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DECIDED
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, 'm THE HI~- COURT OF TANZANIA . ~____._. AT DAR ES S11.LA.AM ~ :APPELLILTE
JURISDICTION ., HIGH COURT CRIMINAL APPEAL NO.224 OF 1995 · ORIGINAL CRIMIN.AL CASE
NO.541 OF 1994 of the' DISTRICT COURT OF IL/.1.LA. DIST'RICT AT SAMORA AVENUE BEFORE:
F.M. KIN,U~O,ESQ. 1 DISTRICT l~hGIST&c1TE. D.P.P. .~·~· . ~ ····· o o · . ······ i\PPELL'~NT
(ORG. ACCUSED) .versus BRUNO lfLJSOKE. ···· o ······ o ·········· RESPONDENT (ORG.
PROSECU'IOR)

JUD G M E N T. ~.l!gh.J.:mi(~t~~~f}.~l. ~ ll!he appellapt, DPP, on behalf of the Republic has preferred ~~, . . Criminal Appeal No. 224 of 1995 against decision of the Ilala District Court in Criminal Case No.541 of 1994 whereby that trial court ordered the acquittal of the respondent one·BRUNO MUSOKE@ HENRY SSENOGA BRUNO ' on four sets of offences in eight counts. That Court ordered the Commissioner of Sales tax and Inland Revenue to refund the accused a sum of Tshs~21,786?000/= . The first and second sets of offences are in single count of first and second counts being of producing a false document or information c/s 56(l)(b) of" the Sales Tax .Act No.);3 of i976 and forgery contrary to sections :!33, 334 and 337 of the Penal Code Cap 16. of the Laws respectively. The third and fourth set of offences are those in the ,third to the fifth counts which are those of failure to t: pay truces on the due date c/s 56(1) (a) of the Sales Tax Act No.13 of 1976 and in the sixth the eighth counts being those of knowingly concerned in fraudulent evasion of the payment of taxes c/s 56(I)(p) of the Sales Tax,i'lct No 13 of 1976 respectively. \ Briefly stated, the prosecution's ~ase, which was for reasons that I am roan going.to give, was poorly conducted, wished the trial court to believe I that the accused upon collecting three consignments of 2,000 cartons of konyagi or three different dates, a~ter he had at first deposi~ed a cash deposit of shs~21,785,ooO/= as ~~s tax and excise duty , for the first consignment of 2000 cartons of konyagi} all the 6,000 cartons of konyagi was· not exported to ,the country of destination - Uganda; \

- 2 - , instead the same stuff having been fraudulently sold in this country in a bid to evade payment of truces,' the accused had committed the offences . . charged. However the defence not only denied such evidence but also produced oral and documentary evidence, to show that the accused had indeed transported the consignment of konyagi through custom post stations of Kyaka on the Tanzania side and Mutukula on the Uganda side

before he was escorted by customs officers to Kikangati in Mbo.rara District and then entered Rwanda through Mira.ma Hill customs post. Before me, in this appeal, Yu-. Mwengela 1 learned Senior State Attorney, has contended that 1m.1ch as the Republic is not challenging the acquittal of the accused/ respondent on the second count of forgery as they were s~tisfied with that decision on that count, but he argues in this appeal that the accused/ respondent fraudulently and knowingly f~iled or evaded payment.of truces in Uganda and that as the offence started in Truizania and when the taxes were due to being pnidt the offence was completed in Uganda, that is, the Republic has been aggrieved and hence this appeal. But before I .. may consider the appeal itself, perhaps 1 for purposes of not giving .. appellate court re-evaluate chance to a misjudgment,'let me as a first the evidence as follows. On the 7th day of June 1994 the o.ccluded walked into offices of the Comm;ir--o;ioner of Sales Tax and Inland Revenue where his request for purchase of 6,000 cart~ns of konyagi 'fo; export to Uganda was granted to his company known ns i~GROLINKS (U) 'Limited. A resident sales Tax officer (P,14) stationed at the Tanzania .Distilleries, DSM was directed I by the samd Commissioner tho.t as the trie autho_ri ty for purchasing the said commodity had been granted on condition that the accused should deposit a cash deposi~ equivalent to the truces involved, i.e. sales tax and excise duty,. refund of the deposited amount was to be effel-ted upon , ' production of relevant and authentic docume_nts supporting the exportation, This letter is marked Exh.PE4. The prosecution t~ough their investigD.- tions officer produced bpforc court the: rest of the documents relied upon by the prosecution as follows. Exh.PE8 shows a ~art enlisting the ;'li amount of sales tax and excise duty which 'the accused was expected to have paid for the 6000 cartons of konyagi. In Exh PE9 are d11-:..ivery notes ' (I) Nos. 474838 dated 15.6.1994 (2) No.628565 dated_1.8.1994 and (3) ,I • No.628551 da.ted 13.7.1994. There were produced : three . export entry forms Exh.PE5 Nos. (I) 002577 doted 14.6.1994 (2) 002579 dated 12.7.1994 and

