

on the grounds contained in his memorandum of appeal mostly which may be summarized as follows:

- (i) That the caution statement did not comply with the law;
- (ii) That no proof that the appellant was given the alleged money and he refunded Tshs. 50,000/=;
- (iii) That all the witnesses came from the same family; and
- (iv) That the trial magistrate did not comply with Section 312 (2) of the Criminal Procedure Act, Cap. 20.

At the hearing of the appeal, the appellant preferred the learned State Attorney to respond to his grounds of appeal and thereafter he will reply. Ms. Magiri, learned State Attorney who appeared to defend the appeal had no objection to the appellant's appeal for the simple reason that the prosecution failed to prove its case beyond reasonable doubt that there is no proof of the appellant been given Tshs. 2,225,000/= by Zaitun Muhono Ramadhan (PW1), the complainant.

Having gone through the record of the lower court together with the appellant's memorandum of appeal and having heard the submissions made by the learned State Attorney I have no hesitation in allowing this appeal.

As to the fact of the case, Zaituni Muhono (PW1) told the trial Court that she paid the appellant money in instalments in order to

buy plot from him. She said the price for the plot was Tshs. 2,250,000/=. It was the testimony of PW1 that she paid the appellant Tshs. 1,100,000/= thereafter her mother Aziza Longopa (PW2) paid the appellant in instalments money totalling to Tshs. 1,150,000/=. PW2 testified that the appellant received the money in writing. The document was admitted as Exhibit P1. There is also evidence of caution statement of the accused person that was admitted as Exhibit P2 despite that the appellant objected for its admission and trial within trial was not conducted. In essence this was the prosecution evidence that led to the appellant's conviction.

I will start with the caution statement as I said the trial court proceeded to admit it without conducting an inquiry to establish its admissibility. The trial court was duty bound as a matter of procedure to conduct an inquiry in order to determine its admissibility as it was stated in the case of **Makumbi Ramadhani Makumbi & 4 Others Vs. Republic, Criminal Appeal No. 199 of 2010 CAT (Unreported)**. The caution statement is therefore expunged from the records.

Apparently, save for the aspect that PW1 and PW2 testified that the money was paid for buying plot there is no other evidence to prove the same. Exhibit P1 that was also relied by the prosecution only proves that the appellant was paid Tshs. 1,000,000/= for looking for a plot for PW1 and not payment for the purchase of the plot. Furthermore, the amount indicated in Exhibit P1 is Tshs. 1,000,000/= and not Tshs. 1,100,000/= as stated by PW1. Here there is clear

contradiction between the testimony of PW1 and Exhibit P1. Though Exhibit P1 has other amounts shown therein but these amounts were just scribbled with another ink pen. It appears to me that Exhibit P1 was later on added with other amounts therein in order to make a total of Tshs. 2,350,000/=. For this reason Exhibit P1 does not prove that Tshs 2,350,000/= was paid to the accused.

I therefore allow the appeal, quash the conviction and set aside the sentence of 3 years imprisonment together with an order of refund of Tshs.2,225,000/=. The appellant is to be released forthwith unless otherwise lawfully held.

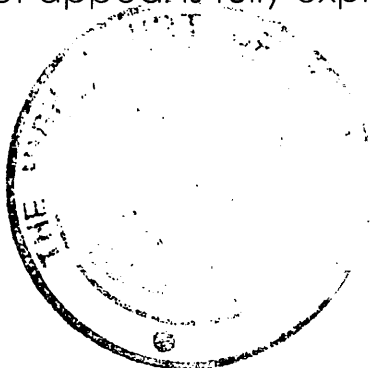
DATED at Dodoma this 12th day of October, 2016.



B.M.A Sehel

JUDGE

Judgment delivered at Dodoma under my hand and seal of the court, this 12th day of October, 2016 in the presence of the appellant and Ms. Kezilahabi, learned State Attorney for the respondent. Right of appeal is fully explained.



B.M.A Sehel

JUDGE

12th October, 2016.