

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

CRIMINAL APPEAL NO. 349 OF 2016

(Originating from Ilala District Court at Samora Avenue
in Criminal Case No. 318 of 2014)

JUMA MAJALIWA.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

MKASIMONGWA,J.

Juma Majaliwa (Appellant) and Adauti Thomas stood before the District Court of Ilala at Samora Avenue charged with Obtaining money by false pretenses contrary to section 302 of the Penal Code [Cap. 16 R.E 2002]. Only the appellant was found guilty, convicted and sentenced to seven (7) years imprisonment term for the offence. The Appellant is aggrieved by both the conviction and sentence so he challenges them by appeal a petition of which raises seven grounds. He did again file a supplementary petition of appeal which contains twelve grounds.

The facts of the case as they can be comprehended from the adduced prosecution evidence are as that one Abdallah Liputa and Zaituni Khalfan Kilimo (PW2) are a husband and wife respectively. The two wanted to purchase a motor vehicle (car). Sometime in August, 2014 the husband

sent his son one Msafiri Abdallah (PW1) to a person he alleged was selling a car so that he inspects and test the vehicle they intended to buy. It is when PW1 went and met with the Appellant. The later represented to him that he has a relative at Tabata who was selling a motor vehicle. The two went to Tabata Chama where they met with Kulwa Ramadhani. Kulwa Ramadhani showed them a motor vehicle with Registration No. T 539 BTA make Toyota Noah, Black in colour which upon inspecting and testing it PW1 found the same to be in a good mechanical condition and agreed to buy it at Tshs. 7,200,000/= which information he passed to the father who again passed it to PW2.

On 12/8/2014 Abdallah Liputa gave to his wife (PW2) a sum of Tshs. 7,200,000/= to buy the car. Accompanied by PW1 and the appellant PW2 came to Tabata Chama and while they were at Tabata Garage, the appellant made a call to Kulwa Ramadhani whom he said was his sister. After a half an hour Kulwa Ramadhani came to the garage driven in a used motor vehicle with Registration No. T 539 TBA make Toyota Noah, black in colour. PW2 again was impressed by the car upon seeing it and agreed to buy it. Kulwa Ramadhani and the appellant wanted them to go to the seller's home for them to execute the car sale agreement. They all left to the home leaving the motor vehicle there at the garage. At the home PW2, paid the price money (Tshs. 7,200,000/=) which was first received by the Appellant and after counting it he handed the same to Kulwa Ramadhani. The Appellant and Kulwa Ramadhani then asked PW1 and PW3 to wait there outside as they held private conversation. After 15 minutes later PW2 went back to the garage where she did not find the motor vehicle. She

came back and informed this to PW1. They again detected that Kulwa Ramadhani had escaped from the home to an unknown place. Later there came the landlord who confirmed Kulwa Ramadhani to be his tenant. Both the landlord and Juma Majaliwa (the appellant) were surprised by what Kulwa Ramadhani did. The appellant knows that Kulwa Ramadhani had a motor vehicle.

In its decision the trial court found that determination of the case hinges on two issues, that is:

1. Whether the prosecution managed sufficient evidence to prove the offence of obtaining money by false presence against the 1st and 2nd accused persons.
2. Whether the prosecution managed to provide sufficient evidence to prove the offence beyond all reasonable doubt?

Upon considering the evidence adduced the court below found it is proved the appellant did receive Tshs. 7,200,000/= and gave it to Kulwa Ramadhani being the purchase price of the motor vehicle and that the Appellant had assured PW1 and PW2 that Kulwa Ramadhani who is his sister was trust worthy. The court also was satisfied from the evidence that it is not disputed that it is the appellant who brought PW1 and PW2 to that Kulwa Ramadhani. This evidence, the court found, proved involvement (collusion) of the Appellant in the commission of the offence. The fact that the motor vehicle was not handed over to the buyer and upon search, it was found that the registration number that the motor vehicle, a subject matter of the sale agreement, was bearing was that assigned to the motor

cycle, the court found the Appellant to have obtained money by false pretenses. He was therefore convicted and sentenced as shown hereinabove.

When the appeal came up for hearing the appellant appeared in person and the respondent Republic was represented by Miss Monica Ndekidemi, learned State Attorney. In his submission the appellant contended that he has filed a petition of appeal and the supplementary one in which he has raised several grounds of appeal. He prayed the court to go through the grounds and allow the appeal.

In her submission Miss Monica Ndekidemi contended that the Respondent Republic supports the conviction and sentence imposed against the appellant. According to the learned State attorney the appellant raises six issues or complaints in the petition of the Appeal. In the first complaint, he asserts that the case against him was not proved beyond doubt for there was no evidence given to show if he received the alleged money and that in the case there was no written agreement exhibited. In that regard the learned state attorney submitted that the adduced prosecution evidence proves beyond doubt the case against the Appellant. The evidence given by PW1 and PW2 is to the effect that the Appellant introduced them to Kulwa Ramadhani whom it was said was selling a motor vehicle and that at the time of sale of the motor vehicle the appellant was present and it is him who made them to believe that Kulwa Ramadhani was a reliable person. The learned State Attorney added that the available evidence is again to the effect that the Appellant was paid

Tshs. 7,200,000/= so that he pays it to the seller. This according to the learned State Attorney is the direct evidence against the appellant.

