

TANZANIA / JUDGMENT

20140226 TZCA Tabora

COURT
TZCADECIDED
26 February 2014

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE COURT OF APPEAL OF TANZANIA' AT TABORA (CORAM: MSOFFJ:, ,_ J.A., KIMARO • J.A., And MJASIRI, J.A.) CRIMINAL APPEAL NO.77 OF 2009 JOSEPH S/O MASAGANYA APPELLANT VERSUS THE REPUBLIC

..... ~ ... RESPONDENT (Appeal from the Judgement of the High Court of Tanzania at Tabora) (Kaduri, J.) Dated the 3 rd November, 2008 in Criminal Appeal No. 118 of 2005 JUDGMENT OF THE COURT 25th & 28th February 2014 MJASIRI, J.A This appeal arises from the decision of the High Court of Tanzania (Kaduri, J.) dismissing the appeal against the conviction and sentence of the District Court at Nzega. The appellant Joseph Masaganya Was charged and convicted of 80 . counts of fraudulent . false . accounting contrary to section 317 (a) of the .. 1 Penal Code, and stealing by public servant contrary to sections 270 and 265 of the Penal Code, Cap 16 of the Laws of Tanzania. He was sentenced to three years imprisonment on each count of fraudulent false accounting and seven (7) years imprisonment on the offence of stealing by public servant. The sentences were to run concurrently. He was also ordered to pay compensation to the respective owners. The appellant has already served the sentence. Briefly the background to this case is as follows. The appellant was employed by the District Court of Nzega as an accounts clerk. He was alleged to have falsified the various accounts he was handling, which included, payments from the Treasury for beneficiaries in Probate and Administration causes filed in the Nzega District Court as well as salaries for court Employees. His appeal to the High Court was unsuccessful hence his second appeal to this Court. The appellant preferred four grounds of appeal which are reproduced as under:

1. That the learned High Court Judge erred in law and fact in failure to notice that the first trial Court denied me the rights to legal representation and/or to be informed of the rights to legal . 2 . representation or the rights . to the accused to get another- advocate. ..
2. That the learned High Court Judge erred in law in failure to notice that the defence case was not considered by the 1st trial court as well as the appellate court.
3. That the High Court Judge erred in law in failure to notice that there was no handwriting expert report to compare with the handwriting of myself (accused) on the cheques and other documents.

4. That the High Court Judge erred in law in failure to notice that the accused was not the only signatory in the office. At the hearing of the appeal, the appellant appeared in person and was unrepresented and the respondent Republic had the services of. Ms. Jane Mandago, learned State Attorney. 3 F. ... , • L-, k~: - ~ ~ . . L - Mr. Masaganya did not have much to say and he asked the Court to adopt his memorandum of appeal as part of his submission. He opted to let Ms. Mandago make her submissions first. When Ms. Mandago rose to make her submissions, she firmly stated that she did not oppose the appeal. She submitted that her reason for doing so was that the appellant was not properly arraigned. She stated
- I that the charge against the appellant was substituted six (6) times. All the times the charge was substituted, it was not read over to the appellant as required by the law and no plea was taken. She submitted that when the charge was substituted for the 6th time, although the charge contained 80 counts, only the 80th count was read over to the appellant. He was therefore not asked to plead in respect of the remaining 79 counts. This means that the whole proceedings before the District Court and the High Court was a nullity. She relied on the case of *ThuwayAkonaay V Republic* 1987 TLR 92. She also made reference to section 228 of the Criminal procedure Act Cap 20, R.E 2002. She asked the Court to declare the proceedings before the High Court and District Court, a nullity, and to quash the proceedings and set aside the 4 sentences and the compensation order. She did not press for retrial given the fact that the appellant has already served the sentence meted out by the District Court. In relation to the 80th count Ms. Mandago further submitted that even though the appellant was given a chance to enter a plea on that count, no sufficient evidence was adduced by the prosecution to prove it. She therefore conceded that there was no evidence to sustain it. On his part the appellant in rejoinder did not have anything to say. He stated that he agreed with the submissions made by Ms. Mandago. We on our part are inclined to agree with the learned State Attorney. As correctly observed by her, the charge against the appellant was substituted six (6) times as reflected on pages 35, 37, 42, 49, 70, 86 and 100 of the proceedings. With regards to the last substituted charge only the 80th count was read over to the appellant. A plea was therefore only entered in respect of the 80th count. 5 It is evident from the record that section 228(1) of the Criminal Procedure Act was not complied with. It is a requirement under the said section that the substance of the charge shall be stated to the accused person by the court who shall be called upon to plead. Section 228(1) provides as under:- "The substance of the charge shall be stated to the accused person by the court, and he shall be asked whether he admits or denies the truth of the charge." The main issue for consideration is whether or not the omission to call upon an accused person to plead to a new, altered or substituted charge renders a trial a nullity. In *ThuwayAkonaay V Republic* 1987 TLR 92, CAT, it was held as follows:- 6 I I 1 1 1 1 It is mandatory for a plea to be altered or charge to be taken from, an accused person, as it is otherwise the trial becomes a nullity.// See also *Akbarali Damji VR 2 TLR 137* where it was stated thus:- "The arraignment of an accused is not complete until he has pleaded. Where no plea is taken the trial is a nullity. The omission is not an irregularity which can be cured by

section 346 of the Criminal Procedure Code (now section 388 (1) of the Criminal Procedure Act.): Emphasis provided. It is only the 80th court which was read over the appellant, and a plea taken. However as submitted by Ms. Mandago, no sufficient evidence was adduced in support of the charge. 7'. i I . In view of what we have stated hereirabove; we allow the appeal, quash the conviction and set aside the sentence imposed and the order for compensation. We do not think that the circumstances of this case call for an order of retrial given the fact that the appellant has already served the sentence meted out by the District Court and upheld by the High Court. We will therefore make no such order. DATED at TABORA this 26th day of February, 2014. J. 1-1. MSOFFE JUSTICE OF APPEAL N. P. KIM.A.RO JUSTICE OF APPEAL S. MJASIRI JUSTICE OF APPEAL I certify that this is a true copy of the original. p~p:~A SENIOR DEPUTY REGISTRAR COURT OF APPEAL 8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://media.tanzlii.org/media/judgment/333780/source_file/26d1b72501983db3/20140226_TZCA_Tabora.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/joseph-so-masaganya-v-the-republic-fraudulentfalseaccounting-tzca-2014

Prepared on 14 October 2026 · Esheria