

**IN THE HIGH COURT OF TANZANIA  
(DISTRICT REGISTRY OF MTWARA)**

**AT MTWARA**

**CRIMINAL APPEAL NO. 16 OF 2022**

*(Originating from Criminal Case No. 14 of 2020 in the District Court of Lindi at Lindi)*

**RAHIMU MOHAMED MBUNGO @ TONGOLANGA.....APPELLANT**

**VERSUS**

**THE REPUBLIC..... RESPONDENT**

**JUDGMENT**

**Muruke, J.**

Rahimu Mohamed Mbungo @ Tongolanga, (the appellant) was charged with one count of stealing by argent contrary to section 273 (b) of the Penal Code. He was convicted and sentenced to serve five years' imprisonment. Being dissatisfied, he has filed present appeal, raising seven grounds articulated in the petition of appeal.

On the date set for hearing, appellant was in person, he thus requested his ground of appeal to be received as his submission in chief referring right to make rejoinder after State Attorney submissions. Respondent being represented by Wilbroad Ndunguru learned State Attorney joined ground **one, two, four, five, six,** and **seven** as they both speak of lack of evidence to ground conviction and submitted that, appeal is on stealing by argent contrary section 273 (b) of Cap to the Penal Code, R.E 2002, by then Appellant was accused of stealing the motorcycle. In this offence, issue is

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possession. Evidence of PW2 shows that appellant and PW2 knew each other as seen at page 13 to 14 of typed judgment. On the date of the incident, PW2 and appellant agreed appellant to use motorcycle. PW2 being the driver was special owner. The legal owner was PW1 (principal owner). There is direct evidence of PW2 and PW3 who witnesses appellant being handled motorcycle. PW5 testified how appellant admitted to have committed the offence. Appellant admitted and explained to PW5 how he managed to steal the motorcycle. Section three (3) of the TEA Cap 6 on the orally evidence is relevant to this case. At page 13 and 14 of trial Court judgment. Court was satisfied that, evidence of PW2, PW3 and PW5 were credible and reliable. Thus ground one, two, four five, six and seven lacks merits.

Ground three complaints is on none compliance of section 210 of the CPA Cap 20 R.E 2019. It is true that, evidence was not read to the appellant by the court. However, it is appellant who was to ask for the same. Being raised now it is an afterthought. In totality there is no any normally in the conduct of this trial. Trial court records are to be believed.

Having gone through records, submission by respondent, appellant rejoinder, it is clear that **One**, there was no search warrant tendered as exhibit, by PW5. **Two**, there is no contract tendered between the PW2 and PW3. **Three**, (Veo) Village Executive Officer who witnessed the handing over of motorcycle from PW2 and PW3 did not testify. There is no connection between PW3 and appellant. More so, PW2 in his evidence testified at page 16 of typed proceedings that, he was telling lies while being cross examined by the appellant then accused, when he said: -

"It is my first time to give lie evidence in court.

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It should be noted that, it is the prosecution who has duty to prove case beyond reasonable doubts. In the eyes of law, there was no such proof. Evidence arranged at the trial court were mere suspicion. Court of Appeal the case of Ally Fundi Vs. R. [1983] TLR 2010, held that: -

***“a more opportunity to commit an offence cannot be the basis for convicting the accused, suspicion, however grave it may be, cannot be a substute for proof in a court of justice”.***

In a recent decision of Court of Appeal at Iringa dated 9<sup>th</sup> November 2022. Criminal Appeal No. 511/2020, Anord Mtuluva Vs. R Justice Maige JA, held that:-

***“More suspicion however has never been the sole basis for sustaining conviction”.***

Thus, there was no evidence to ground conviction, appeal allowed, conviction quashed, sentence is set aside. Accused to be released from prison, unless lawful held.



  
**Z. G. Muruke**

**Judge**

**29/11/2022**

Judgment delivered in the presence of Enosh Kigoryo State Attorney for the respondent and appellant in person.



  
**Z. G. Muruke**

**Judge**

**29/11/2022**