IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT BUKOBA

(BUKOBA DISTRICT REGISTRY)

CRIMINAL APPEAL No. 17 OF 2020

(Arising from the Resident Magistrates' Court of Bukoba at Bukoba in Corruption Case No. 2 of 2019)

EVODIUS JASSON KATALE ---------- APPELLANT

Versus

REPUBLIC ---------- RESPONDENT

Judgment

03/11/2020 & 06/11/2020

Mtulya, J.:

An appeal was lodged in this court by Evodius Jasson Katale (the appellant) on 19th February 2020 to contest the decision of the Resident Magistrates' Court of Bukoba at Bukoba (the court) in Corruption Case No. 2 of 2019 (the case). The appellant in his petition of appeal attached five (5) grounds and finally prayed this court to allow the appeal and set aside the conviction and sentence. The attached five (5) grounds are essentially fault the same thing in criminal responsibility, particularly on onus and standard of proof.

On onus of proof, the appellant stated in ground two of his appeal that the prosecution failed to prove that he received Tanzanian Shillings Thirty Thousand (30,000/=) and on standard of

proof, the appellant stated in ground one that the prosecution did not prove its case beyond reasonable doubt. When the appeal was scheduled for hearing, the appellant appeared in person without any legal representation. When he was called to explain on his grounds of appeal, the appellant stated that he has no any explanations to register, but this court to adopt all of his grounds of appeal to form part of his submission.

The Republic on the other hand was represented by Mr. Grey Uhagile, learned State Attorney. Mr. Uhagile on his part, he opted to support the appeal and registered two reasons, *viz*: first, the trial court erred in law and fact by holding the appellant responsible for the offence of corruption which was not proved beyond reasonable doubt; and second, the trial court heavily relied on the evidences of PW1 and PW2 who had dispute with the appellant.

Submitting on the first ground, Mr. Uhagile stated that the appellant was prosecuted by two offences related to corruption transactions namely: first, soliciting corruption and second, receipt of corruption amounting Tanzania Shillings Thirty Thousand (30,000/=). To Mr. Uhagile's opinion, the two offences were not proved beyond reasonable doubt as the trial court relied on evidences of PW1 and

PW2 who testified that they had given the appellant initial sum of 30,000/= Tshs., and prepared a trap of the remaining sum 70,000/= with a prevention of corruption officer PW4, but the appellant refused to receive them. However, the court held the appellant responsible for the initial claimed receipt of 30,000/= without any proof of evidence in numbers of the stated money or certificate of seizure.

With the second reason in support of the appeal, Mr. Uhagile submitted that DW1 and PW1 had disputes prior to the arrest of the appellant and therefore PW1 had interest on the arrest of the appellant. According to Mr. Uhagile, PW1 was a Village Executive Officer and PW2 was a buyer of vanilla products whereas the appellant is Kashai Ward Agricultural Field Officer. Mr. Uhagile argued that PW1 and PW2 were doing illegal transaction without involving the appellant as required by the law hence the appellant ceased the transaction and that was a source of all disputes and initiation of a corruption trap. However, after the arrest and prosecution of the appellant, the trial court heavily relied on evidences of PW1 and PW2.

On my part, I have gone through the record of this appeal. The appellant was arrested and arraigned before the court for the charges of soliciting to obtaining Tanzanian Shillings One Hundred Thousand

(100,000/=) and obtaining the sum of Tanzanian Shillings Thirty Thousand (30,000/=) contrary to section 15 (1) (a) & (2) of the **Prevention and Combating of Corruption Act** [Cap. 329 R. E. 2019] (the Act). The transaction allegedly to take place in night hours at Bushago Village within Missenyi District in Kagera Region.

In order to prove its case, the prosecution marshalled a total of four witnesses in the court. Basing on the evidences of the four witnesses, the court found the appellant guilty for the offence of corrupt transaction and was ordered to pay Tanzanian Shillings Five Hundred Thousand or in alternative to face three (3) years imprisonment. The reasoning of the court is found at page 3 to 6 of the judgment, but generally is that: evidences adduced by PW1, PW2, PW3 and PW4 produced certainty in sequence of events of receipt of Thirty Thousand (30,000/=) Tanzanian Shillings.

However, the evidences of all prosecution witnesses were based in mere allegations. PW1 at page 8 & 10 of the proceedings of the court testified that he heard the appellant asking money from Jasper John (PW2) amounting to 100,000/= but was given 30,000/=. At page 11 & 13 of the proceedings of the court, PW2, the buyer of vanilla testified that he gave the appellant Tanzanian Shillings

30,000/=. PW3 on the other hand at page 18 of the proceedings of the court testified that PW2 gave the appellant Tanzanian Shillings Thirty Thousand (30,000/=) and PW4, a PCCB officer who participated in the trap, is depicted at page 21 & 22 of the proceedings of the court and testified that the appellant solicited 100,000/= and was given initial payment of 30,000/= and he had prepared a trap of the remaining 70,000/=.

