

IN THE HIGH COURT OF TANZANIA

AT MBEYA

ORIGINAL JURISDICTION

(Mbeya Registry)

(DC) CRIMINAL APPEAL NO. 19 OF 2003

(Original Mbeya District Court Criminal C. No.613/2001

1ST FREDRICK RUGAIMUKAMU MBALEBILE )

2ND ALLAN BHUJO MWAKATUMBULA ) ..... APPELLANTS

3RD NURU LAITON MWALA )

VERSUS

THE REPUBLIC ..... RESPONDENT

J U D G M E N T

MMILLA, J.

The appellants, FREDRICK RUGAIMUKAMU MBALEBILE, ALLAN BHUJO MWAKATUMBULA and NURU LAITON MWALA (herein referred to as the first, second and third appellants respectively) were charged in the District Court of Mbeya with two offences; Conspiracy to defraud C/s. 306 of the Penal Code and Obtaining money by false pretences c/s. 302 of the same Code. They were convicted on both counts and were each sentenced to a term of one (1) year imprisonment in respect of the first count and a further term of two (2) years imprisonment in respect of the second count. They were also ordered to refund Shs.30,000,000/= to the complainant being the actual amount allegedly obtained from him. The appeal is against both conviction and sentence.

The facts forming the background of this case are not complicated. The complainant, Solomon Shaban was a well known person to the appellants. In particular, he had business relations with the second appellant, Allan Bhujo Mwakatumbula. It was asserted by the complainant, but refuted by the appellants, that on 14/9/2001 the appellants visited the complainant at his shop and requested him to loan them Shs.35,000,000/= to enable them to buy more diamond from the Democratic Republic of Congo. It was related that the complainant had no money on that day, he requested them to give him time in which to find the said money. He asked them to call again on 17/10/2001.

On 17/10/2001 the appellants met the complainant in the company of PW.2 Samwel Mathias Mzava. It is alleged that the complainant gave them Shs.30,000,000/= and that the appellants pledged three tubes which were said to contain yellow diamond worth of Shs.128,000,000/= as security. The appellants are alleged to have bound themselves to repay the said money within two weeks period. Unfortunately, the appellants failed to keep the promise. Upon that, the complainant thought of checking the diamonds which were offered as security. He discovered that the said diamonds were fake. It was then that he reported the matter to the police, subsequent to which the appellants were apprehended and charged in court.

The appellants' joint memorandum of appeal raised nine (9) grounds which, when closely scrutinised are found to boil down to a single ground alleging that the trial court did not competently analyse and evaluate the evidence before itself. In their submissions, the appellants are commonly challenging that their convictions were grounded on insufficient evidence.

The Republic was represented by Miss Kileo, Learned State Attorney who declined to support conviction, hence the sentences which were imposed by the trial court on the ground that the prosecution side did not prove the case against the appellants beyond reasonable doubt. I agree with the Republic. I will justify my assertion.

In the first <sup>place,</sup> the offence of conspiracy to defraud will have been proven where evidence would have been led in court to show that any person agreed with any other person or persons to pursue a course of conduct involving commission of any offence or offences by one or more of the parties to the agreement, and that the agreement is executed according to their intentions. As properly submitted by the Republic, there is no such evidence in our instant case. There were two key witnesses in this case; PW.2 Samwel Mathias Mzava and PW.4 Solomon Shabani Msangi. None of them attempted to explain the existence of conspiracy. So were the other prosecution witnesses, PW.1 No. F.300 DC Patrick and PW.3 Ausi Mwakyoma.

In the circumstances, the trial court wrongly found that the offence of conspiracy to defraud was proven.

Regarding the offence of obtaining money by false pretence, I agree with the Republic that it was similarly not proven. It is clear that, in terms of Section 301 of the Penal Code, the representation may be made by words, writing or conduct, and that such representation must be false and the person making it must be knowing it to be false or must be entertaining the belief that it is not true. Both PW.2 and PW.4 testified that the appellants made the alleged representations by words, and that because they trusted them, especially the second appellant, they found it unnecessary to reduce the same in writing. I share the views of both the Republic and the appellants that the said representation was not satisfactorily proven. The amount of money which was the subject of representation was undisputably substantial. In my view the complainant's judgement that it was not necessary to reduce the representation in writing was extremely reckless and exhibited imprudence on his part. As it is, I find that the evidence availed is shaky and/or insufficient to prove that the appellants were given such substantial amount of money in a manner that was. In my view, the appellants were improperly convicted on this count too.

In a nutshell, this court finds that the appeal has merits and is allowed. The conviction in respect of all of them is quashed, sentences and order of compensation set aside. It is directed that all appellants be released from prison forthwith unless they are otherwise being lawfully held in prison for some other offence(s).

Order accordingly.



B. M. K. MWILA

JUDGE

21.11.2003

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