

TANZANIA / JUDGMENT

stephen mhina mnkabenga vs republic 2009 tzhc 152 28 august 2009

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IN THE HIGH COURT OF TANZANIA AT TANGA CRIMINAL APPEAL NO.64 OF 2008 (Originating from DC - Korogwe Cr.C.No.52 of 2007) STEPHEN MHINA MNKABENGA.....
APPELLANT VERSUS THE REPUBLIC..... RESPONDENT 6/7/09 & 25/9/09
JUPGMENT Teemba, J. The appellant, Stephen Mhina Mnkabenga, was charged and convicted by the District Court of Korogwe in Criminal Case No.52 of 2007 of corrupt transaction and receiving bribe of shs. 10,000/= contrary to section 4(1) of the Prevention of Corruption Act, Cap 320 R.E. 2002. The prosecution alleged that on 2nd day of April, 2007, around Manundu Primary Court, in Korogwe District of Tanga Region, the appellant being an employee as a senior office assistant at Manundu Primary Court did corruptly solicit for himself and received the sum of shs.10,000/= from Michael Tulo as inducement in order to influence the issuing or preparation of bail from the trial magistrate who was handling criminal case No. 133 of 2007, the matter which was in relation to his principal's affair. The appellant pleaded not guilty to the charges leveled against him; but upon full enquiry he was found guilty and convicted. The learned trial Magistrate sentenced the appellant to seven months imprisonment, after considering the fact that the appellant is a disabled person. . Being aggrieved by that decision the appellant appealed to this court against conviction and sentence of the trial court at Korogwe. It is not irrelevant to mention that the appellant appeared before me in person. The case for the Respondent/Republic was advocated upon by Mr. Kibwana. The latter supported the decision of the trial court. In his submission, he urged this Court to dismiss the appeal on-the ground that the evidence adduced by the prosecution proved the case beyond reasonable doubt. It is common ground that Michael Kondo, PW.3, had his relative, William Kiondo, arrested and charged in Manundu Primary Court for stealing a bicycle. He was remanded in prison for failure to meet bail conditions. When PW.3 was made aware of the fate of his brother, he sought a letter of introduction from the Ward Executive officer of Kwamsisi so that he could apply to bail out his brother. It is on evidence, adduced before the District Court that, PW.3 got the letter and went to the Primary Court of Manundu. In addition, PW.3 testified that when he went to the court, he met the appellant, who received the letter. The evidence is to the effect that the appellant remained with that letter until 1.30pm. when he called PW.3 and asked him to give him shs. 10,000/= so that the appellant could then take that letter to the Magistrate. PW.3 did not have money and informed the appellant accordingly. The appellant gave the letter back to PW.3. PW.3 left the court premises with the

