

DECIDED
28 February 2018

... (MWANZA DISTRICT REGISTRY) AT MWA.NZA . . . H.C. CRIMINAL APPEAL NO. 359 OF 2017
(Arising from Bukombe District Court Criminal Case No. 165/2016 as per Hon Kurwijila, RM)
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APPELLANT VERSUS THE REPUBLIC.~ I!! E 1111 ■ aa ■ 111m111111-a ■ ■ 11 ■ 11 111111 ■ atr ■
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BEFORE:MAIGE, J At the District Court of Ushiroombo ("the trial court"), the second appellant was, jointly and together with a person not privy to this appeal ("the third party"), charged with and convicted of the following counts . . Fia:-st, 74 counts based on use documents-intended to mislead the principal . cf s. 22 of the Prevention and Combating- of the Corruption Act, J:\d No. 11 of 2007 ("the first offence "); two, 74 counts founded on forgery c/to ss. 333, 335(a) and (d)(1) and section 337 of the Penal Code, Cap. 16 R.E., 2002 ("the second offence"); and three, obtaining money by false 1 . ~ r-z_ . c::;;~ rz-- . \. \$. .

pr_etense contrary to section 302 bf the Penal Code ("the third offence"). For the first offence, he was sentenced to a fine of two million Tanzania Shillings and in default thereof three years imprisonment. For the second . . and third offenc_es, he was sentenced to three years imprispnment each. On his part, the first appellant was charged with and convicted of an offence of aiding and abetting_ c/t s. 30 of the PCCA. He was sentenced to a fine of TZS 1,000,000/- and in default thereof imprisonment of a term of one year. The appellants have been aggrieved with both the conviction and sentence and henceforth _the instant appeal. In the memorandum of appeal, the appellants have enumerated four grounds of appeal which in my assessment raise two important issues namely, whether the charges . . against them was duly proved; and whether it was proper and correct in law for the trial court to convict and sentence the second appellant with both the offences of use of documents intended to mislead the principal . . and forgery. Before I direct my mind on the issues raised in the appeal, a brief narration of the factual ground of the case may be inevitable. In 2007, 1 2 the Government Qf the United Republic of Tanzania in toilaboration with the Word Bank launched an agricultural pro"gramme known as the National Agricultural Inputs Vouchers Scheme ('NAIVS'). It was in response to the _ high food and fertilizer prices.

prevailing at that particular time. The voucher system was used to facilitate the Government's strategy to offer subsidies in the distribution of agricultural inputs in selected agricultural areas. The programme established a chain of Voucher Committees at the Regional, District, ward and village levels to oversee allocation and distribution of vouchers. The village vouchers committees were responsible for selecting beneficiaries and prepare a list of recipients for approval by the village assemblies. The vouchers were allocated to the District Agricultural directors, who passed on the vouchers to extension officers for final distribution among the peasants. Input supply, distribution and retail were undertaken by private sector actors. These were companies dealing with supply of agricultural inputs and their distribution agents. Farmers would turn in vouchers for a reimbursement at specifically certified agro-dealers, who would redeem the vouchers directly with a branch of NMB.

3 In this matter, the first appellant assumed the position of a ward extension officer in the process whereas the second appellant was constituted an agent to distribute subsidized agricultural inputs in different villages including the village in dispute. The claim by the prosecution was that; the second appellant, in collusion with the first accused, presented to the District Director false vouchers indicating that he had supplied agricultural inputs to about 34 peasants in the village in question which was not true. It was further alleged that, before presenting the said vouchers as such, they inserted false entries therein suggesting that the peasants therein named received subsidized agricultural inputs which was not true. In doing so, it was alleged, the second appellant and the first accused forged the signatures purporting to be of the recipient peasants named in the said agro vouchers. Upon presentation of the fabricated vouchers, the second appellant received a cash of TZS 2,560,000/= which he did not deserve. The proof of the three offences against the second appellant and the first accused was based on that factual allegations. Similarly so for the offence against the first appellant who was accused of aiding and abetting the second appellant and the first accused to commit the offences herein mentioned. In the conduct of this appeal, Messrs Mhingo and Ngwilimi learned advocates represented the appellants. The respondent was advocated by Mr. Karumuna, learned state attorney. In their brief oral submissions which were fully subscribed by the learned state attorney, the counsel for the appellants were of humble opinion that; the evidence adduced at the trial court did not connect the appellants with any of the offences. As against the three offences the second appellant was convicted of, their contention was that; the evidence adduced was not clear as to who between the second appellant and the first accused forged the vouchers in exhibits P-1 to P-31. The counsel explained further that; in view of the chain of transaction process contained in the relevant government circular (exhibit P-35), the second appellant was not involved in any of the acts constituting the three offences in question in that; his responsibility was to supply the implements upon receiving the vouchers in question. The counsel criticized the trial court for placing reliance on the oral testimony of PW-2 to PW-16 to establish forgery of the signatures in the 5 vouchers in exhibits P-1 to P-31 without considering the fact that the said vouchers were not shown to them before commenting on their genuineness. The counsel relied on the authorities in *Joseph Mapena versus the Republic* (1986), TLR 148 and DPP

