

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

CRIMINAL APPEAL NO. 142 OF 2020

THERESIA DAMIAN NGEDUKA.....APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

(Appeal from a decision of Kilombero District Court at Ifakara)

(Mashabara- Esq, SRM.)

dated 13th February, 2020

in

Criminal Case No. 195 of 2018

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JUDGEMENT

27th November 2020 & 12th February 2021

Rwizile, J

The appellant and one Kanisia Joseph@ Mhesi were arraigned before the Kilombero District Court on two counts of obtaining money by false pretences. This was however contrary to section 302 of the Penal code. After a full trial, Kanisia Joseph was acquitted. The appellant was convicted and sentenced to pay 8,000,000/=, the complainant, in three months period or serve a sentence of imprisonment for one year.

This did not please the appellant. She preferred this appeal on 6 grounds. But upon scrutiny, it may be reduced to two grounds of appeal as follow;

- i. That the District Court erred in law in convicting the appellant based on fabricated and contradicting evidence*
- ii. That the District Court erred in law and fact by convicting the appellant basing on two judgements thereby resulting to a wrong sentence.*

The appellant was not represented. She argued his appeal by written submission. The respondent which was represented by Mr. Kalinga learned State Attorney did not file submissions. There was not reasons advanced to ask for more time. Therefore, this appeal is determined basing upon the appellant's submission only. In his submission, the appellant, who spent much of his time narrating the evidence, stated that the case was not proved to the required standard. She submitted that the whole evidence used to convict him was based on suspicion that he committed the offence. She referred me to the case of **Simon Mapunda vs R**, Criminal Appeal No.24 of 2005. (Despite referring to the case which is unreported, the appellant did not produce a copy of the same to the court for its reference. I will therefore disregard the same).

Further, the appellant was of the firm view that since the onus of proving the charge lies on the prosecution and the same has not been discharged. She was entitled to an acquittal. To support this point, she referred the case of **Jonas Nkenze vs R** [1992] TLR 213.

Having though briefly dealt with the submissions, I have to state here that the second ground of appeal, claims the trial court had two judgements. On perusal to the record, it seems, the trial magistrate was not keen enough when preparing copies of the judgement and the proceeding thereto. The two judgements stated by the appellant are not different from each other. But what I learnt is that pages in the original hand written judgement were misplaced. Since the appellant referred to certified copies, I had to compare the same with the original. It is trite that in such a conflict the original which is a hand written one solves the problem. There is therefore no contradiction. What is apparent is that upon writing the judgement and pronouncing it, the appellant was sentenced as follows;

Since the accused has a spirit to pay, I hereby enter suspended sentence to pay victim 8,000,000/=within three months.

- i. Accused person to be released upon bringing four witness who will ensure he pays within three months*
- ii. Accused to report to court twice in 9 months*
- iii. Accused person to be released on paying three million*
- iv. When accused person defaults on 13.05.2020 to go to imprisonment for one year.*

What is stated above appears in one copy of the judgement at page 5 while in the other the same appear at page 6. Clearly, this is a contradiction but it does not make two judgements. The hand written one which is the is original shows it all. I therefore hold this ground of appeal has no merit.

The other ground, materially deals with whether or not, the case was proved beyond reasonable doubt. Here, I have to begin by going to the offence charged. The same is as per charge sheet preferred under section 302 of the Penal Code. It states as hereunder;

302. Any person who by any false pretence and with intent to defraud, obtains from any other person anything capable of being stolen or induces any other person to deliver to any person anything capable of being stolen, is guilty of an offence and is liable to imprisonment for seven years.

But what amounts to false pretences is defined under the same law. section 301 of the Penal Code is good to that. It states as follow;

301. Any representation made by words, writing or conduct of a matter of fact or of intention, which representation is false act and the person making it knows it to be false or does not believe it to be true, is false pretence.

This means, any conduct in the nature of the above proves the offence. The key elements of the offence therefore must be conducts done with intent to defraud as indicated under section 302. The prosecution, as submitted by the appellant has to prove so. Going by evidence, it is stated by Pw1 and other prosecution witnesses that the appellant sold land to Pw1. She did so, on agreement openly made. The agreement was according to the evidence frustrated by family members who brought the conflict of ownership when Pw1 began to develop the same. The appellant did not dispute that he sold it to Pw1.

There is evidence that later an agreement was reached that Pw1 be given back his money. Exhibit P2 and P3 are clearly connecting the same. It is therefore clear that there was an agreement where Pw1 sold land. The respondent was duty bound to show that the conduct of the appellant before and after the incidence had ill intensions aiming at defrauding Pw1. That, in my view, was not proved, conviction cannot therefore be grounded on such scant evidence. Proving the case, beyond reasonable doubt is not a matter of simply collecting and presenting evidence in court. something more than that must be done. It can only be done by collecting, linking and showing that the conducted, omission or other acts of the person charged, proves he committed the offence.

There is merit in this ground of appeal, and so the appeal as a whole. This means, there was no sufficient evidence to prove the charge. This appeal is entirely allowed. Therefore, the judgement is quashed, conviction and sentence set aside.

ACK. Rwizile
Judge
12.02.2021

 Recoverable Signature

X 

Signed by: A.K.RWIZILE

