

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

**CRIMINAL APPEAL NO.33 OF 2020**

*(Original Criminal Case No.23 of 2019, the District Court of Kahama)*

**HASSAN MANYANGALI.....APPELLANT**

**VERSUS**

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

**JUDGMENT**

31<sup>st</sup> August & 16<sup>th</sup> October, 2020

**Mdemu, J.;**

In the District Court of Kahama, the Appellant, who was the 1<sup>st</sup> accused person together with Abdalah Luhanga, the then 2<sup>nd</sup> accused person got charged jointly and together with three counts to wit; conspiracy to commit an offence contrary to the provisions of section 384 of the Penal Code, Cap.16; forgery contrary to the provisions of section 333, 335 and 337 of the Penal Code, Cap. 16 and uttering false document contrary to the provisions of section 342, 335 and 337 all of the Penal Code, Cap.16 in the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> counts respectively.

According to the charge, on or about the 16<sup>th</sup> of February, 2016 at Kahama Ward Land Tribunal, the Appellant and his colleague fraudulently and with intent to defraud, presented a forged judgment of land case No.3 of 2016 indicating that the said judgment was duly delivered by the said tribunal, a fact which was not true.

In the prosecution case led by Maisala Kasonga, Steven Magala, Ashura Ally and E.2544 D/C Emmanuel testified as PW1, PW2, PW3 and PW4 respectively, indicated that, the Appellant had once involved in land dispute No.56/2012 in

that tribunal where the then 2<sup>nd</sup> Accused person was a Chairman. That case was concluded. The Appellant then did conspire with the then 2<sup>nd</sup> accused and forged a judgment having land case No. 3/2016 purporting to be a genuine one. In his defense, the Appellant testified to have filed that case, thus it is not a forged one.

The trial was concluded, in which, on 20<sup>th</sup> of January, 2020, the trial court found the Appellant liable in the 3<sup>rd</sup> count of uttering a false document. The court acquitted both the Appellant and the then 2<sup>nd</sup> accused for the offence of conspiracy and forgery fourth with. The Appellant was not happy with the finding of the trial court thus preferred an appeal to this court on the following ground:

- 1. That, the trial Magistrate erred in law and fact in convicting the Appellant for the offence of uttering a false document under section 342 and 337 of the Penal Code.*
- 2. That, the trial Magistrate erred in law and fact in relying on exhibit P1 while the same was not read out to the Appellant in court.*
- 3. That, the trial Magistrate erred in law and fact in convicting the Appellant basing on the prosecutions' evidence which was weak, contradictory, doubtful and unreliable.*

On 31<sup>st</sup> of August, 2020, I happened to hear Mr. Bakari Muheza, learned Advocate who represented the Appellant and Mr. Nestory Mwenda, learned State Attorney for the Respondent Republic. Mr. Mwenda declined to support the appeal. Mr. Bakari who fended for the Appellant argued each ground of appeal seriatim as hereunder:

Submitting in the 1<sup>st</sup> ground of appeal Mr. Bakari had an observation that, it was wrong in the conviction of the Appellant to omit section 335 of the Penal



Code providing for categories of uttering false document. In his view, the omission is incurable in two senses; one because the Appellant was charged under section 342, 335 and 337 all of the Penal Code and two, with such an omission, it will not therefore show how the offence was committed. He thought the judgment be nullified.

As to the 2<sup>nd</sup> ground of appeal, it was his submission that, it was illegal to deploy in evidence exhibit P1 while the same was not read in court after it has sought admission. He cited in this, the case of **Robinson Mwanjisi v. R (2003) TLR 218** to bolster his averment. In his view, as the said exhibit was not read in court, then it be expunged from the record.

Mr. Bakari also submitted in the 3<sup>rd</sup> ground of appeal such that, besides exhibit P1, there is no evidence to connect the Appellant with uttering of the false document. He commented also in the evidence of the prosecution that, the evidence that Hussein Rashid (deceased) never participated in land case No.3/2016 because he was sick is lacking. There is no any document tendered to that effect, or even indicating that, PW1 was nursing Hussein Rashid. The learned counsel added.

He also commented on the evidence of PW2, PW3 and PW4 such that, land case No.3/2016 was filed without following proper procedure. If this is the case, according to Mr. Bakari, then criminality won't be determined merely because the procedure has not been followed. He also commented on the evidence of PW2 that, land case No.3/2016 existed, only that it was forged. The learned counsel wondered on that assertion on how it could happen. He thus thought to be relevant for the prosecution to have tendered the case file in court for proof thereof.

