

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

**AT TABORA**

**CRIMINAL APPEAL NO. 116 OF 2019**

(Arising from Original Criminal Case No. 138 of 2018 of the District Court of  
Igunga at Igunga)

**NTEMI JAMES@MCHANGA.....APPELLANT**

***VERSUS***

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

**KIHWELO, J.**

In the District Court of Igunga, the appellant was arraigned for one count which was predicated under the relevant provision of the Penal Code, Chapter 16 of the laws, R.E 2002 (the Code) and Prevention and Combating of Corruption Act, No.11 of 2007 (the Act). More particularly, the appellant was arraigned for failure to produce documents for investigation contrary to section 10(2) and 2A of the Code read together with section 8(1) and 10(1) (3) (b) of the Act. The particulars were that, the appellant on diverse dates between 8<sup>th</sup> September 2017 and 11<sup>th</sup> October 2017 during working hours at the Prevention and Combating of Corruption Bureau offices within Igunga Township and Igunga District in Tabora Region being a person employed by Igunga District Council as

Ward Executive Officer of Igurubi Ward and knowingly that books and other written documents may be required in evidence in a judicial proceeding did willfully and unlawfully fail to produce the said books with intent thereby to prevent them from being used during investigations.

When the charge was read over and explained to the appellant at the commencement of the trial, he denied the charge, whereupon the prosecution featured four witnesses and five documentary exhibits. After full trial, the appellant was found guilty as charged and was convicted and sentenced to pay Tshs.500,000.00 or to serve a jail term of one year.

Being unhappy with the conviction and sentence, the appellant marshalled four grounds of complaint and later filed a supplementary petition of appeal with two grounds of complaint which when properly construed boils down to the question of evidence. So, in short, the appellant is saying that the evidence on the prosecution case is too weak to ground a conviction.

Before this Court, the appellant was represented by Ms. Flavian Francis, learned Advocate and the respondent Republic was represented by Mr. Deusdedit Rwegira learned State Attorney. With the consent of the parties this appeal was disposed through written submissions which were dully filed by the parties.

The appellant strongly argued that the prosecution miserably failed to prove the case beyond reasonable doubt against the appellant. He elected to argue only one ground of appeal which relates to the failure by the appellant to establish and prove the charge.

In support of his contention that the prosecution failed to prove the case against the appellant he submitted that whereas the charge sheet indicated that the appellant was employed by the Igunga District Council as Ward Executive Officer of Igurubi Ward in 2017 the documents which related to investigation were for Bulangamilwa village and the prosecution did not prove that the appellant did not handover the office and the receipt books before leaving. He argued further that the prosecution did not prove that the appellant upon transfer to Igurubi Ward was still working for Bulangamilwa village.

The appellant strenuously challenged the caution statement but for reasons to be stated later in the course of this judgment I will not discuss much about the caution statement which was however, expunged by the trial court for being irregularly admitted. Finally, the accused vehemently stated that all exhibits were admitted in evidence without reading them out after admission which is fatal. He referred this court to the celebrated decision in **Robinson Mwanjisi and 3 Others v Republic** (1994) TLR 218.

Mr. Rwegira learned State Attorney for the respondent Republic in principle supported the appeal and argued that the prosecution failed to prove the case beyond reasonable doubt and in order to substantiate that he raised three issues. **Firstly**, Mr. Rwegira learned State Attorney

submitted that there was no enough evidence to show that the appellant failed to produce as suggested. He referred to the testimony of PW1 who said the accused produced 11 receipt books, PW2 who testified that she gave the appellant 20 receipt books and not 31 receipt books as alleged by PW1 and further referred to the testimony of PW3 who testified that she issued 11 receipt books to the appellant for revenue collection. Mr. Rwegira learned State Attorney submitted that there were material contradictions in the testimony of the three witnesses. **Secondly**, Mr. Rwegira learned State Attorney went on to submit that the prosecution did not prove whether the appellant was the WEO of Igumbi Ward as stated in the charge sheet since all prosecution witnesses testified that the appellant was the WEO of Bulangamilwa village and **Thirdly**, the caution statement which was tendered in evidence as the basis of conviction of the appellant was irregularly tendered and admitted in evidence since the same was not recorded by a Police Officer.