It is unfortunate that all these statements did not receive proof of evidence either in terms of the said 30,000/= or its numbers or certificate of seizure or any proof of the transaction. They were mere words which can be drafted by any persons, especially when the parties are in conflict as clearly shown in the proceedings. PW1 and PW2 together had quarrels with the appellant over the control and sale of vanilla businesses. It is unfortunate that the only evidence tendered by the prosecution was a Permit prepared by the appellant on 6th July 2018 to UVAN Limited for transfer of vanilla (P.1). I am wondering it was admitted to establish which offences among the two offences drafted in the charge.

On the other hand the appellant, as is displayed at 36 & 37 of the proceedings of the court, denied involvement in the either

soliciting or obtaining the stated money, but was acting under the directives of Missenyi District Commissioner and Kagera Regional Commissioner to intervene and prevent the vanilla exit transactions at night hours. To substantiate its case, the appellant produced in court Minutes on Strategies to Prevent Rampant Illegal Exit of Vanilla from Kashenye Ward (*Mkutano wa Wakulima wa Vanila–Kata ya Kashenye*) and was admitted in the trial court as defense exhibit number D.1.

Having noted all that, the decision of the court cannot stand in an appeal. It is fortunate that Mr. Uhagile did not protest the appeal and argued well on the defects and opined that the case against the appellant in the court was not proved beyond reasonable doubt. I agree with his submission.

I must take this opportunity remind learned magistrates that it is an elementary rule of law that the burden of proof in criminal cases is on the prosecution side and the standard is beyond reasonable doubt. The practice of our superior courts as been that the prosecution must produce evidence to substantiate its case beyond any reasonable doubt (see: **Sylvester Rulgenci v. Republic** [1980] TLR 208; **Said Hemed v. Republic** [1987] TLR 117; **Mohamed Matula v. Republic** [1995] TLR 3, and **Horombo Elikaria v. Republic**, Criminal Appeal

No. 50 of 2005). For instance, in **Mohamed Matula v. Republic** (supra), the Court of Appeal stated that:

> *In a criminal case like this one that burden is always on the prosecution; it never shifts and no duty is cast on the appellant to establish his innocence.*

Therefore, accused in criminal cases is only required to raise some doubts and cannot be convicted on basis of certainty in sequence of events only or that he is found to be a liar (see: **Mushi Rajab v. Republic** (1967) HC 384) or weaknesses of his defense (see: **Christian Kale & Rwekaza Bernard v. Republic** (1992) TLR 302).

I understand, lies of the accused may corroborate the prosecution case (see: **Felix Lucas Kisinyila v. Republic**, Criminal Appeal No. 129 of 2002, **Salum Yusuf Liundi v. Republic**, Criminal Appeal No. 26 of 1984 and **Kombo bin Khamis v. Crown**, 8 ZLR 122), but that is not proof of the prosecution case or remove the prosecution's obligation in establishing its case beyond reasonable doubt (see: **Sylvester Rulgenci v. Republic** (supra).

I have also noted in totality of evidence produced by the prosecution witnesses, PW1, PW2, PW3 and PW4 in the trial court with regard to certainty in sequence of events leading to grant of permit to UVAN Limited for transfer of vanilla, may display suspicion against the appellant. However, the law and practice of our courts has been that suspicion alone cannot take the place of proof in criminal cases brought before the court (see: **Shabani Mpunzu @ Elisha Mpunzu v. Republic,** Criminal Appeal No. 12 of 2002, **B. Mapunda v. Republic**, Criminal Appeal No. 2 of 1989; **Hakimu Mfaume v. Republic** [1984] TLR 201; and **Benedict Ajetu v. Republic** (1983) TLR 190).

Having said so and reasons adduced in this appeal, I have come to the conclusion that the appellant, Mr. Evodius Jasson Katale, was wrongly convicted and sentenced by the court. The prosecution in the trial court did not establish its case beyond reasonable doubt. I therefore set aside proceedings and quash the decision of the Resident Magistrates' Court of Bukoba at Bukoba in Corruption Case No. 2 of 2019. This appeal must be allowed as I hereby do and is allowed without any order as to costs.

It is accordingly ordered.

F.H. Mtulya

Judge

06/11/2020

This appeal was delivered in chambers under the seal of this court in the presence of learned State Attorney, Mr. Grey Uhagile and in the presence of the Appellant Mr. Evodius Jasson Katale.

F.H. Mtulya

Judge

06/11/2020