- (3) 00503 dated 29.7.1994. These are the export entry forms which had to be returned to the Commissioner after endorsements and rubber Gtamps had· been shown to support that the exportc.tion of the : 6,000 cartons had been ' done before'the c~sh deposit could be returned to the accused. When the accused tendered E:-ch.PE5 with a view of both proving exportation of the 6000 cartons of konyagi and also· requesting for more consignment for exportation purposes, he was neither allowed to have more consignment nor refunded his deposit of shs.21,786,000/=• .An investigator and auditor with the sales tax and Inlnnd Revenue office in Dar es Salaam, PW3, upon learning from an informer that as the accused had a habit of forging documents his boss instructed him (R:/3) to investigate the matter. By u letter marked Exh.PE6 addressed 'to the Commissioner Managem,~;nt Services, Uganda Reyenue Jiuthority·, the P;/3 enquired whether the 6,000 c~rtons of konyagi had been exported to Ugnnda via Mutukula by the accused. By a 1~eply contained in a letter marked ·Exh. PEI, PW5 confirmed the suspicion when it categorically stated that ~~eir investigations and records indicated that there were no such importations and a company of a name as indicated was still under investigations as to whet)ier the same exists. However, PW_3 later received two more letters, one of which is marked Exh.PE2 from the officer incharge l'-

IDTUKULi't and. signed by one O.D. Kilfal'Jl.JKA. This letter confirmed that indeed the 6000 cartons of konyagi had been exported through their customs post to Uganda. As for the second letter from the Kagera Regional Sales Tax and Inland Revenue officer Mr. D.M. Kage.zi Rv3 said that they did not trust his letter. PW3 in continuing with his investigations sent Exh.PE2 to the Commissioner Uganda Revenue Authority in Exh.PE7 whom

- 1' through one Stephen Tye wrote bc..ck in a letter Exh.PE3 that Exh.PE2 was a forgery and that their Authority did not have in their employment- one R15 later discovered that the forgery on Exh.P.E.2 had O,D. Kil'//.NUI<1.. ' been perpetrated by one Mukassa who was later dismi~sed. As to whether the 6,000 cartons of konyagi had b~een. exported to Uganda, the PW5 was at first heard saying that the snme had not been exported to Uganda but later on he admitted that that consignment had not~only been export~d into Uganda but also that the sar.le had. been re-eJq>orted to Rwanda through ungazetted roots. To this evidence, the accused led by his Mr. Hyera learned advocate -d~nied fail~re to export the 6,000 cartons of koeyagi e.nd he produced some I' documents.. The accused also refuted al.legations that his cow..pany AGROLD' _IKS (ti)Ltd. was nei thcr registere~ in Ugn.nda nor incorporated.,- The accused tendered certified true copies.Exh.DEI which is certified copy of a memorandum and Articles of Associ~tion for Agrolinks (U) Ltd and Exh.DE2
- 4 - a certificute of incorporation for the same company. The accused also tendered a certified copy of exchequer receipt No.180441 issued on 13.6.1994 for shs.21,786,000/= being~ deposit for export consignment of 2,000 cartons of ·kooyagi for IVS Agrolinks (U)Ltd. Exhibits DE4, DE5 and DE6 were tendered to show that on three different occassions, a consignment of 2000 cartons had been purchased from.Tanzania Distilleries, paid) for . in Dollars to the Bank of Tru1zania, carried in a lorry with its trailler which after off-loading was certifie'd at crossing the boarder of having returned to Tanzania side empty and all export entry forms bear the rubber stamps of both custom posts of Kyaka and Mutukula. Finally the accused tendered three very i~portant letters - Exhs DE7, DE8, and DE9. Letter DE7 is Ref.No.RS1Q/KGR/CF.I/67 dated 31;8.1994 signed by the Kagera Regional Sales Tax and J'nland R_venue Officer Mr. D.M. Kagazi. In this letter which was not trusted by FW3 it is confirmed the,t ufter visiting Kynk,l and Mutukula, Mr. Kagazi had satisfied himself that record kept at those stations show that three consignments of 2000 cartons of konyagi each had been exported to Uganda by Agrolinks (U) Ltd. . ' In the second letter Exb. DE8 writt0n by ltc. Christopher Okello, PW5 confirms two things ' :fhich ctre that Agrolinks (U)Ltd exists and their premises are National Insurance Building and secondly that the. 6,000 cartons having been exported into Uganda was transported thr~ugh Kikagnti passing through ungazetted route up to Mirama Hills and finally was received by the war- ; trodden but very thirsty Rwanda. This letter is Ref.No.URA/MSD/42/94 and it is dated Ist day of November 1994. And in Ref.No.URA/MSD/42/94 a.a~ted the 7th_ October 1994 Exh.DE9, the PW5 is again confirming about the consign~ent of 6000 cartons of konyagi having been, upon, being imported into Uganda was thr0ugh ungazetted routes re-exported to Rwanda I - • through an unmanned Mirama Hills Customs post. According to P\15 in case the accused repeated exportation to Uganda and re-exportation I of konyagi 1, to l?wanda, they had no objection.

