

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(SONGEA DISTRICT REGISTRY)**

**AT SONGEA.**

**CRIMINAL APPEAL NO. 12 OF 2020**

*(Originating from Criminal Case No. 41 of 2019 of Mbinga District Court)*

**COSMAS JUSTIN NYONI ..... APPELLANT**

**VERSUS**

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

*Date of last hearing: 03/06/2020*

*Date of judgment: 15/07/2020*

**JUDGMENT**

**I. ARUFANI, J.**

The appellant, Cosmas Justin Nyoni was charged before the District Court of Mbinga (hereinafter referred as the trial court) with three counts of corrupt transactions contrary to sections 15 (1) (a) and 15 (2) of the Prevention and Combating of Corruption Act, No. 11 of 2007.

The particulars of the offences leveled against the appellant are to the effect that, the appellant was Ward Executive Officer of Linda Ward within Mbinga District in Ruvuma Region. It was alleged that, on 29<sup>th</sup> June, 2018 the appellant corruptly solicited TZS. 550,000/= from one Salmon Zacharia Komba as an inducement for not calling the District Agricultural

Officer and other officials to inspect him as he was being suspected he had in possession coffee consignment suspected was purchased illegally.

It was stated further that, on the same date the appellant received TZS. 100,000/= from the mentioned person out of the money he solicited from him for the stated purpose. It was stated furthermore that, on 4<sup>th</sup> July, 2018 the appellant received another TZS. 250,000/= from the same person for the same purpose. Thereafter; on 4<sup>th</sup> August, 2018 the complainant reported the event to the office of the Prevention and Combating of Corruption Bureau (hereinafter referred in short as PCCB) and that caused the appellant to be arrested and arraigned before the trial court with the stated offences.

After hearing the evidence from both sides the appellant was convicted and sentenced to pay fine of TZS. 500,000/= in each count and in default to serve three years imprisonment in each count. Although the appellant paid the fines imposed to him by the trial court but he was aggrieved by the decision of the trial court and lodged in this court the petition of appeal containing the grounds of appeal quoted hereunder:-

- 1. The trial court erred in law to deliver judgment contrary to the requirement of the law;*
- 2. The trial court erred in law and facts to convict the appellant basing on doubtful and weak evidence adduced by the respondent; and*
- 3. The trial court convicted and sentenced the appellant contrary to the law.*

When the appeal came for hearing the appellant appeared in court in person, without legal representation and the respondent was represented by Ms. Shose Naimani, Senior State Attorney. The appellant told the court that, he has appealed to this court after seeing the prosecution failed to produce any document relating to the offences of corruption laid against him. He stated further that, although it was stated he demanded bribe from the complainant through mobile phone communication but there is no evidence adduced before the trial court by the prosecution to prove there was such a communication between him and the complainant. At the end he prayed the court to allow his appeal.

In reply the learned Senior State Attorney told the court they are supporting the appeal through the second ground of appeal and said they are not supporting the first and third grounds of appeal. That being the position the court will deal first with the second ground of appeal which is supported by the respondent and if it will succeed to dispose of the appeal the court will not deal with the rest of the grounds of appeal.

The learned Senior State Attorney told the court the second ground of appeal has merit because the prosecution failed to prove the offences leveled against the appellant beyond reasonable doubt as required by the law. She told the court that, Salmon Zakaria Komba who testified before the trial court as PW5 and was a key witness in the case said that, on 29<sup>th</sup> June, 2018 the appellant demanded a bribe of TZS 550,000/= from him so that he can abstain from calling the District Agricultural Officer and other officials to go to investigate PW5 in relation to the business of purchasing coffee he was doing without following the required legal procedures.

She went on arguing that, PW5 said after telling the appellant he had no the stated amount of money the appellant told him to give the same to him in three installment and on the same date he gave him TZS 100,000/=. The learned Senior State Attorney told the court that, the prosecution lead no any evidence to prove the appellant demanded the stated sum of TZS 550,000/= from PW5 and he received the stated some of TZS 100,000/= from him on the mentioned date. She told the court that shows the prosecution failed to prove the first and second counts leveled against the appellant.

She said the evidence of PW5 that he was solicited by the appellant to give him the stated corruption and he gave him the stated sum of money is doubtful. She argued that, if it is true that PW5 was demanded to give the stated corruption and he gave the appellant the stated sum of money as a corruption why he didn't report that event to the office of the PCCB on the same date. She went on arguing that, PW5 said on 4<sup>th</sup> July 2018 he gave Zakaria Crispin Kapinga who testified before the trial court as PW6 the sum of TZS 250,000/= so that he can take it to the appellant as part of the money the appellant had demanded from him. She said PW5 said when he was giving PW6 the stated sum of money, Dennis Alphonse Kapinga and Ernest Ernest Ndunguru who testified before the trial court as PW1 and PW2 respectively were present.

