

TANZANIA / JUDGMENT

jafarai dule vs republic 2017

tzhc 2070 17 march 2017

COURT
TZHCDECIDED
17 March 2017

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*“ORIGINAL” IN THE HIGH COURT OF TANZANIA DODOMA DISTRICT REGISTRY AT DODOMA
CRIMINAL APPELLATE JURISDICTION DC CRIMINAL APPEAL NO. 62 OF 2016 (Originating from
the District Court of SINGIDA Criminal Case No. 194 of 2013, Hon. F.B. NDALE, RM) JAFARAI
DULE.....APPELLANT VERSUS THE
REPUBLIC..... RESPONDENT*

JUDGEMENT

Mansoor, J: 17th MARCH 2017 This appeal arise out of the judgment dated 18th APRIL 2016, passed by the District Court of Singida in Criminal Case No. 194 of 2013, by which, the Appellant was convicted of three counts charged of forgery contrary to Section 333,335 and 337 of the Penal code, Cap 16 R:E 2002, possession of goods suspected of having been stolen or unlawfully acquired c/s 312 “ORIGINAL”

- (1) (b) of the Penal Code, Cap 16 R:E 2002, and stealing by public servants c/s 270 of the Penal Code, Cap 16 R:E 2002. He was convicted and sentenced to three years jail sentence for the first count, two years in jail for the 2nd count and two years in jail for the third count. Sentence to run concurrently. The prosecution case against the appellant very briefly was as follows: The Appellant was alleged on 14th day of September 2013 at Namfua Area, Kindai Ward, within the District and Region of Singida being the Village Executive Officer of Kisasida with intent to defraud or to deceive was found with forged receipt No. 00122878 being the property of Singida Municipal Council. He was also charged on the second count that on 16/09/2013 at Utemini Area, Kindai Ward within the District and Region of Singida was found in possession or control of Receipt no. 00122870, 00122897 and 00122894, the property of Singida Municipal Council and on 14/09/2013 at Namfua Area in Kindai Ward, within the District and Region of Singida being the 2 “ORIGINAL” Village Executive Officer of Kisasida did steal THz 130,000 the property of the employer, Singida Municipal Council. During Trial, the prosecution presented three witnesses, PW1 was Hassan Tarimba, the Municipal Legal Officer, PW2 was A/Inspector Efraim Nyamhenda, and PW3, Mwanaisha Mohamed the Assistant Accountant of Singida Municipal Council. Based on the testimonies of these three witnesses, the Trial Magistrate found the Appellant guilty of all the three counts; he convicted him, and sentenced him as above stated. The Appellant was aggrieved

by the conviction and the sentence; he appealed to this Court and raised 5 grounds of Appeal as contained in his Petition of Appeal: During the hearing of the Appeal, Mr. Sarara, the State Attorney who appeared for the Republic supported the Appellant's Appeal on the ground that there was contradictory evidence given by PW3 Mwanaisha Mohamed Mambo, the Assistant Accountant of Singida Municipal Council. She gave evidence to the effect that it was her that had issued a Receipt Book to the Appellant 3 "ORIGINAL" and the Appellant had signed on the counter folio book acknowledging the taking of the Receipt Book. She testified further that the counter folio book was shown to the Municipal Solicitor and the Revenue Accountant proving that she gave the Receipt Book to the Appellant. The Counter folio was admitted as Exh P4. She confirmed before the Court that the alleged forged receipts which were tendered in Court as Exh. P I were genuine Receipts and not forged. Therefore from the above, since there was a contradictory evidence given by PW3 that the Receipt Book given to the Appellant was a genuine one, and that ExhPl was recognized to be a genuine receipt Book, it was wrong for the Trial Magistrate to reach into a finding that the Receipt Book Exh P I was a forgery, hence count No. 1 and 2 of the Charge, that the Appellant was found with forged Receipts must be quashed as the Appellant was found with genuine Receipts as evidenced by PW3. It has been noted that on 19th October 2016 before Hon. Judge Sehel on a Ruling delivered on 28/10/2016, the Learned Judge 4 "ORIGINAL" had said that the Third Preliminary Hearing held by the Trial Court was uncalled for but did not vitiate the entire proceedings, and that such Ruling took care of the Third Count. Consequently, based on the above, this appeal has merit and is allowed; the conviction is quashed and the sentence is set aside. The Appellants is ordered to be released from prison unless his continued confinement is related to other lawful cause. Judgement delivered in Court today in the presence of the Appellants, Ms. Luwongo State Attorney for the Respondent Republic and Mr. C.A.Chali the Court Clerk. iur^ L. MANSOOR JUDGE 17th MARCH 2017 5

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Prepared on 14 October 2026 · Esheria