

TANZANIA / JUDGMENT

20160428 TZHC Dodoma

COURT
TZHCDECIDED
28 April 2016

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4., IN THE HIGH COURT OF TANZANIA AT DODOMA CRIMINAL APPEAL NO. 34 OF 2012
(Appeal from Original Criminal Case No. 131 of 2012 in the district Court of Kondoa District)
JABIR SWALEHW SUKAAPPELLANT VERSUS THE
REPUBLICRESPONDENT

JUDGMENT

271412016&28/4/2016 A. MOHAMED, J. The appellant was charged of and convicted of obtaining money by false pretence c/s 322 of the Penal Code [Cap 16 RE 2002] by the District Court of Kondoa in DC Criminal Case No. 131 Of

2011. He was sentenced to serve a 1 year conditional discharge on condition he reimburses the complainant the sum of 4 million shillings within 6 months from the date of judgment. Against that order the appellant appeals on the following grounds: That the learned trial magistrate erred in law and fact for treating this case as a criminal matter while it is a purely civil one. That the learned trial magistrate erred in law and fact in deciding this matter against the weight of evidence. 1 That the learned trial magistrate erred in law and fact in convicting the appellant on the finding that on offence of obtaining credit by false pretence is a minor cognate offence to that of obtaining money by false pretence. That the learned trial magistrate erred in law and fact in convicting the appellant without resolving inconsistency and contradiction of evidence adduced by PW1. PW2 and PW3 which goes to the root of the matter. That the learned trial magistrate erred in law and fact in convicting the appellant while the evidence given failed to establish the case against the appellant beyond reasonable doubt. The appeal was scheduled to be heard at the Criminal Session at Kondoa in April 2016. However the appellant failed to appear in court on 27/4/2016 and again on 28/4/2016. Mr. Matimbwi, his counsel told this court he could not trace the appellant's whereabouts despite strenuous efforts to do so. He was of the view the appellant had probably opted to reimburse the complainant and that is the reason for his failure to prosecute the appeal or make any follow up. Mr. Mwamunyange, learned Senior State Attorney had nothing to say on the appellant's failure to appear in court. I am satisfied that the appellant's conduct in failing to appear in court or make any follow up of the matter shows he has lost interest to prosecute his appeal for reasons best known to himself. I accordingly strike out the appeal. it is so ordered. A. MOHAMED JUDGE 28/4/2016 The right

of appeal explained. A. MOHAMED JUDGE / 28/4/2016 3

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