Citation	Parties	Legal Principles Discussed
CRIMINAL APPEAL NO. 215 OF 2004- COURT OF APPEAL OF TANZANIA AT DODOMA- MUNUO, J.A., KAJI, J.A. And KIMARO, J.A.	**JULIUS NDAHANI Vs. THE REPUBLIC-**(Appeal from the judgment of the Resident Magistrate's Court E/J at Dodoma- Criminal Appeal No 25 of 2004-S.N. MAFURU,SRM E/J)	This being a second appeal, the Court is entitled to interfere with concurrent findings of facts by the courts below only when there is a misdirection or non- direction on matters of facts by the courts below. See the case of **DPP Vs Jaffari Mfaume Kawawa** [1981] T.L.R.149 at page 153. The guiding factors on identification are laid in the case of **Waziri Amani Vs R** [1980] T.L.R. 250.

IN THE COURT OF APPEAL OF TANZANIA
AT DODOMA

(CORAM: MUNUO, J.A., KAJI, J.A. And KIMARO, J.A.)

CRIMINAL APPEAL NO. 215 OF 2004

JULIUS NDAHANI----------APPELLANT

VERSUS

THE REPUBLIC----------RESPONDENT

(Appeal from the judgment of the Resident Magistrate's Court E/J at Dodoma)

(S.N. MAFURU,SRM E/J)

dated 28th of August, 2004

in

Criminal Appeal No 25 of 2004

JUDGMENT OF THE COURT

18 & 22 JUNE, 2007

KIMARO,J.A.

The appellant was convicted by the District Court of Dodoma at Dodoma with the offence of armed robbery contrary to sections 285 and 286 of the Penal Code. He was sentenced to a term of thirty years imprisonment and twelve strokes of the cane. The appellant was alleged to have forced entry into the house of Severa w/o Mohamed on 22nd February, 1999 at night, by breaking the door and stole therein various items whose value was T.shs 2,142,000/= by using violence.

Aggrieved by the conviction and sentence, the appellant appealed to the High Court at Dodoma. The High Court, acting under section 45(2) of the Magistrates' Courts Act, [CAP 11 R.E.2002] transferred the appeal to the Court of Resident Magistrate at Dodoma where it was heard by the late S.N. Mafuru SRM E/J. The first appeal court upheld the conviction and sentence and dismissed the appeal.

Being aggrieved by the decision of the court on first appeal, the appellant has filed this second appeal. There are several grounds of

appeal but the major complaint was that the appellant was not identified as he was not in the village when the offence was committed.

When the appeal was called on for the hearing, the appellant appeared in person. The respondent Republic was represented by Mr. Tangoh, learned State Attorney. The appellant, being a layman had nothing useful to add to the grounds of appeal he had filed. The learned State Attorney supported the conviction and sentence imposed on the appellant.

This being a second appeal, the Court is entitled to interfere with concurrent findings of facts by the courts below only when there is a misdirection or non- direction on matters of facts by the courts below. See the case of **DPP Vs Jaffari Mfaume Kawawa** [1981] T.L.R.149 at page153.

The question before us is whether we are entitled to interfere with the findings of facts by the courts below. We have to say at the outset that we have no reason for such interference.

In the trial court evidence was led by Severa Mohamed (PW1), the complainant, that on 22nd February, 1999, at around midnight, she was in her house sleeping. A small child shared the bed with her. She heard the front door being banged. She raised alarm but it

was not helpful as seven persons who had a gun stormed into the house after breaking the door. Before they entered into the house, they fired the gun outside, obviously with an intention to scare people from rendering assistance to the complainant. The culprits went into her bedroom and forced PW1 to surrender to them some money. She gave them shillings 1,100,000/= but that did not appear to satisfy them as they ransacked the house and collected several other properties. PW1 was forced to accompany the culprits when they left, and they dumped her in a forest wrapped in a mattress.

On the identity of the appellant, PW1 testified that she was able to identity the appellant and three other persons whom she named as Ramadhani Kapele, Obadia and Joseph, as they lived in the same village. Ramadhani Kapela who was arrested on the same night, together with Obadia and Joseph were charged in another criminal case, but the appellant could not be charged with them because he absconded and remained at large until he was arrested and charged with this case.

PW1 had testified further that at the time of the commission of the offence, a lantern lamp was on, in PW1's bedroom, and that is what assisted her with the identification of the appellant and the others. PW1 also mentioned the names of the appellant and the three others to Paulo Andrea (PW2), her Village Chairman, and Matei

Msele (PW3), the Area Settlement Chairman when they made a follow up at the complainant's house later, after the culprits had left, to ascertain what had happened.

The two local government leaders substantially corroborated the evidence of PW1 on how she identified the appellant. They also said that the villagers responded to an alarm raised and gathered at the residence of the complaint but the appellant was not there, and neither was he at home when the witnesses checked him after he was mentioned by PW1.

The appellant relied on evidence of alibi that he had traveled to Dar es Salaam from December 1998 up to July 2000 when he returned to Dodoma briefly because of sickness. He returned to Dar es Salaam again where he stayed until April 2002. Upon his return home, he was arrested on 3rd April, 2002 and charged as indicated earlier. The appellant admitted knowing PW1 before and that they resided in the same village.

The trial magistrate was satisfied that the charge against the appellant was proved beyond reasonable doubt. He rejected the defence of alibi raised by the appellant because he was seen in the village during the commission of the offence. This finding of fact was upheld by the first appeal court.

Supporting the conviction, the learned State Attorney said the identifying conditions were favourable: the offence was committed when there was light from a lantern lamp so the complainant was able to see him, it took sometimes for the culprits to collect the items they stole because they were many, the complainant knew the appellant before as they resided in the same village, a matter also admitted by the appellant. He submitted further that there was no evidence of previous grudges between the appellant and PW1 and the fact that PW1 identified four culprits, out of seven who entered the house, meant that the complainant was a credible witness.

As for the defence of alibi raised by the appellant, Mr. Tangoh said the trial court properly rejected it as he was seen in the village a day before the commission of the offence.

We said before, that we have no reason to interfere with the findings of facts by the courts below. The first appeal court rightly upheld the conviction and the sentence as the trial court made a proper analysis of the evidence and sentenced the appellant according to law. PW1 made a correct identification because the conditions were favourable. There was light, the commission of the offence took time, the complainant knew the appellant before, a fact admitted by the appellant himself during his defence, and she even mentioned his name after the commission of the offence to PW2 and PW3. The credibility of PW1 was never challenged. The guiding

factors on identification, as laid in the case of **Waziri Amani Vs R** [1980] T.L.R. 250 were properly followed. The sentence was a lawful one under the law. Under the circumstances, we dismiss the appeal in entirety.

DATED at DODOMA this 22nd day of June, 2007

E. N. MUNUO

JUSTICE OF APPEAL

S.N. KAJI

JUSTICE OF APPEAL

N.P.KIMARO

JUSTICE OF APPEAL

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

(S.M. RUMANYIKA)
DEPUTY REGISTRAR