She stated further that, for all that period PW5 did not report that event anywhere and he stayed until 3<sup>rd</sup> August, 2018 is when he reported the matter to the office of the PCCB while he had already gave the appellant the sum of TZS 350,000/=. She said PW5 said to have reported

the event after being advised by his friends to do so. She submitted that, if it was true that PW5 had been demanded by the appellant to give him the stated bribe he was required to report the matter to the relevant office at the earliest time. She said if that was done it would have assisted the office of the PCCB to lay a trap which would have enabled the appellant to be arrested.

She told the court that, Abedeus Arbogast who testified before the trial court as PW4 said he was an officer from the PCCB Office. She said the said PW4 said to have received the information of the alleged event from PW5 on 3<sup>rd</sup> August, 2018 while the corruption exercise had already been executed. She said even when PW4 was cross examined he said the evidence he was giving he was relaying on what he heard from other witnesses and said that shows PW4 did not get any proof that the appellant demanded the bribe of TZS 550,000/= from PW5 and the appellant received the sum of TZS 350,000/= from PW5. She said as PW5 did not tell the court why he failed to report the event to the relevant authority at the earliest time that renders the evidence of PW1, PW2, PW4, PW5 and PW6 doubtful and prayed the court to base on the above stated reason to allow the appeal.

After considering the submission made to the court by the learned Senior State Attorney in relation to what is stated in the second ground of appeal the court has found the issue to determine in respect of that ground of appeal is whether the prosecution side proved the offences leveled against the appellant to the standard required by the law which is beyond reasonable doubt. The requirement for the prosecution to prove criminal

case beyond reasonable doubt is provided under section 3 (2) of the Evidence Act, Cap 6 R. E. 2002 which provides that;

*"3(2); -a fact is said to be proved when-*

- (a) *In criminal matters, except where any statute or other law provides otherwise, **the court is satisfied by the prosecution beyond reasonable doubt that, the fact exists.**"*

*[Emphasis added].*

The position of the law laid in the above quoted provision of the law has strictly been followed by our courts in criminal cases. One of the case where that position of the law was emphasized is the case of **Director of Public Prosecutions V. Peter Kibatata**, Criminal Appeal No. 4 of 2015 CAT at DSM, (unreported) where the Court of Appeal of Tanzania stated *enter alia* that;

*"... the duty to prove the charge beyond doubt rests on the prosecution and the court is enjoined to dismiss the charge and acquit the accused if that duty is not discharged to the hilt."*

While being guided by the above stated position of the law the court has found the prosecution side paraded six witnesses before the trial court to prove the offences leveled against the appellant. The court has carefully gone through the evidence adduced by those witnesses as recorded in the proceedings of the trial court. It has found that, as rightly stated by the learned Senior State Attorney, PW5 who stated to be the victim of being

demanding to give a bribe to the appellant said to have been demanded by the appellant to give him the stated sum of TZS 550,000/= on 29<sup>th</sup> June, 2018 so that he should not call Inspectors to go to inspect him as he was being suspected he was doing business of buying coffee illegally. PW5 said to have given the appellant TZS 100,000/= on the same date and told him he would have paid him the balance later on after taking care of his mother who was sick.

The court has found the record of the trial court shows there is no any other person witnessed PW5 talking to the appellant or PW5 giving the money alleged were given to the appellant by PW5 on 29<sup>th</sup> June, 2018. The court has found further that, as stated hereinabove PW5 said on 4<sup>th</sup> July, 2018 he informed PW1, PW2 and PW6 about the money the appellant had demanded from him and said to have given PW6 TZS 250,000/= in the presence of PW1 and PW2 so that PW6 can take that money to the appellant. PW1 and PW2 said to have gone together with PW6 and witnessed PW6 handing over the said sum of money to the appellant.

The court has found that, despite the fact that PW1 and PW2 said to have witnessed PW6 being given TZS. 250,000/= by PW5 so that he can hand it over to the appellant and PW6 said to have handed the said sum of money to the appellant but the prosecution's evidence left some doubts which was supposed to be decided in favour of the appellant. The court has found as rightly argued by the learned Senior State Attorney there is no sufficient explanation given by the prosecution as to why PW5 failed to report the said event from 29<sup>th</sup> June, 2018 when he was required to give the said bribe or on 4<sup>th</sup> July, 2018 when is alleged TZS 250,000/= was

given to the appellant and waited until 3<sup>rd</sup> August, 2018 is when he went to report the event in the office of the PCCB.

