

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

HC CRIMINAL APPEAL NO. 32 OF 2021

(Original Economic Case No. 17 of 2019 of Mwanza Resident Magistrate's Court at Mwanza)

DICKSON AUGUSTINE NKWERA APPELLANT

versus

THE REPUBLICRESPONDENT

JUDGMENT

28th June & 8th July 2021

RUMANYIKA, J.:

Only with respect to Dickson Augustine Nkwera (the appellant), according to records jointly and together charged with Zaituni Msetti and Isaya Bukakiye @ Simon (the 1st and 2nd accused) respectively who are not here, unless the context otherwise required, the appeal is against conviction and sentence of fine of shs. 10.0m or seven (7) years in default for the offence of uttering false documents Contrary to Sections 342 and 337 of the Penal Code Cap 16 RE. 2019 the 4th count in the charge sheet for the reasons on record between Kabuka and Sumaye, Rms the case having had changed hands on 6/10/2020.

The 3 grounds of appeal revolve around points as under; **(1)** that the prosecution case wasn't beyond reasonable doubts proved **(2)** that the impugned decision was wrongly reached at for it lacked reasons and **(3)** the learned trial resident magistrate improperly evaluated and analyzed the evidence.

When the appeal was, by way of audio teleconference called on 28/06/2021 for hearing, Messrs Gunda and L. Meli learned counsel and state attorney appeared for the appellant and the respondent Republic. For avoidance of doubts I heard them through mobile numbers 0754646919 and 0717418929 respectively.

In a nutshell, Mr. Gunda learned counsel submitted; **(i)** that given its essential elements the offence of uttering false documents it was not beyond reasonable doubts proved leave alone proof, as only the 1st accused was, with respect to the collateral Plot No. 52 Block "B" Mhungula area Kahama author of the Valuation Report at issue save for improper evaluation of the evidence hence leading to breach of the principles of natural justice (right to be heard) **(ii)** that the report was not proved the forged one **(iii)** that the impugned decision lacked reasons therefor therefore it offended the mandatory provisions of Sections 312 (1) of the

Criminal Procedure Act Cap 20 RE. 2019 no points for determination either were spelt out therefore it was worth the name not a judgment. It was liable to be quashed (case of **George Mingwe v.R** (1989) TLR 10 (HC). That is all.

Ms. L. Meli learned state attorney submitted that actually ingredients of the offence were all proved beyond reasonable doubts. After all with respect to the site Visit Form the appellant should have had also been convicted for forgery leave alone it also having been unlawfully uttered. That the issue of one having been misled by the 1st accused who nevertheless readily pleaded guilty, it should not have been raised. That as for points for determination and reasons for the decision, the omission prejudiced no party nevertheless this one being a 1st appeal the court it may wish to step into shoes of the trial court leave alone the principles of overriding objectives. That is all.

A brief account of the evidence on record reads thus:-

Pw1 Mudith Cheyo the Executive director of Self Microfinance Fund and resident of Dar es salaam he stated that in Tanzania they had seven branches including Mwanza for which in 2016 the appellant served as manager that on application, they issued credit facilities among other

objectives whereby, with respect to the collateral alleged say worth shs. 400.0m, on 27/9/2016 the 1st accused secured loan of shs. 250.0m but defaulted but, at the time of attachment and probably sell of the collateral they found only a bare plot. No warehouse or something.

Pw2 Santiliziona Manonge of Lumala area, Ilemela district Mwanza stated that he was loan director who worked with Self Microfinance Fund (with respect to the appellant's role and duties vis avis loan issues, as per Pw1). That in his capacity, with regard to the case at hand on 21/9/2016 he received the 1st accused's loan application, then upon investigations the appellant assured him it all (copies of the respective loan application form, a letter signed by the 1st accused and member's resolution)- Exhibits "P1", "P2" and "P3" respectively, then with respect to the 1st accused's shs. 388.0m worth collateral, the appellant presented a copy of the respective Valuation Report which Pw2 received on 5/10/2016 (Exhibit "P4") plus the appellant's Site Visit Report dated 12/10/2016 (exhibit "P5") and. upon approval the 1st accused received credit facility of shs. 250.0m on 21/10/2016 (copy of the loan agreement and mortgage deed- Exhibit's "P6" and "P8" respectively only on further inquiries Pw2 and fellows to find no warehouse but a bare plot.

