

<p>CRIMINAL  APPEAL NO 191  OF 2007 -  COURT OF  APPEAL OF  TANZANIA AT  DAR ES SALAAM  CORAM:  MSOFFE J.A,  MBAROUK J.A  AND ORIYO J.A</p>	<p>Shomari Kondo  Vs The Republic  (Appeal from the  decision of the  High Court of  Tanzania at Dar  es Salaam)  Criminal Appeal  No 49 of 2006.  (Shaidi, J)</p>	<p>Offence of armed robbery contrary  to section 285 and 286 of the  Penal Code.</p>
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**IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM**

**(CORAM: MSOFFE, J. A, MBAROUK, J. A, And ORIYO, J. A.)**

**CRIMINAL APPEAL NO. 191 OF 2007**

**SHOMARI KONDO ..... APPELLANT**

**VERSUS**

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

(Appeal from the decision of the  
High Court of Tanzania  
at Dar es Salaam)

( Shaidi, J. )

dated the 2<sup>nd</sup> day of April, 2007  
in  
Criminal Appeal No. 49 of 2006  
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**JUDGMENT OF THE COURT**

25<sup>th</sup> May, & 3<sup>rd</sup> 2009

**MBAROUK, J.A.**

The appellant was charged in the Resident Magistrate's court of Kibaha at Kibaha with two counts. **First**, is the offence of armed robbery contrary to section 286 of the Penal Code. **Second** count is that of robbery with violence contrary to sections 285 and 286 of the

Penal Code. The trial court convicted the appellant as charged for both counts and sentenced him to thirty years (30) imprisonment for the 1<sup>st</sup> count and twenty years (20) imprisonment for the 2<sup>nd</sup> count which were ordered to run concurrently. Aggrieved, the appellant appealed to the High Court at Dar-es-Salaam (Shaidi, J.) which upheld the conviction and sentence on the 1<sup>st</sup> count. However, the first appellant court quashed the conviction and sentence in respect of the 2<sup>nd</sup> count. Still aggrieved, the appellant has filed this appeal against conviction and sentence on the 1<sup>st</sup> count.

The facts upon which the prosecution case was based are as follows: On 27.9.2004 at night PW1 Ali Mwenda and his wife Halima Haule (PW2) were attacked by a gang of people after their door was broken. Both PW1 and PW2 heard the noise at the door and when they got up, they met with four men and one of them was the appellant (Shomari Kondo) who slashed PW1 with a "Panga". PW1 and PW2 said they identified the appellant by means of the light of "koroboi" - wick lamp, but did not identify the other men. It was only the appellant who was identified at the scene of the crime. PW2

further said that, she knew the appellant before, as he once worked for the family to till land and paid him Shs. 15,000/=. After slashing PW1, the thugs went away with a number of articles including one panasonic radio, a watch and a pair of shoes, all worth Shs. 48,000/=. PW1 reported the matter at the police station. Then PW4 D. 8530 Det/Cpl. Ayoub was the one who arrested the appellant.

In his defence, the appellant categorically denied his involvement in the offence charged against him.

In this appeal, the appellant was unrepresented, while the respondent Republic was represented by Mr. Yustus Mulokozi, learned Principal State Attorney.

The appellant filed a memorandum of appeal containing four grounds of complaint. However, the four grounds of appeal centre on the issue of identification of the appellant at the scene of the crime.

At the hearing, the appellant had nothing much to add apart from what he stated in his memorandum of appeal. He just claimed to know nothing about the case against him. He further claimed that PW1 and PW2 were husband and wife, hence not credible witnesses to be relied upon. Finally, he prayed for his appeal to be allowed.

Mr. Yustus Mulokozi supported the conviction and sentence imposed on the appellant by the trial court and upheld by the High Court. He submitted that, the evidence adduced by PW1 and PW2 sufficiently satisfied the two courts below that the prosecution had proved their case beyond reasonable doubt. He added that the appellant was known to PW1 and PW2 even before the date of the incident. Mr. Mulokozi contended that, at the scene of the crime PW1 and PW2 were aided by the light of "koroboi" - wick lamp in identifying the appellant. He said the light enabled PW1 and PW2 to identify the appellant correctly. Hence, the learned Principal State Attorney, urged us to find that each among PW1 and PW2 independently proved that they sufficiently identified the appellant. He

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further contended that the evidence of PW1 and PW2 was straight forward and credible.

Concerning the conduct shown by the appellant at the time of his arrest when he ran away, Mr. Mulokozi urged us to find that the appellant was with guilty conscious that is why he ran away.

For these reasons, he prayed for the appeal to be dismissed.

As pointed out earlier, the determination of this appeal mainly lies on the point of identification. The record is very much clear that the appellant was sufficiently identified by PW1 and PW2 at the scene of the crime. Both two courts below found PW1 and PW2 truthful and credible. PW1 and PW2 were able to identify only the appellant out of a group of people who invaded their house. The record shows that when PW1 was re-examined by the prosecutor he said:

"When I saw accused, I said

"Kumbe na bwana Shomari yupo."

Literally, that means "even you Mr. Shomari is there". We think this clearly shows that PW1 knew the appellant before the act of robbery.

Also PW2 was quoted to have testified that:

"I know accused Shomari Kondo. I know him before. He had once worked for us at home. He had cultivated for us and he was paid Shs. 15,000/= . I paid him."

Being known to the victims of robbery (PW1 and PW2) before the act of robbery leads us to believe that in the circumstances of the case the appellant was sufficiently identified at the scene of the crime.

We find no reason to doubt that the appellant was sufficiently identified at the scene of the crime. We are of the considered opinion that, this second appeal is lacking in merit. We accordingly dismiss it in its entirety.

DATED at DAR ES SALAAM this 29<sup>th</sup> day of May, 2009


J.H. MSOFFE  
**JUSTICE OF APPEAL**

M.S. MBAROUK  
**JUSTICE OF APPEAL**

K.K. ORIYO  
**JUSTICE OF APPEAL**

I Certify this is a true copy of the Original.



  
P.B. Khaday  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**



