IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: KISANGA, J.A., MFALILA, J.A., And LUBUVA, J.A.)

CRIMINAL APPEAL NO. 199 OF 1994

BETWEEN

MICHAEL JOSEPH ..... APPELLANT

AND

THE REPUBLIC ..... RESPONDENT

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

(Bahati, J.)

dated the 6th day of August, 1993

in

H/Court Criminal Appeal No. 97 of 1992

JUDGEMENT OF THE COURT

LUBUVA, J.A.:

The District Court of Ilala District at Kivukoni convicted the appellant of the offence of robbery with violence contrary to sections 285 and 286 of the Penal Code. He was sentenced to a term of imprisonment for 30 years. The appellant was further ordered to suffer 5 strokes of the cane. On appeal to the High Court (Bahati, J.) the main issue raised was that the sentence imposed was not proper in law. He contended that the trial magistrate erred in sentencing him to 30 years imprisonment because a mere knife was used in the commission of the offence in which case it was not armed robbery. In that situation, the appellant insisted, in terms of the provisions

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of Act No. 10 of 1989, he should have been sentenced to 15 years imprisonment for the offence of ordinary robbery. Dismissing the appeal, the learned judge held that the offence was armed robbery because the knife used in the commission of the offence was a dangerous and offensive weapon. Still dissatisfied, this second appeal has thus been lodged. Again it is against the sentence only.

Complaining against the sentence, the appellant has filed four grounds of appeal. In addition to these grounds, at the hearing of this appeal the appellant submitted a handwritten memorandum which he claimed contained additional grounds of appeal. From these grounds, it is our view that in essence two points are raised in this appeal. First, that the sentence imposed was not proper as the offence involved was not armed robbery. Secondly, that as the appellant was 16 years of age at the time, he should not have been sentenced to 30 years imprisonment and 5 strokes of the cane.

For the Respondent, Republic, Mr. Mwengela, learned State Attorney appeared before us. In regard to the appellant's claim that he was 16 years of age at the time of the trial before the District Court, he submitted that, that was not true. Referring to page 6 of the proceedings at the trial, Mr. Mwengela pointed out that the record quite clearly shows that the appellant in his sworn defence statement declared he was 20 years of age. It is inconceivable, Mr. Mwengela stressed,

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that the appellant stated his age to be twenty years if, as a matter of fact he knew it was not so. Furthermore, Mr. Mwengela contended, at the hearing of the appeal before the High Court the issue that the appellant was 16 years of age was not raised. It was Mr. Mwengela's submission that there was no basis for the appellant's claim that he should have been treated as a juvenile.

We accept Mr. Mwengela's submission that this ground is without merit. From record, the issue that the appellant was 16 years old was neither before the trial court nor the High Court on first appeal. As already pointed out by Mr. Mwengela, learned State Attorney, the facts as accepted by the two courts below do not bear him out on this. The appellant in clear and unambiguous terms stated in his defence at the trial that he was at the time twenty years old. What is more, on appeal to the High Court, the age of the appellant was not raised at all. All that the appellant complained on appeal at the High Court was in regard to the sentence of 30 years imprisonment. In such circumstances, we think it is not only too late in the day but that the appellant cannot be entertained in this Court to raise an issue which was not before the two courts below. Furthermore, it is an issue which, according to the record, the appellant clearly admitted that he was twenty years old. With respect, we are satisfied that it is a futile exercise for the appellant to seek to fault the learned judge on first appeal regarding the sentence imposed on the ground of his age.

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We revert to the ground that the sentence of 30 years imprisonment was improper. In his submission on this point, Mr. Mwengela submitted that under Act No. 10 of 1989 read together with section 286 of the Penal Code, once it is proved that a dangerous or offensive weapon or instrument was used in the commission of the robbery, such would be armed robbery. In the instant case, Mr. Mwengela urged, as a knife was used which is a dangerous or offensive weapon the offence involved was armed robbery for which the sentence imposed was proper.

On this ground, the only issue is whether in the circumstances of the case, the offence involved was armed robbery. It is common knowledge that the object behind the enactment of the Written Laws (Miscellaneous Amendments) Act No. 10 of 1989 which amends the Minimum Sentence Act, 1972, was inter alia, to raise the penalties for offences of robbery, robbery with violence or attempt to commit such offences and the use of arms or dangerous or offensive weapons. Otherwise, the basic definition of robbery still remains as provided for under the Penal Code. Under section 286 of the Penal Code which prescribes the penalties for robbery the circumstances under which if robbery takes place, a sentence of life imprisonment with or without corporal punishment could be imposed are set out. In that section, in part, it is provided. "... If the offender is armed with any dangerous or offensive weapon or instrument ..." (Underlining supplied). From this, and as correctly held by the learned

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judge, though there is no express and specific definition of what constitutes "armed robbery" it is clear to us that if a dangerous or offensive weapon or instrument is used in the course of a robbery, such constitutes "armed robbery" in terms of the law as amended by Act No. 10 of 1989. In this context, the weapons are, in our view, not confined to firearms only, other types of weapons such as knives are also included.

In the instant case, the weapon used was a knife which as already indicated is a dangerous or offensive weapon. With respect, we are in agreement with the learned judge that the offence involving the appellant was armed robbery. We are therefore satisfied that the sentence of 30 years imprisonment and 5 strokes of the cane imposed on the appellant was properly founded in law. The appellant's complaint against the propriety of the sentence is untenable.

In the event, we dismiss the appeal in its entirety.

DATED at DAR ES SALAAM this 28th day of November, 1995.



R. H. KISANGA
JUSTICE OF APPEAL

L. M. MFALILA
JUSTICE OF APPEAL

D. Z. LUBUVA
JUSTICE OF APPEAL

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

B. M. LUANDA
SENIOR DEPUTY REGISTRAR