

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: Mwakasendo, J.A., Makame, J.A. and Kisanga, J.A.)

CRIMINAL APPEAL NO. 9 OF 1981

B E T W E E N

EDOM GODFREY MLINGA. APPELLANT

A N D

THE REPUBLIC. RESPONDENT

(Appeal from the Judgement of the High Court
of Tanzania at Dar es Salaam) (Mapigano, J.)
dated the 7th day of January, 1981,

in

Criminal Appeal No. 50 of 1980

JUDGEMENT OF THE COURT

MWAKASENDO, J.A.:

The appellant, EDOM GODFREY MLINGA, was charged before the District Court of Morogoro with an offence of corruption in that he, as a public officer, obtained advantage without adequate consideration contrary to section 6 of the Prevention of Corruption Act, 1971, Act No. 16 of 1971.

The particulars of the offence as shown in the charge sheet read as follows:

"On unknown dates in 1976, he bought a house at Turiani for shs. 9,000/- a price which he had reason to believe to constitute an inadequate consideration, from one NURALI JAFFER EBRAHIM who he had reason to believe to have been concerned in any matter with himself as a public officer".

The learned District Magistrate accepted the evidence of one SHASHU LUGELYE (P.W.4) who described himself as a Valuation Surveyor working with the Anti-Corruption Squad and on the strength of LUGELYE's evidence found that the appellant in purchasing the house at Turiani for shs. 9,000/- obtained an advantage at a consideration which he knew or ought to have known to have been inadequate in terms of the provisions of section 6 of the Prevention of Corruption Act, 1971.

He accordingly convicted him and sentenced him to five years' imprisonment and directed the house in question to be forfeited to the United Republic. The appellant's appeal to the High Court was dismissed and hence his appeal to this Court. Mr. Lakha, learned Counsel appeared for the appellant before us and Mr. Mwipopo, learned Senior State Attorney, represented the Republic.

As already stated, the learned trial District Magistrate found the appellant guilty of the charge laid against him on the basis of the evidence of SHASHU LUGELYE (P.W.4) who testified that on instructions received from his superiors he went to Turiani and there carried out a valuation survey of the house allegedly bought by the appellant from one NURALI JAFFER EBRAHIM at a price of shs. 9,000/-. Going by the rental of the house which was given to him as shs. 2,400/- per annum, SHASHU LUGELYE computed the value of the house to be shs. 35,111/-. He said this was the market value of the house in 1976. Incidentally it is incorrect to say that the house was bought in 1976 for it is clear from the evidence adduced by the purchaser and vendor at the trial that the agreement of sale was made in 1975 and not in 1976 as SHASHU LUGELYE asserts in his evidence. Mr. Lakha, for the appellant, strongly criticised SHASHU's method of computation of the market price of the house in question. He submitted that the method adopted by SHASHU in arriving at the market value of the house at the time the transaction took place is seriously defective and one which no experienced valuation surveyor would follow. With respect, we think Mr. Lakha's submissions on this point are substantial and sound. Quite clearly in our view of the evidence on record, SHASHU's valuation cannot be said to be a competent and careful appraisal of the property, the subject-matter of the charge, at the time when the transaction of sale took place, that is, in 1975. We would even go further and say that the sum of shs. 35,111/- is not a correct assessment of the value of the property at the time when he carried out the valuation survey, that is, in 1977. We say so because we are satisfied that

competent professional valuer could assess the market value of any property without first informing himself of the local conditions and the market value of other properties in Turiani area at the relevant time in 1975. In our considered view, we think that that is what a competent and careful valuer would be required to do before arriving at a correct assessment of the value of the property at the material time. This method of assessment of the market value of property has been approved by the courts in many cases but suffice here to refer only to the case of BAXTER v. GAPP & CO. LTD. (1939) 2 All E.R. 752. The observations made in that case by DU PARCQ, L.J. at page 758 could equally be made in connection with the evidence of SHASHU LUGELYE, the Anti-Corruption Squad valuer. DU PARCQ, L.J. said:

"I think that upon investigations one finds that it is quite plain that he paid no regard to matters which were of the most vital importance. I think that it is an important feature of the case that Mr. Gapp admittedly had no special knowledge of the value of property in Maidenhead or that district, although no doubt he is an experienced valuer generally speaking. It is plain enough, I think, that, if one can imagine a valuer being taken blindfold to some destination unknown to him and then led into a house and asked to value it, he would quite properly say: 'Before I value this house, you must tell me where I am. You must tell me where it is situated. Is it in a town, or near a town? Is it in a suburb? Is it near the sea, or is it near a river?' Then, having been told that, unless he knew the place, he would desire to make inquiries as to the value of local properties. That seems to be elementary and common sense. It follows, therefore, that if a valuer has no local knowledge, he must inform himself".

In the instant case, since the question whether the appellant bought the house at a price less than the going market value of the house in 1975 depended on what was the correct assessment of the market value of the house at the relevant time and since on the evidence on record we have no way of telling what this value was, we are of the considered view that the prosecution's failure to satisfy us on this vital point in the case is fatal to the prosecution's case.

We accordingly allow this appeal, quash the conviction, set aside the sentence and the order of forfeiture and direct that the appellant,

EDM

EDOM GODFREY MLINGA, be released from prison forthwith unless he is lawfully held therein on some other matter.

DATED at DAR ES SALAAM this 6th day of November, 1981.

(Y. M. M. MWAKASENDO)
JUSTICE OF APPEAL

(L. M. MAKAME)
JUSTICE OF APPEAL

(R. H. KISANGA)
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

