

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

DISTRICT REGISTRY OF BUKOBA

AT BUKOBA

HC. CRIMINAL APPEAL NO. 3/2017.

(Arising from the Criminal Case No. 136/2016 of the

District Court of Bukoba).

DPP ----- APPELLANT

VERSUS

HONORATUS BILUNGI SYLIVESTER ----- RESPONDENT

JUDGMENT

26/7/2018 & 20/9/2018

Kairo, J.

Having been aggrieved by the decision of the District court of Bukoba in Criminal Case No. 136/2016 delivered on 24/8/2016, the DPP decided to lodge this appeal to challenge it.

A brief background that resulted to this appeal is that the Respondent was charged for two counts; first count he was accused for corrupt transaction C/S 15 (1) (a) of the Prevention and combating of corruption Act, No. 11/2007. It was alleged that, the Respondent on 10/3/2016 and 14/3/2016 at Katerero Ward Office in Bukoba District within Kagera Region did corruptly solicit the sum of Tshs. 30,000/= from one Wilfred Rwebugisa as an inducement to offer him a copy of a judgment of land suit No. 01/2016 which was delivered by the Katerero Ward Land Tribunal, a matter which was in relation to his principal affairs.

As for the second count, the Respondent stand charged for corrupt transaction C/S 15 (1) (a) of the Prevention and combating of corruption Act No. 11/2007. For this count it was alleged that, the Respondent on 14/3/2016 at Katerero Ward Office in Bukoba District within Kagera Region did corruptly received the sum of Tshs. 30,000/= from one Wilfred Rwebugisa as an inducement to provide him with a copy of the Judgment of Land suit No. 01/2016 entered by Katerero Ward Tribunal, a matter which was in relation to his principal affairs. The Respondent pleaded not guilty to both of the counts. The prosecution called four witnesses to prove the case. After adducement of the evidence and defence by the Respondent, the court found the accused (Respondent herein) to be guilty of both of the counts charged and convicted him accordingly. The court thereafter sentenced the Respondent to pay a fine of Tshs 200,000/= or go to jail for three years for the first count. He was further sentenced to pay a fine of

Tshs. 200,000/= or go to jail for three years for the second count. The court further ordered the jail sentence to run concurrently should he fail to pay the fine. According to record, the Respondent paid a fine of Tshs. 200,000/= for each count making a total of Tshs. 400,000/= thus escaped the jail sentence.

This is the decision which aggrieved the Appellant, hence this appeal raising one ground couched as here under:-

1. That the trial court gravely erred in law by passing the sentence against the Respondent which is contrary to the law.

The Appellant thus prays the court to allow the appeal by quashing and set aside the sentence of the trial court and sentence the Respondent accordingly.

In his reply to the petition of appeal, the Respondent refuted the Appellant's contention and stated that the trial court exercised its powers vested under its jurisdiction correctly and delivered the judgment fairly for the interest of justice. He thus pleaded with the court to dismiss this appeal and uphold the orders of the trial court.

The Appellant was being represented by Mr. Haruna Shomari; the Learned State Attorney while the Respondent was self represented.

When invited for oral submission, the Learned State Attorney contended that the trial court erred for passing a sentence that was contrary to law. He

went on that, according to record, the Respondent was charged with two counts of soliciting and receiving the bribery amounting to Tshs. 30,000/= both C/S 15 (1) (a) of Act No. 11/2017 (supra).

That the Respondent was found guilty of both counts and thus was sentenced to either imprisonment of a term of three (3) years for each count which were ordered to run concurrently or pay a fine of Tshs. 200,000/= for each count. He went on submitting that the Respondent paid a fine of Tshs. 200,000/= for each count vide exchequer receipt No. 11561896 of 24/8/2016. The Learned State Attorney argued that the imposed fine wasn't proper as the same was contrary to section 15 (2) of Cap 11/2017 (supra) which stipulates that the fine should not be less than Tshs. 500,000/= and should not exceed Tshs. 1,000,000/=. He thus concluded that the said amount of Tshs. 200,000/= imposed for each count was against the said provision as the same was below the stipulated fine of Tshs. 500,000/.

The Learned State Attorney thus concluded by praying the court to correct the said sentence and order the correct one in accordance with the law.