versus Shida Manyama @ Selemani Mabuna , Criminal Appeal No. 285/2012 which judicially considered the said provisions~ Submitting in respect to the conviction of the first appellant, the counsel for the appellants claimed that it was wrong in two respects. First, the confessional statement on the basis of which he was- convicted was illegally admitted in so far as the contents thereof was not brought to his knowledge before being exhibited. On this, I was referred to the authority in Robson Mwanjisi & Others vs. the Republic, (2003), TLR 2018. In the second place, it was their submissions that, there was no explanation in the judgment why the first appellant alone was convicted while there were other officers whom were involved in vouchers verification and approval process. On the second ground, it was their submissions that; since the first and second offences are similar offences, the second appellant could not be legally and properly convicted of and punished for both of them as that would amount to double jeopardy. They relied on the authority in Joseph Mapena vs. the Republic (supra). . . I have taken time to study the judgment and proceedings of the trial court. Besides, I have duly considered the mutual submissions in support of the motion from both parties. At this juncture, I think, it is appropriate to venture into the real business of addressing the issue raised in the appeal starting with the first issue. I am preparing myself to subscribe to the counsel submissions in all four. I will first consider the issue in relation to-

- - - -to the offence of forgery. As said above, the second appellant and the first accused were charged with and convicted of forging the vouchers in exhibits P-1 to P-27 with intent to deceive or defraud the Mbogwe District Council. It is a well settled principle of law that, a person who asserts a particular fact is required to affirmatively establish it. The issue here is whether the respondent proved beyond reasonable doubt that the second appellant forged the vouchers in question. Forging, according to section 333 of the Penal Code entails the making of a false document with intent to defraud or deceive. While the term "deceive" was defined in *Re London and Globe Finance Corporation Ltd* (1903) 1 Ch. 728 as "to induce a man to believe that a thing is true which is false; and which the person practicing the deceit knows and believes to be false", the term "defraud" was defined in the same authority as "to deprive by deceit". I entirely subscribe to the judicial interpretation of the
- two phrases in the authority just referred: In accordance with the charge sheet, the forgery in question is premised on the provision of section 335 (a) and (d) (i) of the Penal Code. Under item (a) thereof, forgery can be committed if the accused "makes a document which is false" or which "he has reason to believe is untrue". Under item (d) (i) of section 335 of the Penal Code, the offence can be committed if the accused signs a document "in the name of any person without his authority, whether such name is or is not the same as that of the person signing". As held by the Court of Appeal in *OPP Vs. Shida Manyama*, supra for the offence of forgery to be proved, three essential ingredients must be established beyond reasonable doubt. First, the accused was involved in making the document in question; two, the document at issue was a false document; and three the accused forged the document with intent to defraud or deceive. The determination of the issue of forgery by the trial magistrate appears at page 31 of the judgment, paragraph 3 thereof. I

will reproduce the relevant passage hereunder for easy of references:- Similar^{1½} the two accused person~ the 1st and 2nd accused persons · are also liable to the other 74 counts of the charges relating to forgery of all documents~ the issue voucher which were stated in the charged offences as from 75 · counts to 148- counts. That the evidence by the prosecution side is quite clear that all the documents used to process the payment to the 1st accused as an agent had been substantially and maliciously forged by him. He did so- in --- ;_

- association with the 1st accused who is also the VEO for Ishigamva village. As I said --above, the offence of forgery was premised on the Agro Vouchers in P-1 to P-27. I have taken time to critically examine the said vouchers. They are in the name of the Government of the United Republic of Tanzania and are signed by among others, the chairperson of the vouchers committee and the village executive officer. At the back of the vouchers, there appears a signature and official seal of the District · Agriculture, Irrigation and Cooperative Officer Mbogwe. The prosecution did not disown in evidence of various government officers appearing in the said exhibits. What was refuted, were the signatures purporting to be of the peasants who received the farm implements in question. The vouchers claimed to have been forged were tendered by an investigation officer, PW-1. Questionably, the witnesses who testified as the recipient peasants (PW-2 to PW-16) were not shown the vouchers in question before they had commented on the validity of their purported signatures therein. Mr. Ngwilimi submitted correctly in my view that, unless the said witnesses had an advantage of looking at the documents in question, they could not be capable of proving or disapproving the handwritings and signatures in the documents in question. The reason being that; in accordance with section 75 of the Evidence Act, proof of handwriting and signature in a document is made by a person who is conversant with such handwriting by way of comparison or expert opinion. PW-1 who identified and produced the vouchers under discussion did not claim to be conversant with the signatures of the said peasants. His testimony athered from investigation. 10 on top of that, under the procedure for distribution of the vouchers (to the peasants and the chain of transaction process set out in exhibit P:- . . 35, it is very improbable for the second appellant to be linked with alteration of the vouchers in question. He was not involved in any of the stages of authorship of the vouchers. His role was to supply the inputs upon receiving the vouchers. The vouchers were deemed to be valid on the face of them. In his evidence in defense, which appears to have not been contradicted by way of cross examination, the second appellant claimed to have received the vouchers from the VEO after the same had been signed by all respective persons, including the peasants. In the circumstance therefore, the offence of forgery was not proved beyond reasonable doubt. Let me examine the issue in relation to the offence of use of document intended to mislead the principal. The offence is established under section 333 of the PCCB Act. It has three essential elements. First, the document in question must be false. Two, the accused must have knowledge of the falsity of the document. Three, the document must have the principal. The falsity of the 11 -8- ~<[J 0~)) S t . vouchers in question, according to the prosecution, lies on the fact that the . . . persons purported to have received the subsidies never received the

