



**dated the 27<sup>th</sup> day of September, 2006**  
**in**  
**Criminal Appeal No. 72 of 2006**

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**JUDGMENT OF THE COURT**

**19 & 21 October, 2009**

**MSOFFE, J.A.:**

On 31/12/2004 the District Court of Dodoma (Awasi, PRM) found the appellants AMOSI MGAJI @ SEJE and JUMA MLEMETA guilty of armed robbery and arson contrary to sections 285 and 286, and 319, respectively, of the Penal Code. They were accordingly convicted as charged. On 27/1/2005 Mmbando, RM sentenced them to consecutive imprisonment terms of thirty years and life, respectively. Aggrieved, they preferred a first appeal to the High Court at Dodoma where Masanche, J. upheld the convictions and substituted the sentence of life imprisonment to thirty years imprisonment. The judge on first appeal also made an order for the sentences to run concurrently. They are still aggrieved, hence this second appeal.

The appellants filed a joint memorandum of appeal containing four grounds of appeal. In a nutshell, however, the grounds

crystalize on one major ground of complaint. That the evidence of identification was not watertight. In this regard, they are, therefore, of the view that the prosecution case against them was not proved beyond reasonable doubt.

At the hearing of the appeal the appellants appeared in person(s). Mr. Patience Ntwina, learned Senior State Attorney, appeared and resisted the appeal on behalf of the respondent Republic. In essence, the appellants' submission was that there was no enough evidence of identification to warrant the convictions in question. On the other hand, Mr. Ntwina was of the strong view that the appellants were adequately identified on the night of incident, particularly as was reflected in the evidence of PW3 DAUDI NYAGALU.

The facts of the case may be stated as follows. The complainant, PW1 JACKSON MNYUKWA owned, and presumably still owns, a milling machine at a village known as Chibelela. On 24/6/2003 at around 11.00 p.m. he was awakened by **"people from Sokoine area"** and told that his milling machine had been set on

fire and that his machine attendant had been badly injured. He quickly went to the scene and confirmed the information. PW3 DAUDI NYAGALU, testified and said that on the material day and time he was at the machine in question. While there, the appellants came in, attacked him, stole his money (shs. 50,600/=) and radio, and set the machine and his clothes on fire. In response to an alarm,

people came in and took him to his employer and eventually to the police and to the hospital for medical treatment. At the police station he told PW2 Detective Corporal DEOGRATIUS that he knew the people who attacked him on the night in question. Those he said he identified were the appellants. The appellants were accordingly arrested. In his further testimony, PW3 said that at the time of incident there was a hurricane lamp illuminating the area with the aid of which he identified the appellants. He also explained in detail as to who did what between the two. For example, he said JUMA, the second appellant, was the one who attacked him and cut his ear with a knife and stole his shs. 50,600/= - an amount of money which he had preserved in his "**bukta**" pair of trousers. He also said that AMOS, the first appellant, had come in with a plastic container which

was later abandoned by the second appellant behind the milling machine. The container smelt petrol, the same petrol which was said to have been used in burning the machine. Again, there was the evidence of PW4 JOSEPH NJITI to the effect that on 24/6/2003 at around 7.30 p.m. he was at his place of business when the first appellant came to him and bought five litres of petrol from him. This appellant did not have a container of his own. So, he (PW4) gave him a container. It was this same container with a letter "X" that was later abandoned by the second appellant behind the machine and identified by PW4.

Admittedly, this is a case in which its determination depended to a large extent on the crucial aspect of identification. In this regard, the prosecution case either stood or fell on the evidence of PW3. This is a witness who was at the centre of the whole incident. In their concurrent findings of fact, the courts below believed him to be a truthful witness. The issue is whether there is basis for us to fault the said courts in their findings of fact. With respect, we are of the considered view that there is nothing to fault them.

PW3 was very clear in his testimony that he knew the appellants prior to the date of incident. He knew them both by name and facial appearance. A look at the evidence of PW3 in its totality shows that the incident took a fairly long time. The duration was, in our view, long enough to allow for correct identification. There was also the evidence of the hurricane lamp fixed to a rope in the house. According to PW3, the light coming therefrom was bright enough to allow for correct identification of the appellants. Like the courts below, we have nothing to doubt PW3 on this aspect of his evidence.

There were other features in the case which, we think, were also material and significant in strengthening the prosecution case. It will be recalled that from the very early opportunity PW3 named the appellants. He named them to the police and to the *sungusungu*. We think this was significant in that he harboured no doubts all along that his assailants were none other than the appellants. There was also the container given to the first appellant by PW4. It was this same container that PW3 saw the first appellant holding on the fateful night. The same container was abandoned by the second appellant behind the machine and eventually identified by PW4, as

already stated. The evidence regarding the container was, in our view, also strong and incriminating against the appellants.

For the foregoing reasons, we are of the settled view that the appeal has no merit. We accordingly dismiss it.

DATED at DODOMA this 21<sup>st</sup> day of October, 2009.

J. H. MSOFFE

**JUSTICE OF APPEAL**

E.M.K. RUTAKANGWA

**JUSTICE OF APPEAL**

S. J. BWANA

**JUSTICE OF APPEAL**

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

(Z. A. MARUMA)

**DEPUTY REGISTRAR**