

TANZANIA / JUDGMENT

20180629 TZHC Mbeya

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TZHCDECIDED
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IN THE HIGH COURT OF TANZANIA C AT MBEYA CRIMINAL APPEAL NO.16 OF 2017 (Emanates from the District Court of Rungwe in Criminal Case No.61 of 2016) ELI1'4, MWAMTOBE • . . • • . . , • . . • • . . APPEIJIJANT VERSUS THE REPUBLIC RESEONDENT

JUDGMENT

Date of last Order: 2610612018 Date of Judgment: 2910612018 NGWALA, J: The appellant was charged. and convicted of one count, of forgery Contrary to Sections 333, 335(a)(d)(i) and 337 of the Penal Code [Cap. 16.R.E.20021. She was also convicted of obtaining money by false pretences Contrary to Section 302 of the same code. In proving the charge against the appellant, who was then the accused person together with three other accused persons who were acquitted, the prosecution side called ten (10) witnesses. Five (5) witnesses testified for the defence side including the appellant. At the conclusion of trial, the trial Court was satisfied that the prosecution side had proved the case against the appellant beyond reasonable doubt. The appellant was found guilty and sentenced to VI serve two (2) years imprisonment in all the three counts. The appellant is aggrieved with the said decision. The six grounds in the Petition of Appeal are sUmmarized as follows:- That the defense by the appellant was not considered by the trial Magistrate. The trial Magistrate failed to analyse the evidence adduced from both the prosecution and defence sides. The prosecution case was not proved beyond reasonable doubt. The appellant being unpresented submitted that she did not commit the said offence of forgery as alleged by the prosecution. The appellant argued that she followed all the procedures of NMB, and that the minutes which was tendered by the prosecution side as exhibit were not the ones used to withdraw the money from the bank. That exhibit had been taken from PCCB (TAKUKURU). The appellant vehemently argued that among the prosecution witness did not establish that it was her, the appellant who signed the said minute against the names of other people. In Reply Miss Zena James, learned State Attorney pointed out, that the accused person was not properly convicted. It is a legal requirement that an accused person must be convicted in accordance with the provisions of Sections 235(1) and 3 12(2) of the Criminal Procedure Act [Cap.20.R.E.2002] so as to make a valid Judgment that can be entertained and determined in Appeal. For this reason she prayed the record to be remitted to the lower Court So that a proper Judgment can be entered. UPOfl Perusal of the trial court's judgment, I have noted that at page 12 of that typed Judgment the appellant was wrongly convicted Under Section 235(1) of the Criminal

Procedure Act, ICap.20.R.E20021 The trial Magistrate did not comply with the provi05 of Sections 3 12(2) of the Criminal Procedure Act. For easy r eference Section 312(2) of the Criminal procedure Act reads:T "312 (2) in the case of Conviction the Judgment shall specify the offence which, and the Section of the Penal Code or other law under which he is sentenced". In the light of the above provision of the law it is in mandatory terms, that the trial Court must specify the offence and sentence Upon Which an accused person is convicted. .• As aforesaid the conviction by the trial Magistrate, was short of the mandatory requirements enumerated under Section 312(2), Criminal P FQcedure Act, [Cap.20.R.E.2002]. In the case of Elias MWangoka @ Kingoli v. The Republic, Criminal Appeal No.25 of 2 015, The CQurt of Appeal of Tanzania, Mwangesi, JA, quoting the decjsio in tl -le case of MARVJA MWIBAHI V. REPUBLIC, Criminal Appeal No.0? of 1997 held:- 3 rq "Although there was a finding that, the appellant was guilty he was not convicted before he was sentenced. This was itself irregular. Sentence must always be preceded by conviction whether it be under Section 282 of the Criminal Procedure Act, where there is a plea of guilty or under Section 312 of the same Act, where there has been a full trial". In the case of Elias Mwangoka, (supra). It was further held that:- "It is now settled law that, failure to enter conviction by the trial Court is fatal and incurable irregularity, which renders the purported judgment and imposed sentence a nullity and the same are incapable of being upheld by the High Court in the exercise of its appellate jurisdiction". In view of the above cited authorities, the Judgment in the present case was invalid for want of compliance with the requirement of the law. Therefore I am of the considered view that the said Judgment and Sentence be quashed and set aside. Let the record be remitted to the trial Court to accomplish its task to compose a proper Judgment in accordance with the provisions of the law under Sections 235(1) and 312(2) of the Criminal Procedure Act, [Cap .20 . R.E. 2002] 4 The Appellant shall wait till the Judgment is properly composed. Thereafter the accused who has already served his sentence shall be at liberty to process her Appeal if she so desires. Order Accordingly. AX Nrala Judge 29/06/2018 Court: Right of Appeal to Court of Appeal of Tanzania explained. A.F. Ngwala Judge 29/06/2018 5

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