same and never signed into the vouchers. As a result of the presentation of the false vouchers, it was the prosecution case, the second appellant received money that he was not entitled to. Though under exhibit P-35 the second appellant was not in the chain of making the voucher, payment of his money would depend on presentation of true vouchers. In his evidence, the second appellant represented himself as a person who did not witness the signing by the peasants into the vouchers. He was supplied with the vouchers after he had supplied the inputs to the peasants. I would, in the premise, agree with the appellants counsel that, the second appellant could not be linked with any errors connected with the making of the vouchers under discussion. That notwithstanding, the second appellant would have been linked with the offence, if it was established that he had knowledge that, the documents in question were untrue in material respects. The falsity of the vouchers in question would have been established if the outstanding 12 (fifteen) amount reflected in the vouchers had not corresponded with the quantity of the subsidies supplied to the peasants. On this aspect, the second appellant testified that, he supplied the agricultural inputs in accordance with the vouchers. Perhaps, the issue that I have to tackle first, is whether the second appellant supplied the agricultural inputs reflected in the vouchers? Exhibit P-28 are agro-voucher deposit forms. They bear the name of the second appellant's firm. The forms reflect the particulars of the vouchers in question. There is also exhibit P-33. This is the Bank statement of the firm of the second appellant. It is not in dispute that the second appellant was the one who lodged the vouchers to the District Agricultural Officer. The Agro Deposit forms are signed by the agricultural officer and the agent. The signing in the form in my opinion is a signification that all the particulars therein are true in material respects. Exhibit P-29 consists of four Agri Voucher Deposit Forms. Each of the Forms had 25 entries with two columns. The first column contain serial number of the voucher and the second one the amount of money paid to the appellant's firm. In total, there are 50 vouchers which reflects payment of 40,000 each and 50 or 137,000 reflecting 30,000 each. The heading in the forms indicates that they are in respect of the Mbogwe District.

- As I said above, the burden of proof was on the prosecution. They were supposed to prove beyond reasonable doubts. In his evidence in rebuttal, the second appellant claimed to have not witnessed signing of the vouchers by the peasants. Conversely, the allegation that the vouchers in question were tampered with by the second appellant was not supported by concrete evidence. As observed above, the peasants whose signatures were claimed to have been forged, were not shown with either of the vouchers. In my opinion, they could have not been able to prove the assertion without the forged documents being shown to them. Besides the document being shown to them, proper proof of the alleged forgery would require the prosecution to produce specimen signatures of the said persons and compare them with the forged one. They would have easily been caused to make use of their official documents such as voters registration cards and National Identity Cards. This would assist the trial on two points. First, it would establish that the persons named in the vouchers and the witnesses were the same persons. Two, their official signatures differed with

those in the vouchers. One~ the evidence of alleged recipient peasants is disregarded, there - . . remains no evidence to link the second appellant with the offences of forgery and use of documents intended to mislead the principle. Equally so for the offence of obtaining money in force pretense which was essentially founded on the alleged falsity of the vouchers in question. On that account therefore, I am settled in my mind that, there was no sufficient evidence to warrant conviction of the second appellant of. either of the three offences. Having established that there was no evidence to establish the three principal offences in question against the second appellant, there cannot be sufficient evidence to establish an offence of aiding the second appellant to commit the said offences. On top of that, the confessional statement on the basis of which the first appellant was convicted was illegally received in evidence in so far the contents thereof was not read over to the first appellant before being admitted. This means that the second appellant was denied an opportunity to defend himself on the documents. It is now a settled law that a confessional statement admitted without complying with 15 ~ ~D~ cz, 1 ~ such mandatory requirement cannot be relied upon by the trial court. See . . for instance, Robson Mv\fanjisi & others Vs. The Republic {Supra}), In the final result and for the foregoing reasons therefore, the appeal shall succeed and it is accordingly allowed. The conviction of the appellants at the trial court is hereby set aside and the sentence thereof quashed. The appellants are set free unless withheld for other lawful causes. It is so ordered. ATMWANZA 28/2/2018 16 Date: 28/2/2018 Coram: Hon. Maige, J - Appellants: Mr. Mhingo adv Respondent: Karumu-na-S/A B/C: Paschal - Court: Judgment delivered in the presence of Mr. Mhingo advocate for the appellants and Mr. Karumuna S/A for the Respondent, this, 28 th day of February, 2018. Sgdm I. Maige Judge 28/2/2018 17

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Prepared on 13 October 2026 · Esheria