

IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM

CRIMINAL APPEAL NO. 114 OF 2004

*(From the Decision of the District Court of Bagamoyo in Criminal Case
No.106 of 2003 E.H.Malekela, PDM)*

GEORGE MAPUNDA & ANOTHERAPPELLANTS

VERSUS

THE REPUBLICRESPONDENT

J U D G M E N T

A.Shangwa,J.

The appellants George Mapunda and Wemma Abdallah were charged in the District Court of Bagamoyo with two offences under the Prevention of Corruption Act No.16 of 1971. Both of them denied the charges which were preferred against them.

On the 1st Count, they were charged with corrupt transaction C/S 3(1) of the prevention of corruption Act, No 16 of 1971. It was alleged on this count that on 6/4/2003 at Gongoni area, Bagamoyo District , both of them did corruptly solicit shs 30,000/= from one Azizi Raisi so that they may not arrest him in connection to police case No BAG/IR/373/2003, a matter which was in relation to their principal affairs.

On the 2nd count, they were charged with corrupt transaction C/S 3(2) of the Prevention of Corruption Act No. 16 of 1971. It was alleged on this count that on the same date, place and time they did receive shs 30,000/= from Azizi Raisi as an inducement not to arrest him in connection with Police Case No BAG/IR/373/2003.

They were convicted on both counts and each of them was sentenced to three years' imprisonment on each count. The sentences were to run concurrently. They appealed to this Court through the assistance of Mr. Barnaba Luguwa, Advocate. They did so on three grounds namely:-

1. That the trial magistrate erred in law in not warning himself about the controversies between the witnesses who purported to see the events in issue.
2. That the trial Court erred in law in basing on oral evidence in the place of documentary exhibit.
3. That the trial Court erred in law when it substituted the charge after three witnesses had testified for the prosecution.

As it can be seen, the above mentioned grounds of appeal are technical in nature. Instead of considering this case and

determining it on technical basis, I will consider it and determine it on its merits. The real question to be considered here is whether or not the appellants who are employees of DAWASA at Bagamoyo did solicit and receive a bribe of shs 30,000/= from Azizi Raisi as an inducement not to arrest him in connection with theft of DAWASA WATER PIPES.

The facts of this case show that the only witness who testified on behalf of the prosecution in respect of the offence charged on the 1st count is P.W.1 Azizi Raisi. He said that the accused persons did solicit shs 30,000/= from him so that they may forbear not to report him to the police for the offence of stealing two water pipes from DAWASA.

In my view, the testimony of this witness has to be looked at with a lot of care. This is because he was found in

possession of two water pipes which were suspected to have been stolen from DAWASA. In actual fact, the two water pipes were among several pipes which had been stolen from DAWASA.

In view of the fact that this witness was found in possession of those water pipes, he had to be charged with the offence of being found in possession of property suspected to have been stolen or unlawfully acquired. In order to avoid being charged, he rushed to the police and alleged that the accused persons who are DAWASA employees and who had been assigned to investigate about the theft of several water pipes from DAWASA had solicited a bribe from him so that he may not be arrested and accordingly charged with the aforementioned offence.

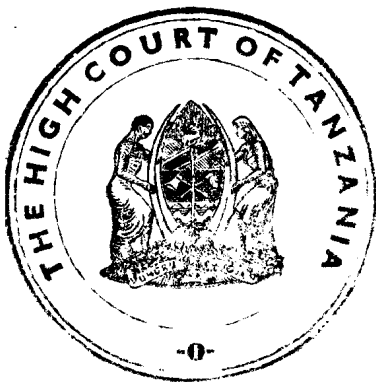
I find that as P.W.1 was a criminal suspect himself, there is a big possibility that his report to the police against the accused persons was actuated by malice.

For a similar reason, his testimony that the accused persons received shs 30,000/= from him as a bribe has as well to be looked at with care. P.W.2 Mohamed Ramadhani and P.W.3 Msafiri Selemani did not hear the accused persons soliciting a bribe of shs 30,000/= from P.W.1 nor did they see them receiving the said amount from him. There is doubt as to whether or not both of them really saw the 2nd accused removing shs 30,000/= from the socks he was wearing on the date of the alleged incident. This is because at the time of the alleged incident, the situation was quite chaotic. Both of them were suddenly surrounded by five police officers following P.W.1's report to the OC – CID

at Bagamoyo that they had solicited a bribe of shs 30,000/= from him.

In my view, the circumstances under which the accused persons were arrested and charged with the offences of corruption on the two counts create a lot of doubts as to whether or not they committed those offences. These circumstances do show very clearly that they were maliciously reported to the police by P.W.1 for the offences charged in order to revenge the situation. The evidence given by the rest of the prosecution witnesses does not add any weight to the prosecution's case as those witnesses did not hear the accused persons soliciting a bribe of shs 30,000/= from P.W.1 and they did not see them receiving the said amount from P.W.1. As I have already mentioned, there is doubt as to whether or not they really saw the 2nd accused removing that amount from his socks.

For these reasons, I allow this appeal, quash the conviction which was imposed on them and set aside the sentence which was imposed on them on both counts. Lastly, I order that they should be released from prison unless otherwise they are lawfully held therein on some other matters.



A. Shangwa
A. Shangwa, J.

24/5/2006

Delivered in open court this 24th day of May, 2006.

A. Shangwa
A. Shangwa,

JUDGE

24/5/2006.