

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MTWARA)**

AT MTWARA

CRIMINAL APPEAL NO. 101 OF 2020

*(Originating from Criminal Case No. 14 of 2020 of Kilwa District Court
at Masoko)*

ABDALLAH SHABANI MADEGE..... APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

Hearing date on: 3/3/2021

Judgment on: 19/4/2021

NGWEMBE, J:

This appeal has been preferred by Abdallah Shabani Madege (Appellant), contesting against his conviction and sentence meted by the trial court.

Brief facts as appears in the particulars of the charge sheet, that on 4th day of March 2020 at about 18:35 at Nangurukuru village within Kilwa District in Lindi Region, unlawfully did interfere with the functioning of a computer system to wit mobile phone, fraudulently causing loss of Tsh 800,000/=



property of one Ramadhan s/o Mohamed Salum, contrary to section 12 (1) (b) of the Cybercrimes Act, 2015. In establishing and proving the offence against the appellant, the prosecution paraded five (5) witnesses. At the end of the case, the appellant was found guilty, hence convicted and sentenced to serve three years' imprisonment.

Being aggrieved with that conviction and sentence, on 3/9/2020 he issued notice of intention to appeal, and on 24th September 2020 he came up with five grounds (5) of appeal, which may conveniently be summarized into one (1) ground to wit:-

That, the prosecution failed to establish and prove the case against the appellant beyond reasonable doubt.

On the hearing of this appeal, the appellant appeared in person, while the respondent (Republic) was represented by Mr. Paul Kimwer, Senior State Attorney. Being unrepresented, the appellant had limited contributions to his appeal. He just prayed this court to adopt his grounds of appeal and denied to deny generally on involvement of the alleged offence. Urged this court to allow the appeal for various illegalities including the alleged improper conviction and sentence.

Added that he has no knowledge of computer and he is not an expert on wireless money transfer through mobile phones. Also argued that there was no printout of the alleged money transfer from the complainant to his phone number.



In turn Mr. Paul Kimweri supported the conviction and sentence meted by the trial court. Argued that, on the eventful date, PW1 met with the appellant at Nangurukuru, whereby the appellant introduced himself to PW1 as agent of Tigo to register lines. He said, at that particular time the appellant had identification marks of Tigo, thus PW1 did give his password and later was told to put off his phone for one hour. When he opened his line, there was an indication that his line is inactive.

So, he went to NMB agent to know his amount of money. The print out indicated that there was a transaction of Tshs 800,000/= on the very time the appellant had the mobile phone of the complainant.

He added that, PW3 was an eye witness, while PW2 corroborated the evidence of PW1. Likewise, before police the appellant confessed as per his caution statement, to have committed the offence.

The evidence of PW4 testified that the appellant had cash money of Tshs 855,000/=, two machines used to register lines, one mobile phone, one small phone and several lines. All were seized and tendered in court as exhibits. He rested his submission by arguing that, the available evidences were watertight and the sentence of three (3) years was within the court's jurisdiction.

In rejoinder, the appellant reiterated his submission in chief with a prayer that the appeal be allowed.



To dispose of this appeal, I find there is one issue for consideration that is whether the available evidence adduced at the trial court was enough to prove the case against the appellant as required by law.

To be in a better position as the first appellate court, I have to go back to the whole proceedings of the trial court to reevaluate the evidences adduced therein. In the case of **Mapambano Michael @ Mayanga Vs. R, Criminal Appeal No. 268 of 2015** (unreported) at Dodoma, the Court of Appeal placed special duty to the first appellate court as follows:-

"The duty of first appellate court is to subject the entire evidence on record to a fresh reevaluation in order to arrive at decision which may coincide with the trial court's decision or may be different altogether"

Being guided by this principle, the testimony of the complainant (PW1), was to the effect that, the drummer started on 03/03/2020 at Nangurukuru in a restaurant, where the appellant bearing identification mark of Tigo, approached the complainant and introduced himself as a Tigo Agent registering student bundle line for college students and renew lost lines. He told the appellant to register in student line, so he gave him Tigo line for registration.

Unfortunate, the appellant told the complainant that he should give him an Airtel number, thus he mentioned his Airtel number, while the appellant was recording the said number to his phone he proceeded with other processes therein. At that time, when he was on the process of registering



the said number, the appellant asked him if he registered his number by thumb and the name he used in registration. After all that processes, the appellant told the complainant to wait for a message confirming his registration in a student line.

After waiting for a while without any response, the appellant told him to give his line. He gave him his line and the appellant clicked some numbers thereafter asked the complainant to click okay which he did.

The appellant the complainant to wait for a phone call from Airtel customer care that his Airtel student card has been registered. Soon after, he informed by the said Airtel customer care that his Airtel sim card for student had already been registered, thereafter he was ordered to switch off his line for an hour.

After an hour when he switched on his line, alas he discovered that his sim card does not operate. Likewise, when he went to check his Bank Account alas a good sum of money to the tune of Tshs. 800,000/= was stolen.