As to the sentence complained by the appellant, Miss Monica Ndekidemi submitted that the sentence of seven years imprisonment imposed by the court is lawful for it is provided for under the law. The Appellant also complained of the contradictory prosecution evidence which the learned state Attorney submitted that the complaint is misconceived because it is not supported by the court proceedings. The learned State Attorney contended further that the appellant also complains showing that he was convicted from the weakness of the defence case. She submitted that, there is nowhere in the judgment the trial court shows that it is from the weakness of the defence, the appellant was convicted, instead it held that it was satisfied that the case against the appellant was proved beyond reasonable doubt and that the defence case did not raise any doubt.

Regarding to the right to be heard as complained by the Appellant the learned State Attorney contended that, the appellant was accorded an opportunity to be heard. He chose to give a sworn defence and had three witnesses who again came and testified in court. Lastly, the Appellant complained that the court did not enter conviction in the judgment. This is responded by the learned State attorney by referring the court to the judgment from which it is clear that the appellant was duly convicted of the offence he was being charged with.

On the basis of the submissions she made, the learned State Attorney prays the court that it finds no merit in this Appeal and the same should be dismissed.

In a short rejoinder, the appellant submitted that the paid price money was paid directly to the seller of the vehicle one Kulwa Ramadhani and that there was a written contract executed by the buyer and seller in the sale of the vehicle. He added that Kulwa Ramadhani disappeared and the incidence was reported to the police and eventually he was charged.

That is all what was submitted by the parties to this appeal. As said the appellant was charged with and convicted of an offence under Section 302 of the Penal code [Cap. 16 R.E 2002]. The section reads as follows:-

"Any person who by false presence, and with intent to defraud, obtains from any other person anything capable of being stolen or induces any other person to deliver to any person anything capable of being stolen commits an offence and is liable to imprisonment for seven years"

So that the prosecution wins a conviction in respect of an offence under this section of law, the prosecution must prove beyond reasonable doubt all elements that constitute the offence. The prosecution must prove that:-

1. The Accused by false pretence, and with intent to defraud
2. Did obtain from the complaint anything capable of being stolen or
3. Did induce a person to deliver to any other person anything capable of being stolen.


Going by the evidence, there is ample evidence that one Abdallah Liputa wanted to buy a motor vehicle and that he sent PW1 to meet someone who was selling a motor vehicle make NOAH and that person PW1 had met is the appellant. According to PW1 the Appellant was not the one who was selling the vehicle but it was Kulwa Ramadhani whom the appellant had introduced to PW1. PW1 saw and tested the motor vehicle Kulwa Ramadhani was selling and found it mechanically good. There is ample evidence that Abdallah Liputa agreed to buy the vehicle and sent his wife one Zaituni Khalfani (PW2) with Tshs. 7,200,000/=, the agreed price so that she buys the vehicle. The prosecution evidence also shows that the money was paid and that PW2 gave it to the Appellant and after connecting it, he gave the same to Kulwa Ramadhani, the seller, and that he did so in the presence of the PW1 and PW2. PW1 and PW2 could not tell in evidence if the money had passed into the ownership of the appellant as the evidence shows that Kulwa Ramadhani had escaped with the money leaving back PW1, PW2 and the Appellant who were waiting for the motor vehicle to be handed over to the buyer. One may ask therefore under the circumstances of the case whether the appellant did obtain Tshs. 7,200,000/= ? In essence one is said to have obtained a property where he obtains title to the said property. Where one is charged with obtaining property by false pretense essentially the allegation is that the accused person did knowingly obtaining title to another person's property by misrepresenting a fact with the intent to defraud. The adduced evidence in my view does not show if the appellant did acquire any title to Tshs. 7,200,000/=. It is conspicuously shown by the evidence that the money

was paid to Kulwa Ramadhani, who said was selling the car. The fact that the appellant was handed over the money and that he counted it before it was given to Kulwa Ramadhani does not show if he acquired title in respect of that money. As such he cannot be held to have obtained the money. One may allege that the Appellant did induce the complainant to deliver the money to Kulwa Ramadhani. Well; but it is evident that the PW1 and PW2 were acting on the instructions of Abdallah Liputa. The latter does not surface in the proceedings. He could have told the court who had presented to him as the one who was selling the car. Was it Kulwa Ramadhani or the appellant?

In such circumstances suffice it to say that the offence of obtaining money by false pretenses was not proved against the appellant and that leads to the conclusion that the appellant was wrongly convicted. In that premises the conviction cannot be sustained. It is accordingly quashed and the sentence imposed is set aside. It is ordered that Appellant be forthwith released from jail if he is not therein for other lawful causes.

Dated at Dar es Salaam this 24th of April, 2018.




E. J. Mkasimongwa

JUDGE

24/4/2018