

IN THE HIGH COURT OF TANZANIA

AT DODOMA

(APPELLATE JURISDICTION)

(DC) CRIMINAL APPEAL NO. 9 OF 2012

*(Original Criminal Case No. 61 of 2010 of the District
Court of Mpwapwa District at Mpwapwa)*

JEREMIAH BANDALI MSILE APPELLANT

VERSUS

THE REPUBLICRESPONDENT

J U D G M E N T

10/9/2012 & 21/9/2012.

KWARIKO, J:

Before the trial court the appellant JEREMIAH BANDALI MSILE stood charged with two corruption related offences. In both two counts the appellant was charged with the offence of **Corrupt Transaction c/s 15 (1) (a) and (2) of the Prevention and Combating of Corruption Act, No. 11 of 2007**. It had been alleged by the prosecution that the appellant had, in the month of April 2010 at Makose Village within Mpwapwa District in Dodoma Region, being employee of Mpwapwa District Council as a Village Executive Officer of

Makose, did corruptly solicit a sum of Tshs. 100,000/= from one PHILEMON FUNDI CHISAGASI as an inducement for him to assist the said PHILEMON not to take his selected children Devotha Philemon and Stephen Philemon to join Massa Secondary School in 2010, a matter which was related to his principal's business. It was thus further alleged that the appellant did on 22/4/2010 receive Tshs. 60,000/= from the said PHILEMON FUNDI CHISAGASI as an inducement to assist him not to send his two said children to Massa Secondary School.

The appellant had denied the charge hence a full trial had been conducted in that respect. During the trial it was revealed that one PHILEMON FUNDI CHISAGASI, PW2 had his two children, Devotha and Stephen selected to join Massa Secondary School in 2010. A full list is shown in Exhibit P1. Though, PW2, as was the case with some of the parents in Mpwapwa District did not take the two children to the said school. It is revealed so in exhibit P2. Then, the district leadership decided to initiate a crackdown to ensure that those absconding children were taken to school. Therefore, according to PW1 EMMANUEL GUSAMA LAMECK, the Headmaster of Massa Secondary School the parents in question had been pursued by the Ward Executive Officers on being assisted by the respective Village Executive Officers (VEO) the appellant included who was the VEO of Makose.

Therefore, the appellant pursued PW2 and in that course he solicited to be given shs. 100, 000/= as an inducement for him to keep away from him as far as his children reporting to school was concerned. However, through negotiation the two agreed that PW2 could only part with shs. 60,000/=. At that point PW2

reported the matter to the office of the Prevention and Combating of Corruption Bureau herein after to be referred to as the Bureau.

Upon receipt of PW2's complaint the Bureau set a trap to catch the appellant and PW2 was given trap money on 22/4/2010. He communicated with the appellant where they agreed to meet at Chogola Market. When they met at the market PW2 handed over the Tshs. 60,000/= to the appellant and signalled the Bureau Officers who were waiting nearby. The officers, including ZABLON JULY MASAWA, PW5 pursued the appellant who had started running from the scene when he saw them. However, the appellant was caught after a short distance of chase. Thereby, two independent witnesses, TIMOTHEO HAPILA, PW3, a VEO of Mkanana and ABDALLAH ITUJA, PW4 who was a person shopping in the market had been summoned to the scene. The Bureau District Chief one ZACHARIA MWANDUMBYA, PW6 also came to the scene after appellant's arrest.

The appellant was ordered by the officers to surrender the money he had in possession. After some resistance the appellant finally produced some money he had in his possession. The appellant hastened to complain that the officers had planted the money in his pockets. However, when the money had been counted and numbers inspected it was discovered that among it shs. 60,000/= in 4 notes of 10,000/= and 4 notes of 5,000/= had their numbers tallying the ones earlier recorded in the Trap Money Form. The cross checking had been done by PW4. The Form, Exhibit P3 was thus signed by all present including the appellant. The appellant was thus formerly booked.

In his defence the appellant did not dispute that he was at the said market on the material day and time. However, he complained that the officers had planted the said money in his pocket after they invaded and fell him down. That, in the process of planting the money his trouser pocket was torn and when he complained he was threatened with a pistol. After that exercise he was ordered to lie down and that is when the invaders introduced themselves before they called their in-charge and the other witnesses. He was then forced to dish out that money. Actually, the appellant complained that the case against him was politically motivated. That, one ISSA GAILANGA who had lost village chairmanship post had grudges on him for failure to help him win the seat thus had instigated PW2 to implicate him. He denied that he was responsible with the school children follow-up exercise because the District Commissioner was the one who had been given a list of the ran away children; he was only given a copy of the list of names of those children.

Other witnesses for the appellant ALBERT KUSADUKA, DW2, ERASTO SAMBAI, DW3 and BERNARD MAGANZA DW4 supported the appellant's defence that the officers had planted money in the appellant's pocket. They said they were at the scene on the material day and time.

