

TANZANIA / JUDGMENT

20160622 TZHC Dodoma

COURT
TZHCDECIDED
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All 35 persons had to sign on the minutes of a meeting for which the money was intended for. A single person could not make any purchase Three persons from TASAF and three from the Makulupora Government had to do any purchase Two persons would receive the money from the NMB Bank but six persons had to do any purchase Before any purchase was made 3 quotations had to be submitted and one of them was selected by the meeting of both TASAF and village government members Thereafter, the six persons purchase and the purchased items are given to the village government leaders, who in turn hand them over to the TASAF storekeeper The storekeeper then issues items to users under the supervision of two persons one from TASAF and the other from the village government He went on to submit that there is no written evidence that he took any money from Esther Edward the signatory of TASAF or from the NMB Bank in regard to the third ground of appeal, he denied that Paul Ngwala, the storekeeper handed over the store to him He added there was no evidence or written document tendered in court proving that he had been handed over the said store or any key to it In regard to the 4th ground of appeal, that the court failed to visit the locus in quo to ascertain whether the project was going on well, he submitted that the trial magistrate only relied on a report by the Manyoni District Council's Inspector of Buildings to convict him He did not bother to visit the site to verify whether the prosecution's 3 allegations were true or not He went on to state that the committee had written to TASAF requesting for extra funds which was 10 million shillings and 10 million shillings was sent by TASAF for completion of the project On the 5th ground of appeal, He contended that a person can only draw monies from the NMB Bank upon being given a grant letter by the TASAF project cashier duly authorised by the Manyoni District TASAF accountant before being presented to the NMB Bank He said two signatories from group A and group B have to sign on the check That Group A was composed of him and Elizube lii Bruno, while Group B was composed Mr. Mbasha and Esther Edward There had to be six persons present when the money was drawn, three from TASAF and three from the village government He said on both occasions when money was drawn from the NMB account no grant letter was presented to the bank In regard to the 6th ground, he submitted that he was convicted on the strength of the defence case in reliance of accomplice evidence instead of the prosecution proving its case beyond reasonable doubt In resisting the appeal, Ms Mgoma for the respondent submitted on the 1st ground that as is seen at 28 of the proceedings, before the check book was tendered, the learned trial magistrate asked the defendants whether they had any objection for the document to be tendered and they replied they did not have any objection which included the respondent She therefore was of the view this

ground should be dismissed as it has no basis----- In reply to the 2nd ground of appeal Ms Mgoma maintained that the evidence before the court was strong PW1 has testified that the check was from the committee and it should have been endorsed by an officer from the Manyoni District Council but this was not done She said that when PW1 was cross examined by the 1st accused (now the appellant), he replied that the check which was used to draw 11 170,000/= shillings shows the money was received by the appellant as is seen at pages 23 and 24 of the proceedings Festo Mutayobya (PW2) 1 the internal Auditor of the Manyoni District Council made an internal audit of the project He testified in court that his audit had discovered that the 1st accused drew 2 million shillings intended for purchase of doors, each costing 1 50,000/=, but none was purchased M.S. Mgoma said that, it is clear, the appellant did not use the money for the purchase of the said doors or construction of the said buildings She went on to submit that when DW4, who is the appellant's wife, was cross examined by the 9th accused, she had said that it was the 1st accused (now appellant) and the 2nd accused person who stole the money Ms Mgoma concluded on this ground by reiterating that the prosecution proved beyond reasonable doubt that It was the appellant who stole the money She urged this court to dismiss the ground as it had no merit 5 irrelevant She stated as the appellant was a signatory, he had conspired with others to draw the sums from the bank She said had the appellant followed the laid down procedure he had detailed, then the theft would not have occurred In regard to the 6th ground of appeal, Ms Mgoma was of the view the prosecution's evidence was able to prove its case against the appellant but it failed against the rest and that is why they were acquitted She went on to say that there is no law barring using accomplice evidence to convict a person if that evidence supports the prosecution's evidence She stressed that the defence's evidence only supported the prosecution's evidence and that is why the appellant was convicted She finally, urged this court to dismiss the appeal and uphold the conviction and sentence In rejoinder the appellant submitted that It was impossible to draw 1,170,000/= shillings from the NMB account and later draw another 2 million shillings from the same bank He was surprised why was no person from the Makutopora village government, the project owner, brought to testify against him He submitted that prior to the last audit by the Manyoni District Internal auditor, an audit team from TASAF headquarters and another from the Manyoni District Council audited the projects quarterly and did not report any theft He said the project's cashier had reconciled the accounts with the Manyoni TASAF headquarter's audit team and it was accompanied by the Manyoni TASAF accountant He further submitted that the TASAF headquarters releases money in phases, when the preceding phase is completed it then releases other funds He went on to say that the village committee is not composed of engineers Its members were selected by the villagers to oversee the construction of the buildings in the project The quality of the building is not the committee's concern but that of the District Inspector of Buildings who authorized the construction to proceed In regard to the allegation that he and DW2 Esmer Edward stole the money from the bank, he queried why didn't Elizabeth Bruno (DW4) report the alleged theft to the relevant authorities? He said that in her statement to the police, she had said she was on maternity leave until she delivered and was not involved in the project for the whole of that period He finally prayed this court to acquit him as he is on ERV medication and was during the project's lifetime After hearing the parties' submissions and having gone through the trial court's record, I have considered the contentions raised and

find those of the appellant merit my acceptance I will begin with the first ground of appeal that the appellant was not shown the check book tendered and admitted as exhibit P2 Having gone through the record find ihat the trial court misdirected itself as there was no evidence at all tendered and admitted in respect of two checks allegedlyused by Ahe appellant to draw monies from the NBC Bank The I counci alleged the appellant on 5/412007 drew 1,170,000/= shilIngs from the NBC 8 a

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