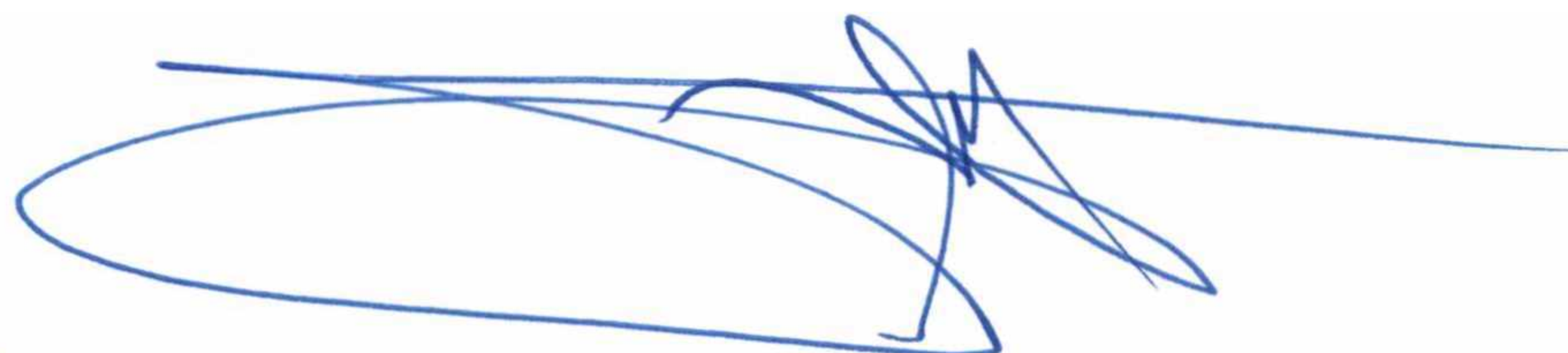
Upon a careful scrutiny of the records of the trial court, grounds of complain and submissions by the parties, I am of the settled view that this appeal may be conclusively considered on the basis of the complaint that all exhibits were wrongly admitted in evidence.

After carefully and cautiously going through the typed proceedings of the trial court I have found that the appellant's contention about failure by the trial court to read out exhibits in court after admission carries weight.

It is fairly settled that once an exhibit has been cleared for admission and admitted in evidence, it must be read out in court. The Court of Appeal of Tanzania clearly stated this principle in the case of **Thomas Pius v**

**Republic**, Criminal Appeal No. 245 of 2012 (unreported) and also the case of **Issa Hassan Uki v Republic**, Criminal Appeal No. 129 of 2017 (unreported). In **Thomas Pius** the documents under discussion were: Postmortem Report, caution statement, extra judicial statement and sketch map. In **Issa Hassan Uki** the document under consideration was the Certificate of Valuation. In all these two cases the Court of Appeal held that the omission to read them out was a fatal irregularity as it deprived the parties the right to understand the nature and substance of the facts contained therein. In the instant case none of the exhibits that were tendered and admitted in evidence in court were read out which is fatal irregularity.

For the foregoing reasons, I find the appeal with merit and consequently, I allow it. The appellant's conviction is quashed, the one (1) year imprisonment sentence is set aside with order of immediate release of the appellant from prison unless lawful held in on another cause.



**P.F. KIHWELO**

**JUDGE**

**10/12/2020**





Judgment to be delivered by the Deputy Registrar on a date to be fixed.



**P. F. KIHWELO**

**JUDGE**

**10/12/2020**



**Court:** Judgment delivered this 17<sup>th</sup> day of December 2020 in the presence of Ms. Flavia Francis, Advocate for the appellant and appellant in person but in absence of the Respondent.

Right of appeal to Court of Appeal Tanzania explained.



**B.R. NYAKI**

**DEPUTY REGISTRAR**

**17/12/2020**

