

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

PC. CRIMINAL APPEAL NO. 7 OF 2018

(From the Appeal decision of the District Court of Babati Criminal Appeal No. 39 of 2017 and Originated from the Primary Court of Babati Criminal Case No. 338/2017)

DEOGRATIUS I. MWACHA.....APPELLANT

VERSUS

LILIAN FIDELS NJAU..... RESPONDENT

JUDGEMENT

30TH OCTOBER, 2018

MWENEMPAZI, J.

The appellant is appealing against the decision of the District court of Babati in Criminal Appeal No.39 of 2017 which dismissed the appellants appeal in its entirety on the reasons that it had no merit. The appellant was sued by the Respondent herein in the Babati Primary Court for the offence of stealing by agent contrary to section 273 (b) of the Penal Code, Cap. 16 R.E. 2002.

It was alleged in the primary Court of Babati that the appellant herein was given or entrusted with the money to the tune of Tshs.3,670,000/= (three Million, Six hundred Seven Thousands) by the Respondent with the aim that the appellant would purchase at Dar es Salaam spare parts for motor

vehicle on behalf of the Respondent and bring them at Babati where both the appellant and Respondents had their businesses. The evidence was lead by the Respondent and another witness Joseph Roma Selasin who testified to the effect that they agreed as husband and wife that in order to expand their business they should purchase more products, spareparts for motor vehicles for sale in their shop at Babati. The primary court was satisfied with the evidence tendered and convicted the appellant with the offence of stealing by agent contrary to section 273 (b) of the Penal Code, Cap. 16 R.E. 2002. He was sentenced to serve a sentence of 3 month conditional discharge and the appellant (accused) was ordered to pay compensation of the amount (Tshs.3,670,000/=).

The appellant was aggrieved and so he appalled to the District Court of Babati. His appeal was dismissed in its entirety on reason that it has no merit. Hence this appeal.

The appellant raised five grounds of appeal in the petition of appeal. He was unrepresented as well as the respondent. At the hearing he argued them generally whereby he faulted the lower courts by convicting him without there being any evidence that he really was entrusted with the money by the Respondent.

The Respondent also submitted on her appeal, supporting the decision of the lower courts. This court however, when considering on the merit of the charge against the appellant noted that the Primary court under section 18 (1)(c) is conferred with jurisdiction to try certain offences under the Penal code. The provisions read as follows:-

S.18 (1) A primary Court shall have and exercise jurisdiction –

(a) –

(i) –

(ii) –

(iii) –

(b)

(c) In all proceedings in respect of which jurisdiction is conferred on a primary court by the first schedule to this Act; and

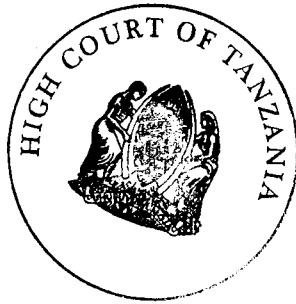
(d) All proceedings in respect of which jurisdiction is conferred on a Primary Court by any other law.

Section 19 (1)(a) of the Magistrates Courts Act, cap 11 R.E. 2002 provides that the practice and procedure of Primary Courts shall be regulated and, subject to the provisions of any law for the time being in force, their power limited in the exercise of their criminal jurisdiction, by the Primary Courts Procedure Code;

Under the circumstances obtaining in this case, it was wrong therefore for the Primary Court to entertain a charge of stealing by agent contrary to section 273(b) of the Penal Code, Cap 16 R.E. 2002. That offence is not among the offences listed in the first schedule to the Magistrate Courts Act, Part I.

I therefore invoke revisional powers of this court under section 31(1) and section 29 (b) of the Magistrate Courts Act and quash judgments and set aside orders of lower courts and order for the case to be instituted in the

court with jurisdiction to hear and determine according to law. This appeal is therefore struck out.




T. MWENEMPAZI
JUDGE
30/10/2018