

**IN THE HIGH COURT OF TANZANIA
IN HE DISTRICT REGISTRY
AT MWANZA**

CRIMINAL APPEAL NO. 291 OF 2018

(Arising from Criminal Case No. 12 of 2018 of Nyamagana District Court Mwanza)

**TIMOTHEW RUBEN @ KAUNDA..... APPELLANT
VERSUS**

THE REPUBLIC.....RESPONDENT

JUDGEMENT

18.11 & 17.2.2019

U. E. Madeha, J

The appellant was arraigned before Nyamagana District Court sitting in Mwanza Region in which he was tried and convicted with the offence of Stealing contrary to section 258 and 265 of the Penal Code Cap 16 (R.E 2002). The complainant went out of his house to buy a television. He met with two women in the city and took him to Bugando hill. They met the accused who declared himself as a Padre of the Catholic Church. The accused told the complainant that he was selling minerals. The complainant gave him Tshs of 2,800,000/= in order to be given minerals. The accused entered the Bugando Catholic Church at the bishop's office and when he returned, he came out with a box which was alleged to have gold in it. When the complainant opened the box, he found that there were

no minerals inside. The accused went away and the police arrived at the scene. At the end of the day the appellant was sentenced to twelve-months absolute discharge and was ordered to return Tshs 3,000,000/= to the complainant. Dissatisfied with the conviction and sentences imposed by the trial court, the appellant lodged the present appeal.

In view of the ground of appeal raised, the issues here is whether the offence of stealing was proved beyond reasonable doubt. The Senior State Attorney agreed with the sentence and conviction, arguing that the same was correct because theft offence was proved by sufficient evidence. I looked at this case well along with the reason for the appeal brought about and found that the appellant pretended to be a catholic Padre and entered on the bishop's office. The appellant sold fake minerals to the complainant for a price of Tsh 2,800,000/=. However, there were no records of the parties to indicate that there was a contract for the sale of minerals and that the minerals were in the hands of the complainant. Secondly, there is no link to the circumstances where he was arrested to link him with this crime. I have looked at the District Court proceedings, the issue was whether the appellant sold the fictitious minerals to the complainant. The evidence shows that the appellant received the complainant money so that

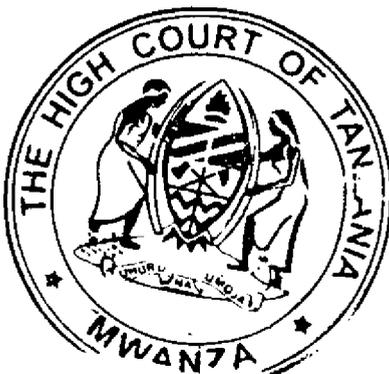
he could supply minerals, there was no corroborations of events, and there was no contract that would protect the complainant in the future. The complainant had nothing to show that he was given fictitious minerals. When the prosecutions took the case to the Court, they must have ensured that there is enough evidence to take the appellant to Court.

I am in agreement with the learned advocate for the appellant who says that the offence was not proved to the required standard and find that there was no link from the event of selling fake minerals, even money transfer, when the complainant allegedly bought all that expensive property. There is no evidence like a receipt or a contract in that respect. I find that this theft offence was not properly investigated and I am inclined to leave it in the hands of the prosecution, so they can investigate it properly and if there is enough evidence to take the appellant to Court. The prosecution should prove all the ingredients of offence without any doubt. In the case of **The Director of Public Prosecutions Versus Morgan Maliki and Nyasa Makorii**, Criminal Appeal No 133 of 2013 (Unreported), the court emphasized that, the prosecution must establish the prima facie case. This is important because if no prima facie case is established the Court could always give an accused person the benefit of

the doubt and acquit him. This case was not proved to the required standards that is beyond a reasonable doubt

Therefore, I hereby quash all the proceedings and judgement of the subordinate Courts and leave the fate of the appellant to be dealt with by the Director of Public Prosecution. I give an order for the release of the appellant from prison unless he is held there for other lawful purposes. Appeal allowed. Order accordingly.

DATED and DELIVERED at MWANZA this 17th day of February 2020.



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U. E. MADEHA
Judge
17/2/2020