letter. On the following day, that is, on 3/4/2007, PW.3 went back to the court, and his relative was brought to court. Once again PW.3 went to the appellant and asked for assistance so that the letter could be taken to the magistrate to consider the application for bail. The appellant, it is alleged, refused. It was after this conversation, PW.3 promised to give the appellant, the amount of money the latter had asked. The record shows that the accused/PW.3's relative was further returned to custody. PW.3 was fed up and decided to go to the offices of Prevention of Corruption Bureau (PCCB) for assistance. He did this on the same day. The evidence is further to the effect that PW.3 met an officer called Riwa, who received the complaint and asked PW.3 to go back to his office on the following day. •:- On 4th April 2007, PW.3 went back to the court early in the morning and met the appellant, who was alone by then. PW.3 was recorded by the trial court to the effect that, he asked the appellant, for the third time to assist in bailing out the relative by taking PW.3's letter to the magistrate for consideration. The record reveals that the appellant insisted on his demands to be given the money 2 first. To trap the appellant, PW.3 asked him the place where they could meet after working hours so that he could give him the amount requested. The two agreed to meet at Green Garden bar/hotel by 4.00pm. PW.3 reported back to the PCCB and was given two notes of shs.5/000/= each. The serial numbers of these notes were recorded by the PCCB officials. As agreed earlier, PW.3 met with the appellant at Green Garden bar and gave him the money and the letter from the Ward Executive officer for identification of surety. The appellant was arrested by PCCB officials as he was about to leave the premises. PW.1, Alvin Kiwia was an officer from PCCB who arrested the appellant. PW.1 was accompanied by Mr. Riwa (not a witness). It is, however, in evidence that Salim Msumari, and Elson Lunyiliko Lucas (PW.2 & PW.3 respectively), both teacher at Mswaha Primary School, were at the bar during this saga. In their testimonies, they told the trial court that they saw the victim, PW.3, and the appellant when they arrived at the scene. PW.3 arrived first and followed by the appellant after a while. These two witnesses saw the appellant and PW.3 sitting together in that bar. They also told the court that when the appellant was about to leave, he was arrested by people who later identified themselves as officers of PCCB. He was searched and found with the money. The notes were recovered from his trousers' pocket and the serial numbers tallied with the numbers recorded by the PCCB. The appellant denied his involvement in the offence. He gave a very long defence but in essence he claimed that he did not solicit or receive the bribe. He was recorded, in his defence saying that he went to the scene/bar to receive the letter only and it was after being requested to do so by PW.3's brother who was his friend. He explained to the trial court that he was requested to take the letter so that he could process the bail application early in the following morning. The appellant had one witness, Sued Mohamed Chamboko, DW.2. This witness did not have much to say but his evidence is to the effect that he was together with the appellant when he received a phone call asking him to go to the Green Garden bar. DW.2 accompanied the appellant to the bar but did not go inside to listen to their conversation. DW.2 did not witness the transaction except during the arrest. The trial magistrate rejected the appellant's defence and in preference believed the prosecution witnesses. In his memorandum of appeal, the appellant protested his Innocence. The appellant insisted that he was not found in possession of the alleged bribe money but that the same was brought there by PCCB people as they opened the letter far from him. Apparently, I went through the record of the trial court and visited the testimonies of all witnesses. It is on record that the two teachers

from Mswaha Primary School PW.2 and PW.5, were present at the bar before and during the incident. These witnesses saw the appellant when entering the premises and they also witnessed the arrest and the search. It is, however, in evidence that these two witnesses did not know the appellant before this incident and therefore, they did not, have any grudges with him. It is on evidence that PW.2 was requested by the PCCB officials to search the appellant's trousers and among the recovered items included the two notes of shs.5,000/= each. It is also on record that other notes of money were found but PW.5 was given a piece of paper with numbers. It is the evidence of PW.5 that he was asked to look at those serial numbers as PW.2 read them loudly. PW.5 confirmed to the trial court that the serial numbers on paper tallied with those of the notes found with the appellant. During the trial, PW.1 told the court that after the arrest, the appellant's cautioned statement was recorded and the appellant admitted to have been found in possession of the two notes - amounting to shs. 10,000/=. I have noted, from the proceedings, that the statement was produced in court as an exhibit P.1. However, the appellant objected to its admission on the ground that the same was obtained by force and coercion. I am aware that although the District Courts do not have a duty to conduct trial within a trial, but in such a situation where the confession statement is retracted, the trial court was supposed to conduct an inquiry in order to satisfy itself that the statement was made freely and without any force. (See: Kileo, JA. In Janta Joseph Komba and Others vs Republic, Cr. Appeal No.95/2006 (unreported)CAT, DSM Registry). Since the trial court did not conduct the inquiry before it admitted the statement, I will disregard the statement. Even after excluding the Exh.P.1 from the evidence, still the evidence against the appellant is strong as the testimonies of PW.2 and PW.5 were not shaken. The appellant has also raised a concern that there were previous grudges between himself and Mr. Riwa of PCCB, Korogwe District. Mr. kibwana, learned State Attorney, submitted and I agree with him, that the conflict, if at all existed, had nothing to do with the instant appeal. Mr. Riwa did not testify before the trial court although he was present during the incident. The remaining five prosecution witnesses had no any grudges with the appellant. Their evidence was tight against the appellant and I see no reasons to fault the decision of the trial court. reasons, the appeal fails and is dismissed in its entirety. AaTEEMBA, J. -/ 14/8/09 28.8.2009^ \ /S Coram - M.&Mlawa-"Dtf ^' Appellant - Absent Respondent - Miss Naiman for Republic C/C Nakijwa Miss Naiman: Since the appellant is absent and sick let the judgment of appeal be adjourned to some other date. Order:- Judgment on 25.9.2009. Appellant be notified. M.R. MLAWA-DR 28/8/2009

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