**Isdori v Serikali ya Mapinduzi Zanzibar**

**Division:** Court of Appeal of Tanzania at Zanzibar

**Date of ruling:** 31 October 2003

**Case Number:** 145/02

**Before:** Mroso, Munuo and Nsekela JJA

**Sourced by:** LawAfrica

**Summarised by:** A Mwanzia

*Crime – Robbery with violence – Identification – Witness giving general descriptions of suspects –*

*Whether such evidence sound to establish identity beyond doubt – Sentence – Judge taking judicial*

*notice of prevalence of offence of robbery with violence and enhancing sentence as a result – Whether*

*proper – Judgment – Duty of presiding officer to analyse and evaluate evidence – Section 276(1) –*

*Criminal Procedure Decree (Chapter 14).*

**Editor’s Summary** The Appellant was charged in the Regional Court at Vuga with the offence of robbery with violence. Evidence at the trial by the complainant showed that the complainant’s gold necklace was snatched while she was taking photographs of tourists who had accompanied her and her sister-in-law. The complainant and her sister-in-law testified that they had identified the Appellant as the person who had snatched the necklace. They gave general description of the persons who had attacked them, one as being “tall, fat and black” and the other as being “short and slim”. The trial court found the Appellant guilty and sentenced him to serve three years at an education centre. The Appellant appealed to the High Court (Dourado J) who confirmed the lower court’s findings but enhanced the sentence to ten years taking judicial notice of the prevalence of robbery with violence cases. The Appellant appealed to the Court of Appeal on grounds that the High Court Judge had not evaluated the evidence adduced in the lower court; that there was contradictory evidence on part of the prosecution witnesses and that the Judge had erred in increasing the sentence without a proper legal basis.

**Held** – The judgment of the Learned High Court Judge contravened the provisions of section 276(1) of the Criminal Procedure Decree in that it contained no point(s) for determination, reasons for the decision or the decision itself. The decision of the High Court simply supported the judgment of the trial court instead of analysing and evaluating the evidence adduced at trial (*Mhando v Republic* [1993] TLR 170 followed; *DPP v Kawawa* [1981] TLR 148 considered). The identification of the Appellant was doubtful. The general descriptions of the suspects as being “tall, fat and black” or “short and slim” could fit many other young boys. The evidence of the two eye witnesses did not establish the identity of the Appellant without doubt. The Learned Judge’s reliance on judicial notice of the prevalence of the said crime as a basis for increasing the sentence imposed by the trial court was erroneous. Conviction quashed and sentence set aside.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*DPP v Kawawa* [1981] TLR 148 **– C**

*Mfaume v Republic* [1981] TLR 167

*Mhando v Republic* [1993] TLR 170 – F