The learned trial District Magistrate, after he had very carefully analysed the evidence, was not satisfied that the offences charged had been proved to a standard required by the law, he thereby acquitted the accused. The Republic has presented three grounds of appeal which are that the trial magistrate non-directed himself in not holding that the respondent on the one hand failed to pay taxes on the due date and on the ' ' other hand that the respondent was knowingly concerned in a fraudulent evasion of payment of taxes. And in the third ground a complaint is that the learned trial magistrate misdirected himself in acquitting the

- 5 - respondent against the totality of evidence that he evaded to pay taxes and that he was knowingly concerned in fraudulent evasion of payment of taxes. Before I embark on discussing these . . grounds of appeal let me make it clear that any question or claim involving tax evasion is a very serious one and as such an appeal by the Republic where an accused has been acquitted by a trial court must be given well-pondered and considered weight. Both from a careful reading through the grounds . of appeal and from the word of mouth of Mr. Mwengela, I am satisfied that the Republic was satisfied with the acquittal of the accused/respondent in respect of the offences of producing false document (first count) and forgery (second count). The appeal is against acquittal of the accused/ respondent in respect of offences in counts three to eight inclusively. These are the two sets of counts in the third to the fifth counts which are those of failure to pay taxes on the date due and in those in the last set in counts six to eight being; those of knowingly concerned in a fraudulent evasion of payment of taxes. First of all let me make it clear that, with respect to what Mr. Mwengela wished me to be misled, was his submission that the respondent had fraudulently and knowingly failed or evaded payment of taxes in Uganda and that as the offence started in this country and when the taxes were due for payment in Uganda because that was the country where the offence was completed. The arrangement that was entered into between the . . Commissioner of . . Tax and Inland Revenue and the respondent was that the taxes that were being waived on the konyagi were on condition that : I the equivalent of shs.65,358,000/= and not the sum of shs.21,786,000/= ,to; the first consignment of 2,000 cartons. That whenever proof of the export of the first consignment would be made by tendering of export entry forms, the sum of shs.21,786,000/= would be refunded to the respondent was never effected before the second and the third consignment of 2000 cartons of konyagi each was collected. It was the office of the Sales Tax and Inland Revenue Dar es Salaam which participated in not fixing rules, charging a full exemption to be deposited ,...;c; j . ~)

- 6 - with that office. However that amount had to be refunded upon 1, >roof that the commodity had been exported. So to this extent I don't agree with the appellant that the respondent did in any way knowingly get himself concerned in a fraudulent evasion of the taxes. As for taxes that had to be paid in Uganda that is a ball outside our court. For the sake of argument the prosecution never showed in evidence that the respondent evaded taxes for the importation of the 6000 cartons of konyagi in Uganda and even if they had such evidence would not have improved the position of their case. I see no merit in the second ground of appeal. With regard to the first ground of appeal, on the line of the foregoing, reasoning the respondent would have been proved to have failed to pay taxes directly or say for example if he failed to show that he had exported the commodity to Uganda. P'15 through his oral evidence and documentary evidence Exh.DE8 mid DE9 and Exh.DE5 that indeed the 6,000 cartons had been imported in Uganda but that the same had got re-exported to Rwanda. There had been an attempt to show that either the commodity had been consumed in Tanzania but that allegation was not supported by any cogent evidence or that the respondent did not have any office known in Uganda as Agrolinks (U) Ltd but the respondent produced both a certified copy of memorandum and articles of Association as well as a certificate of incorporation to prove existence of that company. As I have indicated above failure or evasion of payment of 0% truces in this country cannot be proved by evasion of payment of truces in a neighbouring country like Uganda. This is the reason why I disagreed with the submission of Mr. Mwengelo. What the prosecution has failed to prove is the failure or evasion of payment of truces by the respondent in this country. But what the respondent was required to show on a lesser burden was that he indeed did export the 6000 cartons of konyagi to Uganda and this he has done by producing DE5 ru: i. d DE6 as well as a letter Exh.DE8 With proof that indeed the 6000 cartons of konyagi had been exported as shown in 1 Exh.PE!L the export entry forms., then the respondent was entitled to a refund. of his shs.21,786,000/=: immediately. The first ground of appeal lacks merit. And as the third ground of appeal concerns the totality of evidence in connection with the offences charged and which I have said herein, I find that the same has no leg to stand on. I finally, the result is that as the appeal is for the foregoing reasons devoid of any merit, the DPP's appeal shall have to be dismissed. Appeal dismissed. ,, I M. G. C.; i\AJERr - PRINCIPAL RESIDENT. WIGISTRATE (EX: TENDED JURISDICTION) AT . DAR ES SAIJ: ailM ;;;e::s.:r.:r::~='r..llf' ,:---~::~: .. - . - - ~ I certify that is the true copy of the: origl.1,a~./):4~-- __, i.o"" SENIOR DEPUTY REGISTRAR.- * ,, ~,.....:-:~*..r.-.-...,:r.-.,..._,.TII'.~ ,.....,.....~=-.~.,.

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