, J.A.:

The appellant and one Selemani Issaya (his co-accused) who did not wish to appeal were arraigned before the District Court of Kigoma at Kigoma with the offence of Armed Robbery contrary to section 287A of the Penal Code, Cap. 16 of the Law R.E. 2002 and each was sentenced to 30 years imprisonment with 12 strokes of the cane.

Their appeal to the High Court was unsuccessful. Still aggrieved, the appellant has now come to this Court in a second appeal.

The back ground to the appeal at hand is briefly as follows. On 27/2/2010 at around 23:00 hours PW2 Hamza Saidi, the victim of the offence, while proceeding to his home, came across the appellant and his co-accused Selemani Issaya who were standing by the road side. He vividly identified the two through the aid of moonlight which was shining brilliantly. Apart from that light, it was easy to identify them because the two were acquainted to him having worked previously together as courier at Kasulu Bus stand. When he approached nearer, for no apparent cause, the appellant and his co-accused suddenly attacked him with iron bars. He shouted to the appellant these words:

"Hamisi what are you trying to do."

Despite the warning, the appellant and his co-accused managed to snatch his mobile phone and cash shs. 15,000/= before taking to their heels.

Shortly, PW2 reported the incident to police and named the appellant and his co-accused as the assailants. PW1 PC Bruno was assigned the duty to trace the appellant and on 1/3/2010 he succeeded to apprehend him and his co-accused. They were brought to justice and subsequently

convicted of armed robbery. All the same, the appellant has throughout strongly denied to have committed the offence.

In arriving at the conviction of the appellant the trial court relied crucially and heavily on the evidence of visual identification by PW2.

In this appeal the appellant has filed six (6) grounds of appeal which upon scrutiny on all of them, the same revolve around on the issue of visual identification, in that whether the condition at the scene was favourable for a positive identification.

At the hearing of the appeal, the appellant was unrepresented and Ms. Jane Mandago, learned Senior State Attorney represented the respondent/Republic. The appellant opted to hear first the submission of the learned Senior State Attorney reserving the right of reply.

Submitting on this issue of visual identification Ms. Mandago, learned Senior State Attorney relying on the cases of **Waziri Amani V. Republic** [1980] TLR 250, **Raymond Francis v. Republic** [1990] TLR 100 and that of **Marwa Wangiti Mwita and Another** [2002] TLR 39, argued that the appellant was properly identified.

convicted of armed robbery. All the same, the appellant has throughout strongly denied to have committed the offence.

In arriving at the conviction of the appellant the trial court relied crucially and heavily on the evidence of visual identification by PW2.

In this appeal the appellant has filed six (6) grounds of appeal which upon scrutiny on all of them, the same revolve around on the issue of visual identification, in that whether the condition at the scene was favourable for a positive identification.

At the hearing of the appeal, the appellant was unrepresented and Ms. Jane Mandago, learned Senior State Attorney represented the respondent/Republic. The appellant opted to hear first the submission of the learned Senior State Attorney reserving the right of reply.

Submitting on this issue of visual identification Ms. Mandago, learned Senior State Attorney relying on the cases of **Waziri Amani V. Republic** [1980] TLR 250, **Raymond Francis v. Republic** [1990] TLR 100 and that of **Marwa Wangiti Mwita and Another** [2002] TLR 39, argued that the appellant was properly identified.

She argued that PW2 by the aid of moonlight which was shining brilliantly saw the appellant from far until he came close and passed him and that he knew him prior to the incident as he was working with him as courier at Kasulu Bus Stand. She further submitted that PW2 mentioned the name of the appellant at the scene when attacked and readily named the appellant to PW1 at the earliest possible time when reporting the incident as a culprit at the police station. In this connection the learned Senior State Attorney submitted that the evidence on record is sufficient to ground the appellant's conviction.

On his part, the appellant denied emphatically to have committed the offence. He relied on the grounds of appeal he filed and pleaded for his release.

It is now settled that when a court relies on visual identification, among the important aspects to be considered is the time the witness had with the accused under observation, the distance at which the witness had the accused under observation, if there was any light, then the source and intensity of such light, and also whether the witness knew the accused before. (See **Waziri Amani v. Republic** (supra), **Raymond Francis v.**

Republic, (supra), Yohana Msigwa v. Republic [1990] TLR 148 and Idd Omari Mbezi and 3 others v. Republic, Criminal Appeal No. 227 of 2009 (unreported).

We have subjected the evidence of visual identification in the present case. To be precise, the evidence of PW2 met the requirements for perfect identification as set out in the preceding cited authorities. First, PW2 said that at the scene there was a full moon light which was shining brilliantly; second, that he passed close to the person he identified and that he was very known to him because they were working together at Kasulu Bus Stand. In our considered view, the details given by PW2 lessened the possibilities of mistaken identity. The fact that the moon light was shining brilliantly at the scene and that PW2 passed close to the person whom he was well known to him, surely the issue of mistaken identity can not arise.

We also need to emphasize here that the fact that PW2 mentioned the name of the appellant at the scene of crime and similarly that he readily named him to PW1, the police officer, when reporting the incident is again an assurance that he correctly identified the appellant. (See **Marwa Wangiti and Another v. Republic** (supra) where it was stated at page 43 that:-

"...The ability of a witness to name a suspect at the earliest opportunity is an all- important assurance of his reliability, in the same way as unexplained delay or complete failure to do so should put a prudent court to inquiry..."

On the basis of the above, we agree with Ms. Mandago, learned Senior State Attorney that the appellant was correctly identified by PW2. We thus uphold the findings of both courts below on the point. Under the circumstance therefore, we find that the appeal is devoid of merit and we dismiss it.

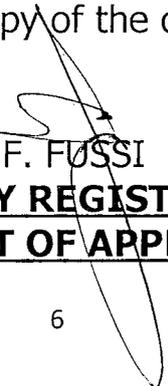
DATED at TABORA this day of October, 2016.

M.S. MBAROUK
JUSTICE OF APPEAL

B.M. LUANDA
JUSTICE OF APPEAL

R.E.S. MZIRAY
JUSTICE OF APPEAL

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


E.F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL