

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**IN THE DISTRICT REGISTRY OF SHINYANGA**  
**AT SHINYANGA**

**CRIMINAL APPEAL NO. 124 OF 2017**

*(Arising from Criminal Case No.24 of 2017 of the District Court of Shinyanga at Shinyanga)*

**THE DIRECTOR OF PUBLIC PROSECUTION..... APPELLANT**

**VERSUS**

**ABDON PANTALEO @ MSAFIRI.....RESPONDENT**

*Date of Last Order: 04/11/2019*

*Date of Judgment: 27/02/2020*

**JUDGMENT**

**C. P. MKEHA, J**

Before the District Court of Shinyanga, the respondent was arraigned in respect of 121 counts of stealing while a Public Servant contrary to section 270 of the Penal Code, one count of false accounting as a Public Officer contrary to section 315(b) of the Penal Code and one count of fraudulent accounting as a Public Servant contrary to section 317(a) and (b) of the Penal Code. When the charges were read over to the respondent, he protested his innocence in respect of all counts. Upon conducting full trial,

the trial court found the respondent not guilty. He was acquitted of all the counts. The Director of Public Prosecutions was not satisfied with the trial court's decision. He thus preferred an appeal consisting of the following grounds:

1. That, the trial Magistrate erred in law and fact by holding that the respondent is not guilty to all the 123 counts despite the prosecution having proved the case on all 123 counts beyond all reasonable doubts;
2. That, the Trial Magistrate erred in law and facts when she failed to understand the evidence which was before her as a result she came up with wrongful conclusion of the case after having raised *suo motu* wrongful issues in respect of all customers whose accounts were used to disburse the created loans to 13 none existing customers and
3. That, the trial Magistrate misdirected herself in holding that the charge was not proved because,
  - (i) She held that evidence of two customers was lacking since death certificates were not brought before the court.
  - (ii) Prosecution failed to state whether the respondent's password was of whatever kind.

- (iii) Prosecution failed to prove that the respondent issued loan to 13 non existing customers which occasioned a loss of TZS.134,321,383.75/= the property of Tanzania Postal Bank.

Briefly stated, the prosecution's case against the respondent before the trial court was that, the respondent, advanced loans amounting to TZS.64,100,000/= to non existing employees/borrowers, hence Tanzania Postal Bank had to repay loans advanced to 13 fake employees to the tune of TZS.70,221,383.75, which belonged to real customers. Therefore, according to the prosecution, the dishonest act of the respondent, occasioned loss of TZS.134,321,383.75 to Tanzania Postal Bank. As hinted earlier on, the trial court found the respondent not responsible of the accusations. The Director of Public Prosecutions seeks to challenge the said finding through the present appeal.

Mr. Jairo learned State Attorney represented the appellant. On the other hand, Mr. Abdon Pantaleo @ Msafiri, the respondent, appeared in person.

Submitting in support of the second ground of appeal, Mr. Jairo learned State Attorney submitted that, the trial Magistrate erred in law and facts by raising *suo motu*, wrongful issues in respect of 91 customers whose

accounts were used to disburse loans to 13 non-existent customers. It was his submission that, it was the respondent and the bank accountant who could manage consumer bank accounts.

The learned State Attorney went on to submit that, two among the said 13 non-existent customers had passed away and evidence indicated that loans appeared to have been advanced to them after their deaths. He also submitted that, the remaining 11 persons were civil servants purported to be from different departments. According to the learned State Attorney, the named departments, Immigration, RAS-Shinyanga and Police, confirmed that they had no such employees. Reference was made to Exhibit PE 22 at pages 27 to 28 as well as to Exhibits 16 to 22 of the prosecution.

The learned State Attorney submitted in respect of the 3<sup>rd</sup> ground that there were official letters from former employers of the two deceased employees that, the said employees were indeed dead hence it was unnecessary to produce death certificates to prove the said deaths.

The learned State Attorney submitted further that, there was no dispute that, it was the respondent's password that was used to create the fake

accounts and that, there was no dispute that it was the respondent who deposited money into the said fake accounts. The learned State Attorney insisted that, the respondent had admitted before auditors to have committed the offences. Reference was made to Exhibit P.15 of the prosecution. According to the learned State Attorney, whether the respondent's password was in a form of numbers or not, that was immaterial.

It was lastly submitted in respect of the first count that, the prosecution had actually managed to prove all the offences with which the respondent stood charged before the trial court. Reference was made to testimonial accounts of PW3, PW4, PW5 and PW6.

The respondent submitted in reply that PW7 testified to have never received unlawful money from the Postal Bank. The respondent submitted that, PW7 refused to have been one of the said 91 bank customers.

The respondent went on to submit that, while it was the prosecution's case that he (the respondent) stole from 91 bank customers so as to pay off the loans he had created, it was unbecoming that all the 91 bank customers would remain quite.

The respondent submitted further that, PW4 (the bank accountant) testified that, he found nothing wrong in the Branch Manager's duties. The respondent insisted that, neither of the loan forms was tendered in court to prove that he really signed the purported loan forms in respect of 13 loans. The respondent added that, there was evidence from loan officers to the effect that, the Branch Manager was not the custodian of the loan forms but the Loan Officers. Reference was made to testimonies of PW5 and PW6.

The respondent submitted further that, in the absence of death certificates, it would not have been proper for the trial court to hold that indeed, two among the purported 13 fake customers had passed away.

The respondent submitted that, while the prosecution alleged that he (the respondent) used his password to enable the said stealing, the said password remained uncertain even after close of the prosecution's case. The respondent maintained that, the prosecution failed to prove the way the said amount of money passed to his possession (respondent's).

The learned State Attorney's rejoinder was a reiteration of his former arguments in chief.

It was the appellant's complaint that, the trial court wrongly framed issues which were irrelevant in resolving the dispute before it. An important question that arises is the following: Did the trial court frame irrelevant issues? My immediate response to that question is with respect in the negative. Regardless of the wording of the framed issues, the same, sought to answer the following three important questions:

- (i) Whether there was stealing of TZS.64,100,000/= the property of Tanzania Postal Bank's customers
- (ii) Whether Tanzania Postal Bank compensated the victims to the tune of 70,221,383.75
- (iii) Whether it was the respondent who issued loans to 13 non-existent bank customers.

In my considered view, response to the said issues would lead the court into determining, whether, at the end of the day the complainant suffered a loss of TZS.134,321,383.75 as alleged in the charges and whether it was the respondent's conducts which led to the said loss.

Apart from complaining, the learned State Attorney whose client owed a duty of proving the allegations before the trial court, did not submit on

what ought to be proper issues before the trial court. To say the least, the 2<sup>nd</sup> ground of appeal is found to have no merit, hence dismissed.


It was the appellant's complaint that, two among the 13 non-existent bank customers died before testifying in court. The learned State Attorney maintained that, letters from former employers of the two employees were sufficient proof of the two deaths. While I agree with the learned State Attorney on that particular submission, I on the other hand disagree with the respondent that in all situations, death of a particular person has only to be proved by production of a death certificate. That would be nearly suggesting that, all deaths in which, for one reason or the other death certificates were not obtained from relevant authorities are suspicious deaths. That is not always the case.

However, in place of what the two persons would have testified if they were still alive, the prosecution brought nothing before the trial court. The learned State Attorney referred this court to nothing. Therefore, the improper finding of the trial court to the effect that there was no proof that the said two persons had indeed died, did not prejudice the appellant in any way.



There was no denial on part of the appellant that the signed loan forms were not tendered in court to prove that it was the respondent who signed the loan forms. The learned State Attorney did not object the fact that PW5 and PW6 (Loan Officers) had testified to the effect that, they were custodians of loan forms and not the respondent (Branch Manager). The learned State Attorney did not either dispute the fact that, PW4 (the bank accountant) was on record to have testified that, he found no problem to the respondent. The said witness, as per bank practice, is ordinarily a close supervisor of the Branch Manager. With all that on record, I do not find a reason for faulting the trial Magistrate on a finding that, the prosecution failed to prove the said 123 counts against the respondent to the required standard. I thus dismiss the appeal for not being meritorious.

Dated at **SHINYANGA** this **27<sup>th</sup> day of February, 2020.**

  
**C. P. MKEHA**  
**JUDGE**  
**27/02/2020**

**Court:** Judgment is delivered in the presence of Mr. Kigoryo learned State Attorney for the appellant and the respondent in person.



**C. P. MKEHA**  
**JUDGE**  
**27/02/2020**

**Court:** Right of further appeal to the Court of Appeal of Tanzania is fully explained.

