

TANZANIA / JUDGMENT

izina dhahir said vs republic

2005 tzhc 168 5 october 2005

COURT
TZHCDECIDED
5 October 2005

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I IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM CRIMINAL APPEAL NO. 183 OF 2003
(Original Criminal Case No.1096 of 2000 in the Resident Magistrate's Court at Kisutu, Dar es
Salaam, N. T. Mwankenja SDM) IZINA DHAHIR SAID.....APPELLANT VERSUS THE
REPUBLICRESPONDENT

JUDGMENT

A. Shangwa, J. The Appellant Izina Dhahir Said was charged in the Court of the Resident Magistrate at Kisutu with the offence of Corrupt Transactions by agent C/S 3 (1) of the prevention of Corruption Act No 16 of 1971. He was so charged on two counts. 2 On the 1st Count, it was alleged by the prosecution that on or about the 14th day of July, 2000 at Ardhi House, Ilala District within Dar es Salaam Region, being an employee of the Ministry of Land and Development and therefore an agent within the meaning of the prevention of corruption Act, 1971, the Appellant did corruptly solicit an advantage to wit Shs 80,000/= from one Kunda Mwasha as an inducement to do valuation for the houses of one Ephrahim Kimaro a friend of Kunda Mwasha, a matter which was related to the affairs of his principal. On the second count, the prosecution alleged that on or about the 20th July, 2000 along Samora Avenue, Ilala District within Dar es Salaam Region, being an employee of the Ministry of Land and Development and therefore an agent within the meaning of the prevention of Corruption Act, 1971, he did corruptly receive an advantage to wit Shs 80,000/= from one Kunda Mwasha as an inducement to do valuation for the houses of one Ephrahim Kimaro, a friend of Kunda Mwasha, a matter which was related to the affairs of his principal. He was acquitted on the 1st count and convicted on the 2nd count. He was sentenced to a term of three years imprisonment. Having been aggrieved with both conviction and sentence, he has appealed to this Court through the legal services of Mr. Kinguji and company, Advocates. The appeal was argued by way of written submissions which were presented by Mr. Kinguji for the Appellant and Mr. Haule, state Attorney for the Respondent. Both learned counsel argued this appeal on merit. But for the reasons which I will soon demonstrate, I will not dispose of this appeal on merit. To start with, I wish to point out that in the course of dealing with this appeal, I found that the Appellant was tried by N.T. Mwankenja, SDM who heard and recorded the testimonies of eight prosecution witnesses and the Appellant's defence and wrote a judgment. As I have mentioned above, the Appellant was acquitted on the 1st count and

convicted on the 2nd count upon which he was sentenced to three years imprisonment. He was so sentenced on 28.11.2003. Whereas the Court case file and the charge sheet do indicate that the court in which the Appellant was charged is the Court of the Resident Magistrate at Kisutu in Criminal case No 1096 of 2000, the typed judgment does indicate that the court which tried, convicted and sentenced him is the District court of Ilala at Samora in Criminal case No. 1096 of 2000. I think that the typed copy of the judgment was wrongly titled by showing that the Appellant was charged in the District Court of Ilala at Samora instead of showing that he was charged in the Court of the Resident Magistrate at Kisutu. Despite the said error, the truth is that the Appellant was charged in the Court of the Resident Magistrate at Kisutu which was wrongly presided over by a District Magistrate instead of being presided over by a Resident Magistrate. The District Magistrates of whatever rank have no jurisdiction to preside over and conduct proceedings of any case be it Criminal or Civil which has been filed in the Court of the Resident Magistrate. I hold therefore that the Senior District Magistrate N.T. Mwankenja who presided over the Court of the Resident Magistrate at Kisutu and conducted the trial of the Appellant for the offences of corruption had no authority to do so. He exercised judicial powers in a Court other than the one in which he is authorized to perform his judicial functions. Being a District Magistrate, he is only authorized to preside over a District Court and not a Court of the Resident Magistrate which has to be presided over by a Resident Magistrate. This means that the trial court in which the Appellant was charged, convicted and sentenced namely the Court of the Resident Magistrate was not duly constituted. According to S. 6 (1) (c) of the Magistrates courts' Act, 1984, a Court of the Resident Magistrate is duly constituted when held by a Resident Magistrate. As the Court of the Resident Magistrate which tried, convicted and sentenced the Appellant was not duly constituted, the proceedings which were taken by the Senior District Court Magistrate who presided over it have no legal validity and cannot be maintained by this Court. I do quash them. 7 A similar position was taken by the High Court at Mwanza Registry in the Case of Lucas Mwita and Two Others Mwanza Cr. Appeal No. 30 of 1977 where the proceedings were declared a nullity because of having been taken by a District Magistrate presiding over in the Court of the Resident Magistrate. One relevant authority which is binding on this Court is the case of William Rajabu Mallya and Two Others Vs Republic (1991) TLR at Page 83 in which the Court of Appeal of Tanzania declared as a nullity the proceedings which were taken by the Principal District Magistrate while presiding over the Court of the Resident Magistrate at Arusha and set them aside on ground that the Court was not duly constituted within the meaning of S. 6(1) (c) of the Magistrates Courts' Act, 1984. After declaring those proceedings as a nullity and setting them aside, the Court of 8 Appeal of Tanzania set free the Appellant one Rev. Father John Kiwere who had been jointly charged with William Rajabu Mallya and Another in the Arusha Resident Magistrate's Court with the offences of obtaining money by false pretences and conspiracy to defraud. The offence of corruption with which the Appellant was charged with is very damnable. For that matter, I wanted to order a re-trial of the Appellant by a duly constituted court but as he is soon completing his term of three years imprisonment which he started serving on 28.11.2003, I do not find it necessary to do so. In the final analysis, I quash the trial Court's conviction which was imposed on the Appellant, set aside the sentence which was imposed on him and order that he should be set 9 free forthwith unless he is otherwise lawfully held on another matter.

A.Shangwa JUDGE

5. 10. 2005. Delivered in court this 5th day of October, 2005. A.Shangwa, JUDGE
5. 10. 2005. ADVOCATES Mr. Kinguji and Company Advocates for the Appellant. STATE ATTORNEY Mr. V. A. Haule and Mrs Mwema Pumzi for the Respondent.
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Prepared on 14 October 2026 · Esheria