

TANZANIA / JUDGMENT

20160831 TZHC Mbeya

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TZHCDECIDED
31 August 2016

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IN THE HIGH COURT OF TANZANIA AT MBEYA CRIMINAL APPEAL NO.48 OF 2016 (Original Criminal Case No. 17312014 from the District Court of Mbarali at Rujewa) SAMWEL ARON @ MWARUANDA APPELLANT VERSUS 'THE
1. EPIJBL..IC RESPONDENT'

JUDGMENT

Date of last Order: 2210812016 Date of Judgment: 3110812016 A.F. NGWALA, J.: The appellant was convicted of the offence of personating a Public Officer Contrary to Section 100 (b) of the Penal Code R. E. 2002 and obtaining money by False Pretence Contrary to Section 302 of the same Code. He was sentenced to a fine of Tshs. 300,000/= or two years imprisonment and to serve four years imprisonment and to pay the complainant her money back. He has appealed against conviction and severity of sentence. He says at paragraph 4 of his Petition of Appeal that the magistrate imposed excessive sentence of 1st count. That it was fairly to sentence him to imprisonment of one year and Tshs.50,000/= only as per Minimum Sentences Act. He argues that the prosecution Page 1 of 4 J J side disregarded his defence. The prosecution side did not prove the case beyond reasonable doubt. In this appeal, I must say that the appeal has no merit at all. The accused person was called to show case for mitigation factors after the prosecution side had given a previous record that he was a habitual offender as he was convicted by Igurusi Primary Court, Criminal Case No. 21/2014 and sentenced to one year and four strokes of cane and paid fine of Tshs.50,000/= on 04/03/2014. In mitigation he prayed for leniency and admitted that he was convicted at Igurusi Primary Court and that he had children in school. Much as I know that magistrates should give very careful thought to the appropriate sentences to be imposed on each of two or more counts and so sure of the unnecessary harm especially on consecutive sentences, but this is one of the cases in which the habitual offender who had paid fine should not have been given again the option for fine. It had to be indicated clearly that the sentence had to run consecutively when the offences are related so that the total sentence to be served is within their jurisdiction and in my opinion is adequate to meet the crime. In the circumstances of this case I do not think the trial magistrate imposed adequate sentences in each count to make such of the sentences to run concurrently. Nothing has been said in the sentence. It is for this reason that I find that had the learned Resident Magistrate imposed adequate sentence on each count which the accused person would have been appropriately punished on the counts charged to make Page 2 of 4 six (6) years imprisonment. The appellant is such a dangerous and treacherous person that

is lying before the court and seeking for clarity on whether it is four (4) years imprisonment or six (6) years imprisonment knowingly that he is a habitual offender who has committed the two offences. It is for the said reason that I am not satisfied that the sentencing aspect was proper to a habitual offender. For that reason I substitute the sentence on the first count to two years (2) imprisonment and on the 2nd count to four (4) years imprisonment. The sentences should run consecutively. Accordingly the Appeal is dismissed with costs. A.F. Judge 31/08/2016 Page 3 of 4 Date: 31/08/2016 Coram: A. F. Ngwala, J. (Appellant: Present For Republic: Mr. Kihaka (State Attorney) B/C: M. Mihayo Court: Judgment delivered in open court in the presence of the parties. Court: Right of Appeal to the Court of Appeal of Tanzania explained.

- a,—.' T I A.F. Nwala

4. .: ... : Judge 31/08/2016 Page 4 of 4

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Prepared on 14 October 2026 · Esheria