

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MUSTAFA, J.A., OMAR, J.A. And MARIKANO, AG. J.A.)

CIVIL APPEAL NO. 16 OF 1987

BETWEEN

YONA NGUTO LUWONGO. APPELLANT

AND

1. HON. AUSTIN KAPERE SHABA. 1ST RESPONDENT
2. HON. ATTORNEY GENERAL. 2ND RESPONDENT
(Appeal from the judgment, decreed and order
of the High Court of Tanzania at Mtwara)
(Rubana, J.) dated 18th day of July, 1986

in

Miscellaneous Civil Cause No. 2 of 1985

JUDGMENT OF THE COURT

OMAR, J.A.:

Mr. Yona Nguto Luwongo was a petitioner in the election petition Miscellaneous Civil Cause No. 2 of 1985 against Mr. Austin Kapere Edward Shaba, the successful candidate in 1985 General Elections in the contested seat of Mtwara urban constituency. The second respondent in this appeal is the Attorney General.

Mr. Luwongo's petition was dismissed. In this appeal he has submitted that Mr. Shaba had committed an act of bribery. That is his only ground of complaint. It was concerned with the donation of Shs. 2,500/- by Mr. Shaba to Mtwara Girls Secondary School. Mr. Shaba had gone to this school on 9th March, 1985 as part of his duties as a Member of Parliament to visit places of educational and political interest in his constituency. The school was one of the party branches; two other schools were also visited by him that day as they were also party branches. Mr. Shaba addressed this school on the constitutional changes that Parliament had passed the previous year and as his visit coincided with the sports presentation day he was asked to present prizes to the students

which he did. The prizes were for sports activities. It was in evidence that the sports teacher had said that the school had no table tennis table for the students to **practise** on and that they were forced to go to other institutions for their practices. To this the first respondent responded by promising to contribute towards its purchase if they could discover the price. The price was communicated to him in a letter written by the sports teacher Malifedha dated 27/4/85 which he the first respondent received on 3/7/85. The evidence is to the effect that he was away from Mtwara for about three months and as soon as he received it he tried to contact the Headmistress but found the school closed. On 2/8/85 he managed to talk to the Headmistress about the table for table tennis and his proposed visit concerning that matter but the school had just opened and the headmistress had some travelling to do and it was not a **convenient** time then for his visit. On 20/8/85 first respondent contacted the school again about his donation and the headmistress agreed they should meet the following day for the handing over of the money to the school. Counsel ~~for~~ the appellant Mr. Rweyemamu contended that Mr. Shaba had deliberately timed the giving of this **gift** and that action converted an otherwise innocuous act into a corrupt transaction. He asked why was money not paid earlier or sent by cheque as soon as he had received the letter on 3/7/85. Instead Mr. Shaba waited for more than one and half months until it was election time before he made the presentation. On 21.8.85 first respondent went to the school and gave shs. 2,500/- to the headmistress in the presence of students who had assembled the money was then handed to the head girl, one Miss Patu. The ceremony took ten minutes and first respondent left in a hurry. Three school girls gave evidence of this short ceremony and one of them P.W.3

Zainabu Rashidi said that first respondent told them at that meeting that he was a Parliamentary candidate and that they should vote for him, but the other two girls P.W.5 Marry Edesi and P.W.6 Doroithina Philipo merely stated that the short address of first respondent was restricted to sports development. P.W.5 and P.W.6 stated that when the first respondent was bidding the girls farewell he was heard to say that they would meet again during the election campaign. The headmistress, D.W.2, who was present throughout at that meeting denied having heard Mr. Shaba saying anything about meeting during election campaign as alleged by P.W.5 and P.W.6 or about Mr. Shaba asking the girls to vote for him as alleged by P.W.3.

The learned judge reviewed and analysed the evidence of the witnesses at great length. He was satisfied that P.W.3 was a liar and that P.W.5 and P.W.6 could not have heard the remark allegedly made by Mr. Shaba as neither D.W.2 the headmistress nor P.W.4 a teacher who were present throughout the short ceremony of the money donation had heard any such remarks. The judge accepted P.W.4 and D.W.2 as witnesses of truth.

As the trial judge had properly evaluated and assessed the evidence, we are not in a position to say that he was wrong. The timing of the donation was due to the convenience of D.W.2 the headmistress and it was fortuitous. The trial judge could discern no improper or corrupt motive in the whole of Mr. Shaba's conduct surrounding this transaction and we think that he was right.

This is the only ground of appeal urged to nullify the election of first respondent. We find the allegation of corruption not proved. We dismiss the appeal. No order for costs will be made in this appeal as the appeal has been conducted under legal aid.

DATED at DAR ES SALAAM this 7th day of August, 1987.

A. MUSTAPA
JUSTICE OF APPEAL

A. M. A. OMAR
JUSTICE OF APPEAL

D. P. MAPIGANO
Ag. JUSTICE OF APPEAL

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