

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(Kigoma District Registry)

AT KIGOMA

APPELLATE JURISDICTION

(DC) CRIMINAL APPEAL NO. 6 OF 2020

(Original Criminal Case No. 289 of 2018 of the District Court of Kibondo at Kibondo before Hon. M.P. Kamuntu - RM)

BUKURU S/O MAHAMUDU.....APPELLANT

VERSUS

REPUBLICRESPONDENT

J U D G M E N T


03/06/2020 & 11/06/2020

I.C. MUGETA, J.

The appellant filed an eleven grounds petition of appeal. However, I shall discuss none of them. This is because on the hearing date, Raymond Kimbe, learned State Attorney put to my attention the fact that the appellant was not properly charged as the charge was defective for being preferred under a wrong section. The learned State Attorney submitted that the appellant was charged for obtaining money by false pretence under S.305(b) of the Penal Code instead of section 302 of the same Code. That section 305 (b) refers to obtaining credit by false pretence. On this account he supported this appeal.

I agree with the learned State Attorney that the charge was defective for being preferred under a wrong section. Indeed, the offence of obtaining money by false pretence is created under section 302 and not 305 (b) of the Penal Code. Charging an accused under wrong section is fatal to the proceeding as it amounts to no charge. I, therefore, hold that the appellant has never been charged as the irregularity deprived him the right to appreciate the nature of the offence laid at his door.

Since this issue is not pleaded in the memorandum of appeal, I hereby invoke the revisional power of this court under section 372 of the CPA to nullify the proceedings, quash the judgment of the trial court and set aside all orders emoting therefrom. I order immediate release of the appellant unless otherwise lawfully held for another offence.

The seal of the High Court of Tanzania is circular, featuring a central emblem with a tree and a star, surrounded by the text "THE HIGH COURT" at the top and "TANZANIA" at the bottom. A small star is positioned at the bottom center of the seal.
Mugeta
I.C. Mugeta
Judge
11/06/2020

Court: Judgment delivered in chambers in the absence of the appellant who is in custody and could not be brought due to COVID 19 pandemic and in the presence of Raymond Kimbe, State Attorney for the Respondent.

Sgd: I.C. Mugeta

Judge

11/6/2020