

A States, and some State Supreme Courts, but our concerted effort was barren of fruit. We wish to recommend further research by our Court of Appeal and High Court Registries.

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JUMAALI v. REPUBLIC

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COURT OF APPEAL OF TANZANIA AT TANGA

(Makame, Munuo and Kaji, JJA)

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CRIMINAL APPEAL No. 75 OF 2005

(From the conviction and sentence of the High Court of Tanzania, at Tanga, Mkwawa, J., dated 12 May 2003, in Criminal Appeal number 75 of 2002)

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Evidence – Caution statement – Statement recorded by a policeman under the rank of a corporal – Whether statement admissible – Who is a police officer— section 3 of the Evidence Act, 1967.

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The appellant was sentenced to a jail term of fifteen years by the District Court after he was convicted of the offence of robbery with violence. He was also ordered to pay TZS. 4 000 as compensation to the complainant. Dissatisfied with this decision the appellant appealed to the High Court of Tanzania at Tanga where he lost, hence, the appeal to this Court. One of the grounds of appeal is that the Caution Statement produced in Court was inadmissible, for the reason that it was recorded by a person with powers of arrest.

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Held: (i) It is clear to us that the Caution Statement should not have been received in evidence;

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(ii) Under section 27 of the Evidence Act, 1967 a voluntary confession made to a police officer may be proved against its maker, but then PC Justine was not a “police officer” in terms of section 3 of the said Evidence Act, which provides that a

“police officer” is any member of the Police “of or above the rank of Corporal,” which PC Justine was not; A

(iii) We are satisfied that there still remained sufficient evidence to warrant the appellant’s conviction. B

Appeal dismissed

Statutory provisions referred to:

(1) Evidence Act 1967, section 3 C

Ms. Maganga, for the Republic

JUDGMENT OF THE COURT

(Dated 5 July 2006) D

Makame, JA: The appellant, Juma Ali, was sentenced to a jail term of fifteen years by the District Court of Handeni, consequent upon his conviction for the offence of robbery with violence. He was also ordered to pay a sum of TZS. 4 000 as compensation to PW1 Sophia Mwinyihari, a woman he relieved of some maize flour and a piece of khanga during the course of the robbery. The appellant was dissatisfied with the Trial Court’s decision so he appealed to the High Court, Tanga but his effort there was unrewarded. Mkwawa, J. dismissed his appeal entirely and the appellant has now come to this Court, on second appeal. He appeared on his own, while Ms. Maganga, learned State Attorney, resisted the appeal on behalf of the respondent Republic. F

PW1 told the Court of trial that as she was walking home in the evening in the company of her daughter PW2 Pili Salehe, and carrying some maize flour, they came across the appellant who snatched away the maize flour she was carrying on her head and a piece of khanga; and managed to go away with them after he had knocked PW1 to the ground, despite the joint resistance of herself and PW2. PW1 told the Trial Court that she knew the appellant well, as he was a co- H I

A villager. PW2 told basically the same story. Both witnesses said the night was moon light. The appellant was eventually traced and arrested at Mkalamo, from where he was taken to Handeni Police Station.

B In his brief evidence the appellant said he was arrested "without cause" and flatly denied the allegation against him. To this Court he continued to protest his innocence, in his Memorandum of Appeal, in which he complained that the evidence adduced was not sufficient to base his conviction, and that the Caution Statement produced in C Court was inadmissible, for the reason that it was recorded by a person with powers of arrest. For good measure he added that the burden of proof had been shifted and placed on him.

D Ms. Maganga, learned State Attorney, submitted that there was no shifting of burden: the Prosecution had proved the appellant's guilt. She added that the identification of the appellant by the two prosecution witnesses, PW1 and her daughter, was reliable. The appellant was familiar to them, his village mates, and that the moon light facilitated E the hence reliable identification.

F Both the Trial Court and the first appellate Court were satisfied that there could have been no possibility of mistaken identity in the circumstances of this case, and we respectfully agree with Ms. Maganga's submission on this score. The first appellate Court found no reason to differ from the Trial Court's assessment of PW1's and PW2's credibility and we are satisfied, on the evidence, that we are unable to fault that view. The evidence against the appellant was 'obvious', G as the trial District Magistrate remarked, in our considered view.

H Ms. Maganga, learned State Attorney, made some effort to justify the receipt and use of the appellant's Caution Statement which the appellant challenged. The Caution Statement was recorded by one PC Justine, a policeman under the rank of a Corporal, and even when the Court brought this to the learned State Attorney's attention she bravely sought to convince the Court that although the Caution Statement was admittedly inadmissible, its contents could still be used. However, I she eventually conceded that if the contents of the Statement were

A lifted out of the Statement there would remain a mere husk, with no Caution Statement to speak of. It is clear to us that the Caution Statement should not have been received in evidence. Under section 27 of the Evidence Act, 1967 a voluntary confession made to a Police Officer B may be proved against its maker, but then PC Justine was not a 'Police Officer', in terms of section 3 of the said Evidence Act, which provides that a Police Officer is any member of the Police "of or above the rank of corporal", which PC Justine was not. Having said the foregoing, C we are satisfied that there still remained sufficient evidence to warrant the appellant's conviction. We therefore dismiss the appeal against the conviction, and, as the sentence imposed is the statutory minimum, we cannot disturb that. We also have no reason to interfere with the order for compensation. D

E We wish to add, for the record, that incidentally, the sentence imposed on the appellant for escaping from lawful custody was six months, and not two years as the learned High Court Judge erroneously remarked in his judgement.

F MUSTAFA RAMADHANI KIHIOYO v. REPUBLIC

G COURT OF APPEAL OF TANZANIA AT TANGA

(Makame, Munuo and Kaji, JJA)

H CRIMINAL APPEAL No. 25 OF 2005

(From the conviction and sentence of the High Court of Tanzania at Tanga, Longway, J., dated 11 June 2002, in Criminal Appeal number 7 of 2000)

Evidence – Evidence of a child of tender age – Need to conduct a proper voire dire examination. I