

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

AT DAR ES SALAAM

PC CRIMINAL APPEAL NO. 12 OF 2018

(Originating from Kiiombero District Court, Appeal No. 25/2016 and Mngeta Primary Court Criminal Case No. 152/2015)

HASHIMU GOLI.....APPELLANT

VERSUS

1. ABUSHEHE RAMADHANI

2. HASSANI RAMADHANIRESPONDENTS

JUDGMENT

Last date order: 19/09/2019
Judgement date: 10/10/2019

MLYAMBINA, J.

The Appellant herein and the 1st Respondent had agreed to cultivate seven (7) acres of paddy and share the harvests thereof equally. Upon harvest, they got 28 sacks of paddy but the division was faced with various challenges. It was further unfortunate the Respondents herein opted to steal the 28 sacks of paddy. Following such incident, the Appellant lodged Criminal Case No. 152 of 2015 before the Mngeta Primary Court accusing the Respondent for stealing the 28-paddy sack while in the farm contrary to Section 265 of the Penal Code Cap 16 (R. E. 2002). Upon trial, the prosecution proved the following:

1. That, the Appellant herein and the 1st Respondent herein cultivated the paddy farm jointly and harvested 28 sacks of paddy with 10 x 10 debit density.
2. The Respondents herein fraudently sold the 28 sacks of paddy without involving the Appellant.

In the light of the afore findings, the Respondents were found guilty and sentenced to ten months imprisonment or pay compensation at the tune of TSZ 200,000/= the 1st Respondent was further ordered to give 145 sacks of paddy to the Appellant. Aggrieved with the decision of the Primary Court, the Appellant herein un successfully appealed to the Kilombero District Court Via Criminal Appeal No. 25 of 2016. Hence this appeal on the following grounds:

1. The learned Magistrate erred in law and fact of this case by upholding the judgment of the lower court without considering the fact that the Respondents themselves ignored to take case of the agreement between the Appellant and stole the Appellant's crops.
2. That, the Trial Magistrate failed to consider the offence of the Respondent of stealing by false presence thus he sentenced them six months in jail while that sentence does not balance with the offence which both Respondents were found guilt.

3. That, the learned Trial Magistrate failed dismally to appreciate the fact of this case thus proceeded to dismiss the appeal lodged at District Court whereas the said Magistrate satisfied that the Respondents committed the offence and breached the agreement with the Appellant.

Wherefore, the Appellant prayed the lower Courts judgements be set aside and the Appellant be awarded orders and judgement made by the lower Courts be rescinded and substituted for order that the claims by the Appellant be granted as prayed at the Primary Court.

In the light of the foregoing, let me start with the second ground of appeal. I noted true that the trial Court was in error for sentencing the Respondent for imprisonment of 10 months. **Section 265 of the Penal Code Cap 16 (R.E 2002)** is very clear and explicit on the sentence of a person who commits an offence of theft. It provides:

"Any person who steals anything capable of being stolen commits an offence of theft, and is liable, unless owing to the circumstances of the theft or the nature of the thing stolen, some other punishment is provided, to imprisonment for seven years."

The trial Court, therefore, ought to have sentenced the Respondent to seven years imprisonment instead of ten months.

Needless to say, the above findings, the Respondents had an alternative sentence of paying compensation at the tune of TZs 200,000/=. The 1st Respondent was further ordered to give 14 sacks of paddy to the Appellant.

It is my finding that, as stated by the Appellant, the sentence of TZs 200,000/= compensation did not balance with the offence committed. In my found view, as I hereby order, the Respondents jointly to serve a sentence of seven years imprisonment or pay compensation of TZs 700,000/= in total.

The order to give 14 sacks of paddy to the Appellant issued against the 1st Respondent remains undisturbed as it was fairly issued in accordance to the terms of the contract and the charges filed before the Primary Court.

On the 1st ground of appeal, I have time to go through the submissions of the parties and the original records. I noted the charges before the Primary Court was for theft of 28 sacks of paddy contrary to **Section 265 of the Penal Code**. It is not featuring anywhere in the lower record (Trial Court) that the Appellant herein claimed the total 75 sacks of paddy as the Appellant wants this court to believe. On that note, the District Court was proper in

upholding the decision of the Primary Court save for the low sentence which I have already intimated.

Indeed, to answer the 3rd ground, the District Court was justified in reaching its decision by upholding the decision of the Primary Court on the agreement basis serve for the minimal sentence imposed.

In the final analysis, I find the appeal have merits basing on the second ground of appeal. To that end, the Respondents remain convicted as they were charged by stealing 28 sacks of paddy contrary to **Section 265 of the Penal Code Cap 16 (R.E 2002)**. The sentence of 10 months imposed to the Respondent is hereby set aside as it contravened the provision of **Section 265 of the Penal Code Cap 16 (R.E 2002)**. The Respondents therefore are sentenced to serve seven years imprisonment or pay jointly the sum of TZS 700,000/= or TZs 350,000/= each. The computation of seven years imprisonment shall take into account of the already served 10 months. The 1st Respondent one Abushehe Ramadhani who is not at the Court on the date of this judgment be arrested and his prison service shall start running concurrently from the date of arrest or be acquitted after paying compensation at the tune of TZs 350,000/=.



**Y. J. MLYAMBINA
JUDGE
10/10/2019**

Judgment pronounced on 10th day of October 2019 in the presence of the Appellant in person and the 2nd Respondent in person. Right of appeal explained.



**Y. J. MLYAMBINA
JUDGE
10/10/2019**