

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**CRIMINAL APPEAL NO 02 OF 2018**

**(Originating from Criminal Case No 148 of 2016 of the District Court  
of Kisarawe at Kisarawe)**

**MBWANA BAKARI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

Date of last order: 2/5/2018

Date of Judgment: 16/5/2018

**Munisi,J**

Mbwana Bakari, the appellant, stood before the District Court of Kisarawe at Kisarawe charged with the offence of possession of forged notes contrary to section 348 of the Penal Code, Cap 16 RE 2002. Prosecution alleged that on the 6/12/2016 at Mtamba Village within Kisarawe District, Coast Region, without lawful authority or excuse, appellant was found in possession of 3 forged Tshs 5000/- bank notes marked No DK 2256663 while knowing the same was forged. Prosecution called four witnesses to prove the allegations. The court was satisfied at the conclusion of the trial that prosecution had proved its case to the required standard against the appellant and convicted him accordingly imposing a sentence of seven years' imprisonment. Dissatisfied with the decision, appellant has filed the present of appeal challenging the magistrate's finding based on four grounds of appeal. comprised of five grounds of

appeal. Essentially all the four grounds revolve around one main issue whether the evidence was sufficient to ground a conviction. Having given close scrutiny to the said grounds, they all revolve around one main issue; i.e. whether the evidence was sufficient to support the conviction entered by the trial magistrate.

On 3/5/2018 when I heard the appeal, the appellant appeared in person unrepresented and prayed to adopt his grounds of appeal. Miss Veronica Mtafya, learned State Attorney appeared for the respondent/Republic. On her part, Miss Mtafya opted to support the appellant's appeal on the main ground that the evidence presented by the prosecution was too weak to support the conviction entered by the trial court. She elaborated that the evidence was wanting because; there was no seizure certificate and the witness who certified the notes – exhibit P1 as being forged was not called. Further that the evidence of PW2 which was relied upon heavily by the magistrate was comprised more of hearsay. With regard to the sentence, she argued that it was illegal because the magistrate had no powers to impose a sentence of more than 5 years.

I have studied the lower court's record together with the complaints raised by the appellant in his petition of appeal. It is apparent that the magistrate was impressed by the evidence that the appellant was the one circulating the forged notes. The magistrate concluded his judgment, thus:

1. *"The actions of accused person in using the said fake notes. The adduced evidence by the prosecution side is that on the material date the accused person was found in possession of 3 forged bank notes of Mtamba village. Also PW4 told this court that in all three times the accused person gave him Tshs 5000/- note asked him to buy some goods. Again PW3 police officer has also told this court that upon arrested the accused person was found in possession of forged bank notes which were prove by the Bank of Tanzania to be fake notes.*

2. *The accused person jumped bail and do not appear for hearing shortly before the prosecution case is close. This is other fundamental factor which prove the accused person has knowledge towards the offence charged because he jumped bail without any causes over which he had no control.*

Having gone through the evidence presented by the prosecution, I do not see any evidence supporting the proposition that appellant was found in possession of the disputed notes nor was there any concrete evidence that the same were forged. It is only PW3 who told the court that the Bank of Tanzania confirmed that the notes were forged and tendered a letter to that effect. The person who examined the notes was not called to give evidence. Further PW3's evidence is not clear on what he found on the appellant. From what PW1 and PW2 told the court, it is glaring hat their evidences were comprised of hearsay accounts from the rumors circulating in the village that appellant was the one circulating those fake notes. The evidence of PW4 which appears to have impressed the trial magistrate was to the effect in September 2016 he was twice given the 5000/= by the appellant to buy some stuff from the shops. He told the court thus:

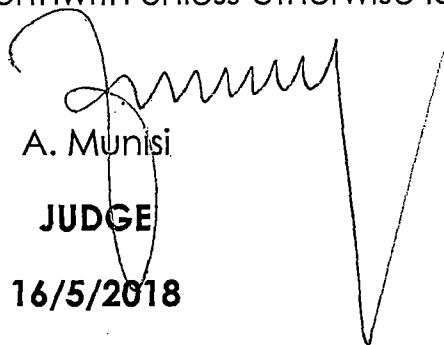
*"Later, rumors spread in the village that there were persons spreading the money. When I went to the same shop to charge my phone battery I found the fake note fixed to the wall as demo to fake notes spreading in the village, on seeing that I commented that the same was given to me by the accused person, on saying that I was taken to the village office where I narrated what had happened together with other people we followed the accused person at his farm where he admitted to distribute the same, he was taken to the police."*

It is glaring from the above excerpt of PW4's evidence that even himself was referring to the news as rumors. Since that was the only direct evidence relied upon by the magistrate to convict the appellant, this being a criminal trial, where proof is beyond

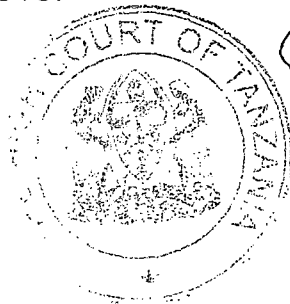
reasonable doubt, the magistrate was wrong to rely on rumors to support a conviction against the appellant. The said rumors being the only evidence on the record, I have no doubt the appeal has merit. I am thus in agreement with the appellant and Miss Mtafya, learned State Attorney that there was no evidence whatsoever to support the conviction entered by the magistrate.

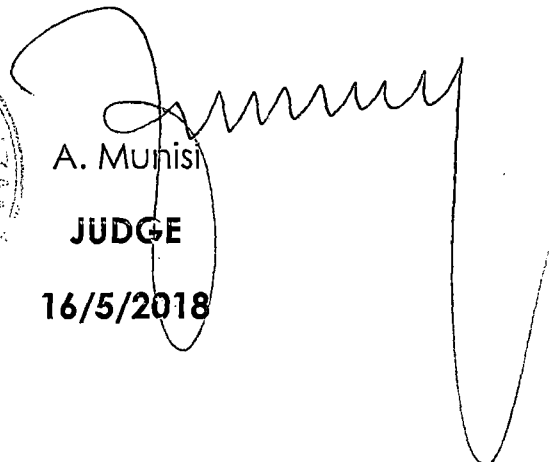
In the event, this appeal has merit and it is allowed. Accordingly, the conviction is quashed; sentence set aside and the appellant is to be released from prison forthwith unless otherwise lawfully held.



  
A. Munisi  
**JUDGE**  
**16/5/2018**

**Court:** Judgment delivered in Chambers in the presence of the Appellant in person and in the presence of the Miss Monica Ndakidemi, learned State Attorney for the Republic/Respondent this 16/5/2018.



  
A. Munisi  
**JUDGE**  
**16/5/2018**