That being the case, he decided to report the incident to police and after two days he was phoned by police Kilwa Masoko to identify the accused. In the cause of Police Identification Parade, PW1 identified the appellant four times in four different locations.

On cross examination and reexamination, PW1 had this to say:-



"My Airtel sim card had access with NMB Mobile 0686826000. Pin number 2000. I gave pin number the accused when he asked me to do so for one hour I switched off the line on 03/03/2020. Bank statement showed the transaction of drawing Tshs 800,000/= done at 18:37. On 03/03/2020 I was with accused at the restaurant Nangurukuru"

PW2 Sophia Mohamedi Mpini supported the testimonies of PW1 to the extent that, on 03/03/2020, at 18:37 hours, the appellant went to her shop to draw 800,000/= through NMB Mobile account, then she gave him a receipt for that transaction. The said receipt was admitted in court during trial, marked as exhibit PE "1".

It means the transaction was done through Airtel network via NMB Mobile and the name of the drawer of the said amount of Tshs 800,000/= was Ramadhani Mohamedi Chimulike Mkanga (PW1) who is the complainant in this appeal. This piece of evidence may mean, the appellant used details of PW1 to withdraw money illegally.

The evidence of PW3 is likewise pointing all fingers to the appellant to have entered into a restaurant advertising his business to register student lines. PW1 was witnessed by PW3 to accept the offer from the appellant to register his college line, but latter PW1 was found complaining that his money has been stolen and the alleged line was invalid.



The evidence of PW4 likewise, corroborated the testimonies of PW1 that the appellant confessed before Police Kilwa Masoko to have stolen money from PW1. During interrogation at Police Kilwa Masoko, the appellant was found with Money equal to TZS 855,000/=, two machines of registering lines, one phone make Infinix, and one small phone with various lines.

In turn the appellant's defence case was of general denial with unrelated and uncoordinated stories to the offence charged.

In this piece of evidence, certain issues are not disputable. First, is the identity of the appellant. That he was found on the fateful morning at Nangurukuru area. That at Nangurukuru he introduced as a person registering Tigo lines. This fact is supported by all prosecution witnesses. Third, the appellant and PW1 met at the restaurant of PW3 where the appellant introduced his business of registering college lines. Fourth, the stealing if any was done electronically through NMB Account at Nangurukuru. The only question is who committed that stealing. Finally, Police Kilwa Masoko conducted Police Identification Parade where the appellant was properly identified by PW1 in four different locations. These are undisputable facts based on the adduced evidences during trial.

It is a settled legal position in our jurisdiction, that in criminal trials, the prosecution must leave no doubt in proving the accusations against the accused person. In this appeal, the evidence adduced by the prosecution witnesses, to the best, left no doubt, leave alone reasonable doubt over the involvement of the appellant in that fraudulent transactions. One may



ask, why the name of the complainant (PW1) appeared in the receipt of NMB while withdrawing such money? I think the answer is simple, the appellant had every details of PW1's line including pin number. Also when one withdraws money he does not sign somewhere before the transaction is complete. Rather, once the pin number is disclosed, transaction is complete.

I am also persuaded by the testimonies of PW4 who disclosed that the appellant confessed to have been involved in stealing money through electronic money transfers. I would therefore, agree with the reasoning of Lord Denning on the need of the Government to protect innocent persons in the society against criminality. That the Court should not be obsessed by proving the case leaving no remote possibility of doubt, which may lead into another danger of being unable to protect them.

Lord Denning in the case of **Miller Vs. Minister of Pensions**, (1947) 2 All ER 372, held: -

"...Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is strong against a man as to leave only a remote possibility in his favour which can be dismissed"

I fully subscribe to that reasoning, the evidence adduced during trial, pointed all fingers to the appellant leaving only remote possibilities of his innocence. I think the appellant should regret himself for what he did. The

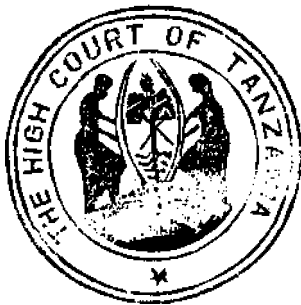



sentence of three years delivered by the trial court was proper and within the jurisdiction of the trial court.

As such I find no reason to disturb the trial court's judgement. Accordingly, this appeal is dismissed.

I accordingly order.

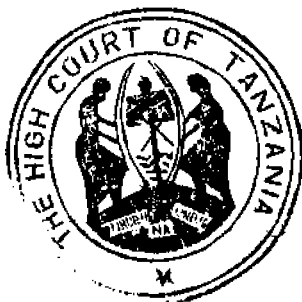
Dated at Mtwara in Chambers on this 19th Day of April, 2021.





P.J. NGWEMBE
JUDGE
19/4/2021

Court: Delivered at Mtwara in Chambers on this 19 day of April, 2021 in the presence of the appellant and Ms. Caroline Matemu for the respondent.

Right of appeal to the court of appeal explained.




P.J. NGWEMBE
JUDGE
19/4/2021