

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

**AT DAR ES SALAAM**

**CRIMINAL APPEAL NO. 130 OF 2017**

*(Appeal from the judgement of the District Court of Morogoro at Morogoro,  
Criminal Case No. 212 OF 2015)*

**GODFREY ALEX MBECHA.....APPELLANT**

**VERSUS**

**THE REPUBLIC.....RESPONDENT**

**JUDGEMENT**

**NGWEMBE, J.**

Godfrey Alex Mbecha, was convicted and sentenced to serve eight (8) years imprisonment for the offence of stealing by agent contrary to section 273 (b) and section 258 (1) of the Penal Code Cap 16 R.E. 2002. In brief facts of the case is summarized that the appellant was entrusted a vehicle make Toyota Rav. 4 with registration No. T 673 BVs property of Jonas Gwabuhura Mpita. The appellant being a broker of vehicles, he was entrusted to dispose of the vehicle worth TZS 15 Million. The agreement was documented and both parties signed with their witnesses. In turn the appellant sold the vehicle to Jacob Luchemo Mang'ati for the amount of TZS 7 million and on top of that gave him his vehicle Paso bearing registration no. T 479 CGP. The sale agreement was admitted in court as an exhibit P. IV. The appellant did not revert the purchase of the sold vehicle to the owner.

The appellant was charged in court for stealing by agent and on 8<sup>th</sup> September, 2016 the appellant was convicted and sentenced to eight (8) years imprisonment. Being

dissatisfied with the conviction and sentence, he filed notice of appeal on 16<sup>th</sup> September 2016 equal to eight (8) days from the date of judgement. The appellant preferred three (3) grounds of appeal which in all respect the appellant is challenging that prosecution failed to prove the offence against him.

On the hearing, the appellant being not represented, had nothing useful than to rely on his grounds of appeal with a prayer that the conviction be quashed and the sentence be set aside. On the adversary side, the Republic had the service of Ms. Elen Masululi, learned State Attorney. The learned State Attorney supported the conviction and sentence, that prosecution proved the case beyond all reasonable doubt. She narrated the evidence in record that PW1 was the owner of vehicle bearing registration T. 673 BVS Toyota RAV 4. Prior to handing over the vehicle to the appellant the two signed a contract which was admitted in court as an exhibit P1. The appellant and PW1 came to know each other through PW3 who knew both the appellant and PW1. PW3 testified that at one time she entrusted the appellant with her vehicle to sell and the appellant being a broker sold the vehicle and she was paid all the purchase price. PW3 was a witness of the contract between the appellant and PW1. Further the evidence of PW2 proved that he was the one purchased the vehicle T. 673 BVS Toyota RAV 4. The sale agreement was admitted in court as exhibit P4. The copy of registration card of the vehicle was also produced in the trial court and admitted as exhibit P II. The last prosecution witness was PW4 who was a police officer who arrested the appellant at Ifakara nearby Kidatu bridge. He took his caution statement in the presence of his relative called Jackson Mbecha. In the caution statement he admitted to have sold the vehicle of PW1 to PW2 at a price of TZS 14 Million, but did not revert the proceeds to the vehicle owner.

On defence the appellant and DW2 did not dispute on the crux of the subject matter but all ended up disputing the caution statement. Finally, the learned State Attorney,

submitted that the prosecution proved the case beyond all reasonable doubt and this appeal is baseless and wastage of time.

Beginning with, I entirely associate myself with the contention of the learned State Attorney to the effect that the evidence produced by the prosecution at the trial was supported by documentary evidence which under the law of evidence documentary evidence is the best and reliable piece of evidence. Section 64 (1) of the Evidence Act Cap 6 R.E. 2002 states that primary evidence means the document itself produced for the inspection of the Court. In the trial court, PW1 produced a contract which was executed between PW1 and the Appellant in relation to the vehicle number **T 673 BVS Toyota RAV 4**. The contract was admitted in court as exhibit P1. Above all PW2, the buyer of **vehicle T. 673 BVS Toyota RAV 4** also produced contract of sell which is a self-explanatory piece of document which the two of them entered into a sale agreement of the vehicle marked exhibit P IV, which content is self-explanatory. Further the evidence of PW3 complimented the evidences of PW1 and that of PW2. On the contrary, the Appellant's defence was purely centered on admissibility of caution statement, without shacking the strong evidence of PW1, PW2 and that of PW3.