Pw3 Lameck Omond Meshack stated that he was, at the time zonal manager of Self Microfinance Fund from whom, this time around the 1st accused secured credit facility of shs. 250.0m in 2016 but defaulted, and, when in 2020 they undertook to attach and sell the collateral warehouse they only found a bare plot. They reported the appellant to police hence the case.

Pw4 Selvia Musiba stated that as he was, at the time working with Simiyu land registry now on duty, following the incident investigations team from Mwanza inquired into Plot No. 52 Block B Muhungula area – Kahama, according to the register the 1st accused's property, it was confirmed as such.

Pw5 Wp 5552 DC. Cpl Joram of the RCO Mwanza stated that following the incident he investigated the matter but contrary to the allegations he found no warehouse but a bare Plot No. 52 Block B property of the 1st accused. That if anything, only on neighboring Plot No. 1 there was a warehouse which belonged to someone else. That is all.

The appellant (Dw2) is on record having had stated that he was at the time Self Microfinance Fund manager for Mwanza branch specialized in business and finance. That among others the 1st accused was their

customer who, now for the 3rd season, on application for loan, upon presenting to him all the requisite documentation, with respect to Plot No. 52 Block B Mungula area, Kahama (the collateral), copy of the valuation report in particular, with fellows led by the local WEO and VEO he visited the site, he verified and approved it all then the HQS office's Dar es salaam endorsed the loan. That is all.

The pivotal issue now is not who, between the appellant and 1st accused prepared or caused it to be prepared, but with all intents and purposes of the charges who, with respect to the collateral presented / caused the Valuation Report at issue to be presented along with the appellant's site visit report (exhibits "P4" and "P5") respectively much as it is undeniable fact that presentation by him to authorities, the Valuation Report turned out to be not only unrealistic but also with naked eyes ambiguity free any lies. It is also very fortunate not disputed that only in this case the appellant knew, and, with a view to establishing physical existence of the collateral (warehouse) he was duty bound to visit the site, that one he did and he accordingly reported it in favor of the 1st accused for approval of the credit facility. It means therefore, unless in his testimony he pleaded blindness or blackmailing which is not the case here,

the appellant should not have verified in writing that a warehouse existed on Plot No. 52 Block "B" Mungula area Kahama district much as the same was neither microscopic, invisible or an imaginary object nor was it apparent only to land management and valuation officers or the like professionals. Simply it was whether the warehouse was there or not. There is no wonder therefore that the appellant did not have in court the alleged local Ward Executive Officer with whom during the visit they might have, if at all visited the site. Failure to bring in court such crucial witness(s) it entitled any reasonable tribunal like I hereby do, to draw adverse inference and this one should not be mistaken for shifting the burden of proof to the appellant all was inconsistent with an innocent person cases of **Hemedi Said V. Mohamed Mbilu** (1984) TLR 113 and **Edward Nzabuga Vs. R. Criminal Appeal** No. 136 of 2008 (CA) Unreported. it follows therefore that most likely the appellant's failure to bring any one of the two key witness it was not an accident but by design. Grounds 1 and 3 of the appeal are dismissed.

In the upshot, the devoid of merits appeal is dismissed. The conviction and sentence are, for avoidance of doubts both upheld. Whether or not the trial court's decision was properly evaluated it was immaterial


under the obtaining circumstances because it wasn't the appellant's contention that the trial court ignored or falsified his evidence. The substantive justice part of it therefore it dictated as such. As said, the appeal is dismissed. It is so ordered.

Right of appeal explained.



S.M. RUMANYIKA
JUDGE
03/07/2021

Judgment delivered under my hand and seal of the court in chambers this 8/7/2021 in the absence of the parties.



S.M. RUMANYIKA
JUDGE
08/07/2021