

<p><b>IN THE COURT OF APPEAL OF TANZANIA AT DODOMA CRIMINAL APPEAL NO. 203 OF 2007 BWANA, J. A</b></p>	<p><b>WILLIAM LENGAI VS. THE REPUBLIC (Appeal from the Session of the High Court of Tanzania at Dodoma by Masanche, J.)</b></p>	<p>1 - Charge sheet should state all important particulars of the articles concerned.</p> <p>2 - Procedures for recording cautioned statement should be observed so as to allow such a statement to be admitted in evidence. For instance, the appellant must have been given an opportunity to agree to be recorded and such statement must be read over to him/her after the recording.</p>
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**IN THE COURT OF APPEAL OF TANZANIA  
AT DODOMA**

**(CORAM: MSOFFE,J.A., RUTAKANGWA,J.A. And BWANA,J.A.)**

**CRIMINAL APPEAL NO. 203 OF 2007**

**WILLIAM LENGAI .....APPELLANT**

**VERSUS**

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

**( Appeal against the Decision of the High Court of Tanzania**

at Dodoma)

(Masanche, J)

dated 16<sup>th</sup> May, 2007

in

(DC) Criminal Appeal No. 74 of 2006

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**REASONS FOR JUDGMENT OF THE COURT**

**BWANA, J. A.:**

On 21 October 2009 after hearing the appellant William Lengai and Mr. Justus Mulokozi, learned Principal State Attorney for the respondent Republic – we allowed the appeal, quashed the conviction and set aside the sentence. We ordered the appellant to be released from prison, unless lawfully held. We did, however, reserve our reasons for the decision. We now proceed to give the said reasons.

The appellant was one of three accused persons charged with armed robbery contrary to Sections 285 and 286 of the Penal Code (the PC). The other two were acquitted by the trial court – the

Mpwapwa District Court. His first appeal before the High Court of Tanzania at Dodoma was unsuccessful, hence this second appeal.

Briefly the facts of this case, as culled from the record, are that on 1<sup>st</sup> March, 2004 David Dickson, PW1, was having dinner in the company of his family, outside his shop. It was around 8.00 p.m. Suddenly two young people appeared, one of them holding a muzzle gun (gobore). The one holding the gun aimed it at PW1, ordering him "not to do anything." A hurricane lamp was on. While one of the two invaders aimed the gun at PW1, the other entered the shop and stole an assortment of items. Then they disappeared in the thin darkness of the time. While disappearing, it was claimed, they discharged a gun shot.

An alarm was raised and later the same night, the appellant was apprehended. He was found to have a pair of new khangas (Exh. P1); a pair of sandals (Exh P2); and ½ kilo of beans in a sulphate bag. It was also claimed that at the time of his arrest, the appellant had a sword (sime). After his arrest the appellant was taken to Mpwapwa Police Station where a cautioned statement (Exh.

P5) was recorded before the OCD of Mpwapwa, one Lucas Tilya, PW4.

The appellant denied to have committed the offence. The pair of khangas and sandals alleged to have been stolen from the shop are his. He had bought them on the same day following his salary payment. He called DW4, his employer, as witness. This DW4 confirmed that indeed the appellant was paid his dues (Shs.15,000/-) from which he bought the pair of khangas, the sandals and the beans. DW4 was with the appellant during the said shopping. This fact was not controverted.

In his memorandum of appeal to this Court, the appellant stated in essence that the alleged cautioned statement before PW4 was not freely made and further, he avers that the items allegedly stolen but found in his possession, were not satisfactorily identified by PW1.

Mr. Mulokozi did not support the conviction of the appellant ostensibly on two grounds. **First**, the items the appellant was found in possession of, were not clearly proved that they were the ones stolen from PW1's shop. The new khangas were said to have been bought by the appellant on the same day. That averment was supported by DW4 and was not controverted by the prosecution. According to Mr. Mulokozi, the appellant had raised the necessary doubts on the prosecution case. Therefore, what was stolen from PW1's shop was not sufficiently described/ identified. **Second**, in so far as the cautioned statement is concerned, it was recorded without following laid down procedures, Mr. Mulokozi contended.

Having perused through the record, we do agree with both the appellant and Mr. Mulokozi on the two fundamental points. The description of the new khangas was not satisfactory so as to leave no doubt that what was found in possession of the appellant was the one stolen from the shop.

That is not all. The charge sheet did not state in its particulars of offence that the sandals and beans were part of the looted property. We find it a fatal omission on the part of the prosecution case thus laying credence to the defence averments.

In so far as the irregularities surrounding the recording of the cautioned statement are concerned, we need not detain ourselves further. Having been recorded by such a senior police officer, (the OCD), one would expect that all the procedures for recording such a statement, as laid down by law, is complied with. This was not the case. The record is equally silent on how Exh. P5 was eventually tendered in court. The appellant denied to have made it voluntarily. There were allegations of torture and the record shows that the issue was even raised in court. The way the cautioned statement was recorded **neither** shows that the appellant was given an opportunity to agree to be recorded, **nor** was it read over to him after the recording. All these irregularities in respect of the cautioned statement should have led the two courts "a quo" not to rely on it, let alone to admit it in evidence.

In the absence of the said statement, the prosecution case did not have a strong legal leg to stand on, leading to the conviction of the appellant. Fortified by this sober legal truth, and as conceded by Mr. Mulokozi, the conviction cannot stand.

It was for the above reasons that we allowed the appeal, quashed the conviction, set aside the sentence and ordered the appellant's release from prison.

DATED at DODOMA this 27<sup>th</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**