

**IN THE COURT OF APPEAL OF TANZANIA
AT IRINGA**

(CORAM: MUNUO, J.A, LUANDA, J.A And MJASIRI, J.A)

CRIMINAL APPEAL NO. 150 OF 2010

EDWARD S/O MBAWALA APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

**(Appeal from the decision of the High Court of Tanzania
At Iringa)**

(Uzia, J)

Dated the 16th day of June, 2010

In

DC Criminal Appeal No. 38 of 2009

JUDGEMENT OF THE COURT

22 & 23 June, 2011

MUNUO, J.A:

The appellant, Edward Mbawala, was convicted of personation c/s 369 of the Penal Code, Cap. 16 R.E.2002 in Criminal Case No. 316 of 2008 in the District Court at Njombe in Iringa Region. The trial court sentenced him to a term of six years imprisonment. Aggrieved, the appellant lodged Criminal Appeal No. 38 of 2009 in the High Court of Tanzania at Iringa,

before Uzia, J. He lost the appeal. Subsequently, he lodged this second appeal to challenge the conviction and sentence.

The prosecution called P.W.2 SSP Edward Urio of police Njombe to state that at midday on the 14th November, 2008 the appellant went to his office and pretended to be No. F. 8545 PC Edward stationed at Changombe Police, Dar es Salaam and that he was on his way to Songea on leave. P.W.2 deposed, furthermore, that the appellant claimed that his brief case which had his Movement Order had been stolen at Njombe bus stand so he wanted PW2 to issue to him a fresh Movement Order to enable him to travel to Songea for leave. Suspecting that the appellant was deceiving him, P.W.2 tested the appellant by asking him the names of the OC – CID, Temeke as well as the names of the OCD and the OCS at the Changombe police station. The appellant failed that test for he did not know the names of the OCD, OC (CID) or OCS, Changombe Temeke, Dar es salaam, his working station. Upon inquiry at Changombe police station, PW2 learnt that no. F. 8545 was the force number of PC Frank, not PC Edward as alleged by the appellant. Satisfied that the appellant wanted a Movement Order so that he could defraud people, the appellant was

arrested and charged with the offence of personation c/s 369 (1) of the Penal Code, Cap 16 R.E 2002.

The appellant denied the charge. He gave a sworn defence stating that he was randomly arrested at the Njombe Bus stand by P.W.1 E 5154 Detective Corporal Timothy, taken to the police station at Njombe, locked up in custody and later charged with the offence of personation which he categorically denied.

In this appeal, the appellant filed seven grounds of appeal reiterating his innocence. Before us, the appellant denied seeking a movement order from PW2. He stated that PW1 arrested him at the Bus stand at Njombe out of ill will.

Mr. Josephat Mkizungo, learned State Attorney did not support the conviction. He observed that the ingredients of the offence of personation under the provisions of section 369 (1) of the Penal Code were not proved. The Officer In Charge, Temeke Police, the OC (CID), Temeke and the OCS of Temeke police station were not called to testify for the prosecution to

substantiate the charge against the appellant, the learned State Attorney pointed out. In that situation, the prosecution case was not proved beyond all reasonable doubt, the learned State Attorney submitted.

That is indeed the position. This being a criminal case the prosecution had to call witnesses to prove that the appellant, with intent to defraud, falsely represented himself as some other person, living or dead as stipulated under the provision of section 369 (1) of the Penal Code which states *inter – alia*:

" 369 (1) Any person who, with intent to defraud any person, falsely represents himself to be some other person, living or dead, is guilty of an offence".

It was not enough for the three prosecution witnesses to merely state that investigations revealed that No. 8545 PC Edward is the force number of PC Frank. The latter did not testify either.

In view of the above, the respondent Republic rightly declined to support the conviction. We accordingly quash the conviction and set aside the sentence. The appeal is allowed. The appellant should be set at liberty forthwith if he is not detained for other lawful cause.

It is so ordered.

Dated at Iringa, this 23rd day of June, 2011

E. N. MUNUO
JUSTICE OF APPEAL

B. M. LUANDA
JUSTICE OF APPEAL

S. MJASIRI
JUSTICE OF APPEAL

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



A handwritten signature in black ink, appearing to read 'J.S. MGETTA'.

J.S. MGETTA
DEPUTY REGISTRAR
COURT OF APPEAL