At the end of the trial the court found that the case against the appellant had been proved beyond a shadow of doubt, he was found guilty and accordingly convicted. The appellant was sentenced to a fine of Tshs. 500, 000/= or imprisonment of three (3) years in default. The record shows that the appellant paid the fine on 30/1/2012.

The appellant was not satisfied with conviction and sentence hence he filed this appeal upon the following six grounds of appeal:

- 1. That, the trial court erred in law and in fact in not holding that the prosecution had failed to prove its case beyond reasonable doubt.*
- 2. That, the trial court erred in law and in fact for not addressing contradictions which arose during the trial.*
- 3. That, the trial court erred in law and in fact when it applied double standard in assessing the credibility of witnesses.*
- 4. That, the trial court erred in law and in fact when convicted the appellant without warning itself that the offence was obtained through section 13 (1) of the Prevention and combating of corruption Act No. 11 of 2007;*
- 5. That, the trial court erred in law and fact when it convicted the appellant without considering his defence.*
- 6. That, the trial court erred in law when it wrote its judgment in contravention of section 312 (1) of the Criminal Procedure Act, Cap 20 R.E. 2002.*

During the hearing of the appeal the appellant appeared in person and he only at first prayed the court to consider his

grounds of appeal and allow the same. In reply to the ground of appeal Mr. Wambali learned State Attorney appeared on behalf of the respondent, Republic.

In respect of the 1st ground of appeal Mr. Wambali submitted that the prosecution evidence proved the case against the appellant beyond reasonable doubt that he solicited and received bribe on pretence that he could assist PW2 to make sure that his children did not report to school. That, PW3, PW4, PW5, and PW6 witnessed the appellant producing money from his own pockets. That money was a trap set by the Bureau's officers and given to PW2 who ultimately handed over to the appellant as bribe. The money's numbers matched the numbers which had been recorded earlier in the Special Trap Money Form.

As for the second ground of appeal Mr. Wambali learned State Attorney submitted that the appellant did not show the alleged contradictions. That, there had not been any contradiction in the prosecution case.

Mr. Wambali submitted in respect of the third ground of appeal that the trial magistrate complied with principles of fair justice when he decided the case.

In the fourth ground of appeal Mr. Wambali contended that the case against the appellant had not been maliciously prosecuted since there is no evidence on record to prove that assertion.

Fifthly, it was submitted by Mr. Wambali learned State Attorney that the defence evidence had been considered by the trial Magistrate along with the prosecution evidence before a decision was reached. In that the appellant's defence had been considered from page five (5) of the trial court's judgment.

And in the sixth ground of appeal it was submitted on behalf of the respondent that the trial court's judgment complied with section 312 of the Criminal Procedure Act contrary to the appellant's complaint. Thus, Mr. Wambali supported the appellant's conviction and sentence and prayed this appeal to be dismissed as it is non-meritorious.

In further reply to the foregoing contention the appellant contended that the arresting team did in fact plant trap money in his pocket. That, they had not sought independent witnesses before they arrested him instead they did that after they had managed to implicate him with the trap money. Also, the trial court did not consider his defence when he alleged that the case was politically motivated.

To the foregoing Mr. Wambali contended that the whole exercise was a trap that was organized after the appellant solicited bribe hence the officers did not need to call witnesses before the arrest. The witnesses who came to the scene after arrest witnessed the appellant produce the trap money from his pocket.

Subsequent to the foregoing submissions the court has to decide whether this appeal has merits. I will consider the grounds of appeal in their chronological order.

In the first ground of appeal in relation to proof of the case against the appellant, this court is in agreement with the respondent's counsel that the prosecution witnesses proved that the appellant solicited bribe from PW2 who reported to PW6 and a trap had been set. The appellant fell into the trap and was arrested after he had pocketed the bribe money. There are PW3 and PW4 who witnessed the appellant producing money from his pocket after he had been arrested. These two were independent witnesses not connected to the arresting officers. They were randomly selected at the scene and there cannot be doubt that they testified the truth. Since the officers had been executing a trap there cannot have been independent witnesses before the arrest was affected.

The appellant has been emphatic that the officers had planted the money in his pocket. First of all the appellant had not fronted any reason as to why the officers duly entrusted to work for the good of their institution could have set to spoil his career and life. Secondly, if the appellant was innocent, why did he take to his heels after he saw the arresting team approach him? This shows that he had sensed trapped after he had taken bribe minutes before. The officers had to chase him before arresting him. PW3 and PW4 who were independent witnesses testified that they found the appellant and PW5 in a mess and disorderly. They were dirty with dust all over. This confirms that there was a struggle between them when the appellant decided to run away. His running away was inconsistent with innocence. The

appellant's allegations that the officers planted him money is watered down by the defence's contradicting evidence. While the appellant and DW2 said the appellant was chased, caught, fell down and money forced into his pocket, DW3 said he saw the appellant wrangle with people and heard the appellant say those people were putting things in his pocket and DW4 said the appellant was beaten until he lost consciousness and the people put money in his pocket while he was in that state. Therefore, this defence has not shaken the prosecution evidence which was straight forward.