The court has considered the evidence given by PW5 that he failed to report the event to the office of the PCCB or any other authority on time and he went to report it after being advised by his friends to do so but failed to see any reality in his evidence. The court has arrived to the said finding after seeing it is not only that the stated friends were not called to testify before the trial court about what was said by PW5 but also he didn't even mention the names of those friend in his testimony. The court has also found that, although PW5 said to have communicated with the appellant through mobile phone on 29<sup>th</sup> June, 2018 and 4<sup>th</sup> July, 2018 in relation to the alleged event of corruption but there is no evidence adduced to show the appellant communicated with PW5 through telephone on the mentioned dates. Funny enough when PW5 was cross examined by the appellant he said the mobile phone he used to communicate with him has been damaged.

The court has also found as argued by the learned Senior State Attorney even when PW4 who investigated the case was cross examined by the appellant he said there was no evidence to show PW5 was still buying coffee without following the laid down procedures. He also didn't say if in his investigation he managed to discover whether before PW5 being demanded by the appellant to give him the alleged corruption he was purchasing coffee illegally. PW4 said what he testified before the trial court is what he heard from the witnesses and he had nothing more to prove the offences leveled against the appellant.



In the light of what I have stated hereinabove the court has found that, although the decision of the trial court was based on credibility of the witnesses testified before the trial court and the principle of the law as laid in numerous cases is that the trial court has a domain of assessing and determine credibility of witnesses testified before it but the court has found that, as stated in the case of **Salum Mhando V. R**, [1993] TLR 170 the appellate court can interfere with the finding of the trial court if is found the trial court completely misapprehend the substance, nature and quality of the evidence, resulting in an unfair conviction. The court has found in the light of the doubts stated hereinabove it cannot be said the trial court evaluated properly the evidence adduced in the appellant's case.

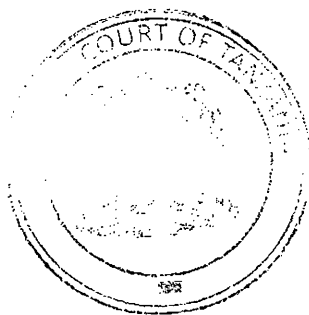
The court has also come to the above finding after seeing the defence of the appellant raised more doubts in the prosecution's evidence. The court has found when the appellant was cross examined by the Public Prosecutor he stated in his defence that, what was going on against him was the antagonism which was between him and PW1 and PW2 as he was supporting his assistants who were in conflict with them. He said the stated conflict was reported to the District Commissioner and the District Executive Director and after the Commission being formulated to investigate the matter it was found the Agricultural Officer was not performing his duties in accordance with the law. Since the doubt raised by the appellant in his defence was not cleared out by the prosecution, the court has found it added more doubt in the prosecution's case.

Basing on all what I have stated hereinabove the court has found bound to agree with the learned Senior State Attorney that the charges laid

against the appellant were not proved beyond reasonable doubt as required by the law. The court has found the appellant was convicted on weak and doubtful evidence which was not sufficient enough to prove the offences leveled against him to the standard required by the law. In the premises the court has found merit in the second ground of appeal filed in this court by the appellant.

Having arrived to the above finding the court has found the second ground of appeal contained in the petition of appeal filed in this court by the appellant is enough to dispose of the appeal. Hence there is no need of continuing to deal with the rest of the grounds of appeal as they will not change what has already been found in the second ground of appeal. Consequently, the appeal is hereby allowed, the conviction entered against the appellant in all three counts is quashed and the sentences imposed to him in respect all offences are set aside. The court is ordering the fines paid by the appellant in all three counts to be refunded to him. It is so ordered.

Dated at Songea this 15<sup>th</sup> day of July, 2020.



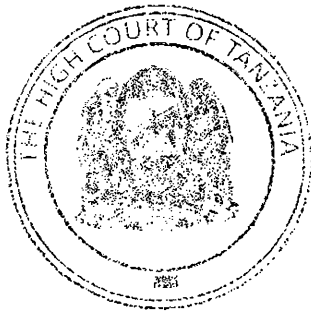
*I. Arufani*  
**I. ARUFANI**

**JUDGE**

**15/07/2020**

## **COURT**

Judgment delivered today 15<sup>th</sup> day of July, 2020 in the presence of the appellant in person and the respondent is represented by Ms. Jenerosa Montano, State Attorney. Right of appeal to the court of Appeal is fully explained to the parties.



*I. Arufani*  
**I. ARUFANI**

**JUDGE**

**15/07/2020**