

TANZANIA / JUDGMENT

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IN THE HIGH COURT OF TANZANIA~ IN HE DISTRICT REGISTRY ATMWANZA CRIMINAL APPEAL NO.233 OF 2018 (Arising from Criminal Case No. 10 of 291s of Nyamagana District Court) SILVA LIMBU~ APPELLANT I I THE REPUBLIC., Z ~ ... ~... RESPONDENT • JUDGEM~NT, f ~ . - ~ - - 1 : I \" 23.10 & 2s.11.2019 I I ~ MADEHA, l I ' At Nyamagana District Court, in Mwanza, the appell~nt Silya Lim bu was I charged with and convicted with the off~nce of stealing by agent contrary to I ' . I section 258 (1) (e) and 273 (b) of the, Penal Code (R.~ 2002). being an agent of Nyanza Cotton Oil Limited she was found guilty~ she was entrusted I by Company with Tsh 203,254,890/= and three solari all valued Tsh 2, 100,000/= the appellantconverted the said money to his own use. Following his conviction, the appellant was sentenced I three years , and six months I imprisonment. The appellant was charged with two offences of stealing by agent. The facts leading to the appellants arraignment knd his consequent I conviction are not complicated. The appellant was g'iven money by the I I I i Nyanza Cotton Oil Company to buy cotton, instead, he used the money for I his own use, thus the Nyanza Oil company Limited decided to file the criminal Case No. 10 of 2018 before Nyamagana District Court, the complainant ! through non-Government Attorney, who prepared the indictment for two ! counts of stealing by agent contrary under section 258 (1) (e) and 273 (b) I of the Penal Code Cap 20 R.E 2002. Nyanza Cotton Oil iCompany Limited registered the appellant for the purchase of cotton at a pri~e of Tsh 40/= for ! kilogram. After agreement the appellant opened a Bank account No. ! 32210003890 NMB PLC where by the money for the purchase of cotton was I deposited. According to PW1 Tsh 186,000,000/= were deposited in the i I appellant's account. Cash money of Tsh 57,000,000/- and unpaid amount . I of Tsh 20,328,480/= together with three machines valued Tsh 2,100,000/=. i On defence side the DW1 admitted that she was the agent of the Nyanza Oil Company Limited Since 25/6/2017 for the purchase cottlon. In his appeal, the appellant raised three grounds of appeal as follows; - 1

1. That the trial magistrate failed in law for convicting the appellant I through a provision of law which is non existing in law. I 2 I
2. That, the trial magistrate erred in law by convicting the appellant I ; without specifying the offence and section of the law for which the i appellant was sentenced contrary to section 312 (2) of the Criminal I I Procedure Act, Chapter 20. R.E 2002. I

3. That, the trial magistrate erred in law by convicting the appellant based on purely civil allegation and evidence not found in records. Alternatively, the appellant was convicted based on allegations which did not involve her. At hearing of appeal, the appellant was represented by Majebele Mayenga the learned advocate, whereas the respondent Republic was represented by Ms. Rehema Mbuya Senior State Attorney. In arguing the appeal, the learned advocate for the appellant stated that, the trial Magistrate used unknown law. She was charged with section 258 (1) (e) and section 273 (b) of the Penal Code which is unknown law. It is a defective charge. The indictment had to be amended under section 388 i of Cap 20, (R. E. 2002). Third reason the appellant was charged with a criminal case rather than a civil case and he prayed that the appellant to be acquitted. Also, he found that the indictment was to be prepared by the complainant learned advocate, he was not authorized to prepare the indictment, and continued to conduct the case without the authorization. The one who was supposed to prosecute this case should be the state attorney. The Senior State Attorney argued that, she found an independent attorney Mr. Chama Matata handled the Criminal Case, the records are silence, the learned advocate to prosecute a criminal case without having permission from the DPP that he should conduct the case. There is no any confirmation that Mr. Chama Matata was allowed to prosecute a criminal case, he has no instruction to prosecute a criminal case. He destroyed this case. Also, there is only one witness who says he gave the money to the appellant, she considers this to be a civil case. The claims are not a criminal case. I have looked at the details of both parties. In this appeal, I take the view of both learned attorneys with a positive attitude. I have found that this case was supposed to be a civil case, but brought in as a criminal case, there was one prosecution witness which means this case was not investigated, the investigator would have found that it should be presented as a civil case because it involves the sales of goods, and there is a contract between the two parties, shall be evaluated on the balance of probabilities. In this case the indictment was prepared by a private attorney. That was supposed to be administered/prepared by the state prosecutors, after an investigation by the police, I check that the private prosecutor was supposed to have a confirmation from the Director of Public Prosecution office, in order for the DPP to authorize him to prosecute this case. I asked my question that is the private prosecutor was allowed to run criminal proceedings and prepare a charge sheet as a public prosecutor, and if the case was investigated. However, it cannot be a case of stealing by respondent because the appellant does not deny having a cotton business with the respondent. The appellant was detained on 18/5/2018 she had been in prison for three years and six months and I feel she was wrongfully convicted, all said, I allow the appeal and, in the result, I quash the conviction and set aside the sentence imposed on the appellant. I accordingly, order that he be at liberty forthwith unless he is held in some lawful cause. It is so ordered. u. Judge 25/11/2019 5 I U. E. Madaha Judge 25/11/2019 6

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