

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

(CORAM: MASSATI, J.A. MUSSA, J.A. And MUGASHA, J.A.)

CRIMINAL APPEAL NO 18 OF 2015

REBEKA RASHID SAMBOYA.....APPELLANT

AND

THE REPUBLIC.....RESPONDENT

(Appeal from the decision of the RM'S Court of Tanzania at Mbeya)

(Lyamuya, EXJ, SRM.)

dated 24th the June day of 2014

in

Criminal Appeal No. 19 of 2014

JUDGMENT OF THE COURT

2nd & 3rd Septmber,2015

MUSSA, J.A.:

In the District Court of Mbozi, sitting at Vwawa, the appellant was arraigned as hereunder:-

"OFFENCE SECTION AND LAW:-

*Obtaining Money By False Pretence C/S 302
of the Penal Code Cap 16 (RE:-2002) of the
laws.*

PARTICULARS OF THE OFFENCE:- *That REBEKA d/o RASHID SAMBOYA charged on 09th Day of April, 2013 at about 13:00 Hrs at Sogea Street in Tunduma Township within Momba District in Mbeya Region unlawfully did obtain Cash Money Valued at Tshs. 1,500,000/= From FURAHA s/o SILOMBA after cheating him that you will dismiss your case CC. 48/2013 against his Relatives which is at Mbozi District Court”.*

The appellant denied the charge but, after a full hearing, she was found guilty, convicted and sentenced to five years imprisonment. In addition, she was ordered to redress the alleged victim with the sum of shs. 1,500,000/=. Aggrieved, the appellant preferred an appeal to the High Court which was, however, transferred to the court of Resident Magistrate, Mbeya with an order that the same be heard by Hon. A.M.Lyamuya, a Senior Resident Magistrate with Extended Jurisdiction. In the upshot, the learned Senior Resident Magistrate (EJ) upheld the conviction and dismissed the appeal in its entirety.

Still discontented, the appellant presently seeks to impugn the verdict of the first appellate court in a lengthy memorandum comprised of eight

(8) points of grievance. At the hearing before us, she entered appearance in person, unrepresented, whereas the respondent Republic had the services of Mr. Basilius Namkambe, learned State Attorney.

The appellant fully adopted her memorandum of appeal without more as she opted to make a rejoinder in the wake of the submissions of the learned State Attorney. For his part, Mr. Namkambe resisted the appeal mainly on account that the evidence overwhelmingly implicated the appellant. We, however, think that the appeal turns on a much narrower compass and, for that matter, we need not even belabor on a reflection of the factual setting. Section 302 under which the appellant was arraigned stipulates as follows:-

*"Any person who by any false pretence and **with intent to defraud**, obtains from any other person anything capable of being stolen or induces any other person to deliver to any person anything capable of being stolen, is guilty of an offence and is liable to imprisonment of seven years."* [Emphasis supplied.]

Thus, it is discernible from the foregoing extract that an intent to defraud is an essential ingredient of the offence of obtaining by false

pretences and it is, for that matter, thus essential that such intent to defraud must be alleged in the particulars of the offence. We purposefully, extracted the charge with which the appellant was arraigned to demonstrate, beyond question, that the detail is conspicuously missing therein. In the High Court decision of **Msafiri Kulindwa Vs The Republic** [1984]TLR 276, it was held:-

"...a charge of obtaining by false pretences which does not include an averment that the pretence was made with intent to defraud is a charge which discloses no offence at all."

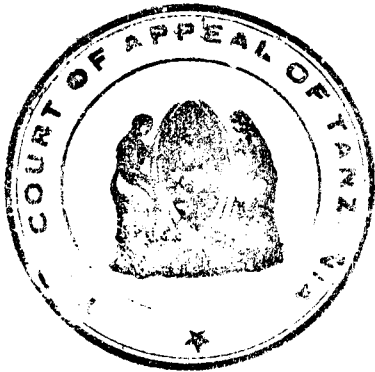
Corresponding remarks were replicated in another High Court case of **Edward Opiyo s/o Anguro Vs The Republic** (1968) HCD n. 55 where it was observed:-

"...and the absence of the words "with intent to defraud" are fatal to a conviction, since the accused may not have understood the charge against him. The false pretence must be set out in the charge with sufficient certainty".

We fully subscribe and adopt the foregoing propositions and, accordingly, hold that it is unsafe to sustain the appellants' conviction. In

the result, we invoke our revisional jurisdiction under section 1(2) of the Appellate Jurisdiction Act and allow the appeal. The conviction and sentence are, respectively, set aside. During the hearing, we were made to understand that the appellant is, presently, on parole. She should be set at liberty forthwith unless otherwise lawfully held.

DATED at **MBEYA** this 2nd day of September, 2015.



S.A.MASSATI
JUSTICE OF APPEAL

K.M.MUSSA
JUSTICE OF APPEAL

S.MUGASHA
JUSTICE OF APPEAL

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

A handwritten signature in black ink, appearing to read "P.W. Bampihya", is written above the printed name.

P.W. BAMPIKYA

SENIOR DEPUTY REGISTRAR
COURT OF APPEAL