The Respondent prayed the court to adopt his reply to the petition of appeal as part of his submission. He went on to submit that he paid the fine of Tshs. 400,000/= as ordered by the trial court, being the fine of Tshs. 200,000/= for each count he was found guilty with. He further informed the court that he was HIV positive and prayed the court to find out that the fine was proper

and enough. He further told the court that he was not in a position to pay more as he doesn't have the money to do so. He thus prayed the court to dismiss the appeal.

When invited for rejoinder, the State Attorney informed the court to have nothing as a rejoinder.

After hearing the parties and going through the document, the question to be determined by this court is whether the appeal is based on a founded ground.

It is not disputed that the Respondent was found guilty by the trial court of the two counts of soliciting and accepting bribery of Tshs. 30,000/= from one Wilfred Rwebugisa. It is further not disputed that the Respondent was sentenced to pay a fine of Tshs. 200,000/= for each count or being imprisoned for a term of 3 years for each count which was ordered to run concurrently. It is also not disputed that the Respondent paid Tshs. 400,000/=being the fine imposed by the trial court for the two counts he was found guilty with.

The State Attorney has attacked the imposed fine, arguing that the same was not in accordance with the law. For easy reference I wish to quote the provision under which the Respondent was charged which is section 15 (1) (a) of Act No. 11/2007;

Section 15 (1); any person who corruptly by himself or in conjunction with any other person.

(a) *Solicits, accepts or obtains or attempts to obtain from any person for himself or any other person, any advantage as an inducement to, or reward for, or otherwise account of, any agent, whether or not such agent is the same person as such first mentioned person and whether the agent has or has no authority to do, or for bearing to do, or having done or for bone to do anything in relation to his principal affairs or business commits an offence of corruption.*

(2) A person who is convicted of an offence under this section shall be liable to a fine of **not less than five hundred thousand shilling** but not more than one million shillings or to imprisonment for a term of not less than three years but not more than five years or both. (emphasis mine)

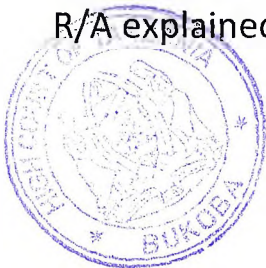
Looking at the penalty for the charged offences, the fine that was supposed to be imposed and be paid was not to be less than Tshs. 500,000/=. In that respect therefore, I join hands with the Learned State Attorney that the imposed fine wasn't correct as was contrary to the amount stipulated under section 15 (2) of Act No. 11/2017 (supra). The Appellant has told the court that he is HIV positive and doesn't have more money to pay. Much as I sympathize with the ailment of the Respondent (if true anyway), the law has stipulated Tshs. 500,000/= to be the minimum as such the court's hands are tied and cannot order less than what has been stipulated by law. With regards to the having no money to pay, suffice to state that the fine is an alternative to imprisonment. Thus the Appellant can opt for it if he so wishes or leave it.

In the fore going and having considered all of the factors this court orders as follows:-

1. That the imposed fine sentence is increased from Tshs. 200,000/= to Tshs. 500,000/= for each count as per section 15 (2) of Act No. 11/2007.
2. That since the Respondent has already paid Tshs. 400,000/=, he is ordered to add another Tshs. 600,000/= to make it 1,000,000/= being the fine of Tshs. 500,000/= for each count found guilty with.
3. Should the Respondent fail to make the additional amount as ordered, the sentence of imprisonment to three years as an alternative shall be imposed effective the date of this judgment. For avoidance of doubt, the amount paid of Tshs 400,000/= being the fine paid is ordered to be returned to the Respondent forthwith should the Respondent fail to add the additional amount and imprisonment sentence be imposed instead.

It is so ordered.

R/A explained



At Bukoba

20/9/2018


L.G. Kairo
Judge

Date: 20/09/2018

Coram: Hon. L.G. Kairo, J.

Appellant: Mr. Haruna Shomary – S/A

Respondent: Present in person

B/C: Peace M.

State Attorney: Hon. Judge, the matter is for judgment. We are ready to receive it.

Respondent: I am also ready to receive the judgment.

Court: The matter is scheduled for judgment. The same is ready and is read over before the State Attorney Mr. Haruna Shomari representing the Appellant and before the Respondent in person in open court today 20/9/2018.



L.G. Kairo

Judge

20/09/2018