As for the local area leaders being a witnesses, PW3 was the local area leader who saw the appellant produce the trap money from his pocket. This was an independent witness and also a public officer who is believed he had no interest to lie against the appellant. For these reasons I find that the prosecution case had been proved beyond doubt. The 1st ground of appeal thus fails.

This court also is in agreement with Mr. Wambali learned State Attorney that the appellant had not explained what are the contradictions he referred to in the second ground of appeal. There have not been any contradictions either in the prosecution evidence or any other in that connection during the trial. Thus, this ground of appeal is baseless and it is hereby rejected.

Further, in the third ground of appeal the appellant did not explain what he meant by the trial Magistrate applying double standard in evaluating the credibility of witnesses. As rightly submitted by Mr. Wambali the trial magistrate considered the evidence from both sides and found that the prosecution case had

been proved against the appellant and that the defence case had not raised any doubt in the prosecution case. That is what is required in proving criminal cases. I have already explained now the defence evidence had failed to shake the prosecution case for being tainted with inconsistencies. This ground of appeal also fails.

In the fourth ground of appeal the appellant complains that the case against him had been actuated by malice. Mr. Wambali contended that no any malice had been proved in this case. This court agrees with this contention. The appellant fronted that this case is the plot by his political opponents. However, the appellant did not prove if the officers who trapped him were politicians or they had any connection with his political opponents. He did not say if the officers or one of them were related politically or otherwise with the said ISSA GAILANGA whom he said had political grudges with him. The appellant also did not tender any proof to the effect that the said ISSA had conspired with PW2 to implicate him with these serious allegations. He did not even tender any proof that he had grudges with the said ISSA whom PW2 said had escorted him to report the appellant's solicitor of the bribe. Thus, the appellant did not have anything to back his complaint as required under **section 13 of the Prevention and Combating of Corruption Act**. This ground of appeal is also rejected.

As for non consideration of the appellant's defence which form the basis of complaint in the fifth ground of appeal, this court agrees with Mr. Wambali learned Counsel that the trial court considered the appellant's defence evidence along with the prosecution case before a final decision was reached. The

explanation and analysis of the defence evidence is witnessed from page seven (7) of the typed version of the trial court's judgment. Thus, this ground is baseless and it is also rejected.

In the last ground of appeal in relation to non observation of **section 312 (1) of the Criminal Procedure Act** the court join hands with the counsel for the respondent that the same is baseless. The trial magistrate prepared his judgment in conformity with the said provision of the law. The offence charged had been mentioned, evidence from both sides summarized, points for determination highlighted the decision thereon reached and reasons for the decision shown. This ground of appeal is thus rejected.

For the foregoing therefore, the appellant's appeal against conviction is found non- meritorious and it is dismissed. As for sentence, the appellant did not say anything to that effect. The respondent's counsel also did not say anything regarding the sentence. In that respect this court finds that while the appellant had been convicted in both two counts, the sentence did not reflect that. The appellant had been sentenced to a fine of Tshs. 500,000/= or three (3) years imprisonment. The trial magistrate did not indicate on which count among the two had this sentence been directed.

Rightly, since the appellant had been charged and ultimately convicted in both counts, each ought to have carried its sentence according to the relevant law. The court thus was at liberty to order the two sentences either to non concurrently or consecutively. This was not done and thus the sentence was an

ambiguous one. Under normal course of events this court would have remitted the court record to the trial court to rectify this error. However, for the interest of timely justice and to avoid unnecessary delay and inconveniences to parties, this court will proceed through its revisionary powers to rectify the said error.

Consequently, the sentence meted out by the trial court which has been held to be ambiguous is hereby quashed and set aside. In its place, since the appellant had been convicted in both counts he is sentenced to the punishment provided in law. He is thus sentenced in each count to a fine of Tshs. 500,000/= or in default to imprisonment of three (3) years. The sentences are ordered to run concurrently from the date the appellant was convicted by the trial court. As the record speaks the appellant had already paid the fine.

Finally, this appeal is found without merits and it is hereby dismissed in its entirety. It is so ordered accordingly.



(M. A. KWARIKO)

JUDGE

21/9/2012

Court: Right of Appeal fully explained.


(M. A. KWARIKO)

JUDGE

21/9/2012

AT DODOMA

21/9/2012

Appellant: Present

For Respondent: Mr. Wambali State Attorney

C/C: Ms. Komba.




(M. A. KWARIKO)

JUDGE

21/9/2012