Even if I am to agree with the appellant, that the caution statement was taken unwillingly, yet the trial court did not convict the appellant based on the caution statement. The judgement was arrived after analyzing the whole prosecution evidence and documentary evidence.

Indeed, the appellant was entrusted with a vehicle of PW1 to find a suitable buyer and remit the sell proceeds to the owner. The appellant did not say anything in relation to the entrusted vehicle, he neither admitted to sell it nor denied to use the proceeds of the sold property.

The Court of appeal in the case of **Pascal Mwita and 2 others V. R (1993) 1 LK 295** at page 301 Justice of appeal Mnzavas quoted the decision in **R V. Nanji Sunderji (2)** that:

*“Where property is entrusted to a person and he converts it to his own use and disposes of it, whether or not the intention to do so was conceived at or after the receipt of the property, as soon as there is an overt act showing a departure from the instruction in regard to it, the offence of theft is complete and a foundation for a case of receiving with guilty knowledge laid”*

In the present case there is no dispute that the vehicle registered **T 673 BVS Toyota RAV 4** was entrusted to the appellant by PW1, subsequently he sold it to PW2 and the proceeds of the vehicle never reached the owner (PW1). That cannot be something else than theft by agency contrary to sections 273 (b) and section 258 (1) of the Penal Code Cap 16 R.E. 2002.

The remaining issue before my conclusion is whether prosecution proved the case to the standard required. Chief Justice Georges in the case of *Fanuel s/o Kiula v. R. (1967) HCD at 369* laid down a basic principle of proving criminal case that:

*“It is not necessary to accept the evidence of the accused in order to find him not guilty. All that an accused need to do is to raise a reasonable doubt as to his guilt”.*

Prior to conclusion, I have sought assistance from the Court of Appeal in *Criminal Appeal No. 267 of 2006 Mkaima Mabagala V. R (Unreported)*, who at length discussed on the reasoned judgement of a court and held that:

*“For a judgement of any court of Justice to be held to be a reasoned one, in our respectful opinion, it ought to contain an objective*

*evaluation of the evidence for the defence which is balanced against that of the prosecution in order to find out which case among the two is more cogent. Such an evaluation should be a conscious process of analyzing the entire evidence dispassionately in order to form an informed opinion as to its quality before a formal conclusion is arrived at.*

Using this legal benchmark, I respectfully and confidently find that the trial court did live up to this requirement.

Consciously, I find the appellant was properly convicted. However, the court sentenced him eight (8) years imprisonment, very close to the maximum sentence of ten years as per Section 273 (b) of the Penal Code Cap 16 R.E. 2002. The trial court further ordered, which order I respectfully agree, that the appellant, upon completing his imprisonment of 8 years, shall proceed to pay PW1 all proceeds of the sold vehicle.

For sure, the vehicle owner (PW1) must anxiously, be looking for a day when the appellant will be released from prison, so that he may realize the proceeds of his vehicle. Financially, the purchase value of money today or that matter this year will differ with the same amount next year due to many factors. In this case PW1 has to wait for 8 years before he could receive the same amount of TZS 14 million. Surely, the value of TZS 14 million of 2018 will be totally different from the same amount 8 years to come.

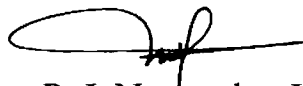
For this reason, I have decided to invoke **section 366 (1)** of the Criminal Procedure Act Cap 20 R.E. 2002 to reduce the sentence of 8 years entered by the trial court to 4 years effective from the date the appellant started serving his sentence. Upon

completing his sentence, the appellant shall forthwith pay the complainant all proceeds of the sold vehicle.

In the circumstances, this appeal is partly dismissed and partly allowed to the extent stated above.

**Right of appeal to the Court of Appeal is explained to parties.**

Dated at Dar es Salaam this 28<sup>th</sup> day of June, 2018



P. J. Ngwembe, J.

**28/06/2018**

Delivered at Dar es Salaam in Chambers on this 28<sup>th</sup> day of June, 2018; in the presence of the Appellant and Ms. Monical Ndakidemi State Attorney for the Republic.



P.J. Ngwembe, J

**28/6/2018**