

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(BUKOBA DISTRICT REGISTRY)

AT BUKOBA

CRIMINAL APPEAL NO. 16 OF 2021

(Originating from the decision of PCCB Case No. 01 of 2019 of the District Court of Biharamulo at Biharamulo)

BUYIGO YUSUPH MVUYEKULE----- APPELLANT

VERSUS

REPUBLIC----- RESPONDENT

JUDGEMENT

Date of Last Order: 17/08/2021

Date of Judgment: 27/08/2021

Hon. A. E. Mwipopo, J.

Buyigo Yusuph Mvuyekule, the Appellant herein, was charged in the District court of Biharamulo at Biharamulo for 25 counts of corrupt transactions contrary to section 15(1) (a) of the Prevention and Combating of Corruption Act, Act No. 11 of 2017. Particulars of the offence reveals that on 27th August, 2019 at Kikoma Village, Nyamalagala Ward within Biharamula District in Kagera Region the Appellant and another person namely Aidan Mpenda Chamubale did corruptly solicit and obtained an advantage worth sum of shillings 100,000/= from 20 people

who were applying for the post of spray operators (fumigators). Each of the applicant for the vacant post paid shillings 5,000/= being an inducement of discussing and passing of applications for advertised post. After hearing of the prosecution and defence case, the Appellant was convicted for all 25 counts and was sentenced to pay fine of shillings 500,000/= fine for each offence or in default to serve 3 years imprisonment. The Appellant was aggrieved by the decision of the District Court and filed the present appeal.

The petition of appeal filed by the Appellant have a total of 7 grounds of Appeal. The grounds are as provided hereunder:

1. That the Court erred in law and facts whereas the prosecution side failed to prove their case beyond the required standard as they failed to set trap after receiving information from the informer.
2. That the Court erred in law and in facts to depend on the false allegation from the prosecution side as neither PCCB Officer nor witnesses namely PW1, PW2, PW3, PW4, PW5, PW6 and PW7 saw the Appellant receiving bribe.
3. That the learned Magistrate erred in law and facts to convict and imprison the Appellant on twenty five counts.

4. That the Court did not put into consideration the evidence adduced by the Appellant as it was water tight as the money aimed to facilitate the meeting as food allowances not otherwise.
5. That the Court erred in law and facts to pronounce a judgment whereas prosecution failed to parade and provide all twenty (20) people in person and names of claimant which bears signature hence false allegation.
6. That the Court erred in law and facts to pass verdict to the Appellant whereas there were no conduct of *mens rea* hence mistake of facts.
7. The Court erred in law and facts to charge and convict the Appellant whereas the chain of custody for exhibits where not adhered as per law.

At the hearing of the appeal, the Appellant appeared in person, unrepresented, whereas the Respondent was represented by Mr. Nehemia John, and Mr. William Fusi, learned State Attorneys.

In his submission in chief, the Appellant being a layman prayed for the Court to consider his grounds of appeal found in the Petition of Appeal and that after the State Attorney has submitted his reply he will make a rejoinder.

On his part, Mr. William Fusi, the learned State Attorney opposed the appeal. Briefly, it was his submission that the offence of corrupt transaction does not always depend on the trap. He said that the trap is used by the investigator before the offence of corruption is about to be committed and where the information

regarding the offence is received after the offence has already been committed, as in this case, there is no need to trap the suspect according to Regulation 54 of the prevention of combating of corruption Regulation, GN. No. 300 of 2009. The said Regulations provides for the discretion of the officer to lay a trap, electronic means and other investigation means in obtaining evidence to prove the offence.

The Counsel argued that Respondent proved the offence as rightly it was held by the trial court by bringing to Court 7 witnesses. He said that among those witnesses, Pw3, Pw4, Pw6 and Pw7 were the victim of the offence whom the Appellant solicited bribes of Shillings 5,000/=. Their evidence is supported by Pw1 and Pw2 who were supervisor of the project who revealed that there was no money needed to be paid and it proved that the unlawful act was committed. The Counsel stated that the evidence adduced especially testimony by PW 3 proved that Appellant asked to all interviewee to write their names on paper and to pay shilling. 5,000/= each. He added that there is sufficient evidence to prove malice in all twenty counts as proved by is the list of all interviewee who paid shillings 5,000/= each which was tendered. Thus, he said that, there was no need to call all 20 interviewee as there is no required number of witness who are needed to testify in court.

On the issue that the chain of custody for exhibits were no adhered, Respondent Counsel argued that the evidence in record does show the chain of

custody as PW3 said in his testimony how the documents he tendered came in his custody. The documents were also identified by PW2.

In his rejoinder, the Appellant said that he was the Chairman of the Village who was responsible for obtaining form in the exercise and he don't know if the Village Executive Officer solicited bribe. He said that he was arrested for receiving bribe without evidence as the evidence available failed to prove the offence. He pray for the court to allow the appeal and release him from imprisonment.

From submissions, the issue for determination is whether the evidence available in record proved the offence of corrupt transactions against the Appellant.

The offence of corrupt transaction as provided by section 15(a) of the Prevention and Combating of Corruption Act, Cap. 329 R.E. 2019 is committed where a person who corruptly by himself or in conjunction with any other person solicits, accepts or obtains, or attempts to obtain, from any person for himself or any other person, any advantage as an inducement to, or reward for, or otherwise on account of anything in relation to his principal's affairs or business. The Appellant herein was convicted by the trial Court in all 25 counts of corrupt transactions after evaluating all seven prosecution witnesses and Appellant evidence.

The evidence from PW1 (Investigation Officer), PW2 (Health Officer and Coordinator for Malaria project in Biharamulo District) and PW3 (Ward Executive Officer of Lusahunga Ward) proved that there was a program fumigating mosquitoes in Biharamulo District and the vacant was announced for the post fumigators (spray operators). The application for the post was to be made to the Village Council by application letters from 12th to 28th August, 2019 and the discussion of the applicants was to start on 29th August, 2019 to 4th September, 2019. The process was to be conducted for free and no payment was required. Their evidence also proved that payment to the members of Village Council I any of its meeting is supposed to be done by the Village Executive Officer. The evidence by PW3 proved that the Appellant summoned those who applied for the post of fumigator on 27th August, 2019 at his office for interview. PW3 found in the Appellant office list of 20 persons who said they have paid shillings 5,000/= each and the money was received by Aidan Mpenda Chamubale, the person who was acting as Ward Executive Officer. The said Aidan surrendered the money corrected to the PCCB Office.

This evidence is supported by independent evidence of PW4, PW5, PW6 and PW7 the applicants for the post of fumigator. These witnesses testified that they paid shillings 5,000/= to Aidan in the presence of the Appellant at Kikoma Village office. They were told that the money is for the allowances to the Village Council

members who will discuss their application. PW7 testified that Aidan and the Appellant told them to pay shillings 5,000/= each as allowance to the member of the Village Council.

The Appellant and his fellow accused person did not deny receiving the money from 20 Applicants. In their defense they asserted that it was the Village Council which told them to take shillings 5,000/= from each applicants for their meal allowance. Unfortunately, this defense evidence does not shake the Prosecution case. The evidence from PW2 and PW3 proved without any doubt that the application was supposed to be free and no money was needed to be paid.

The burden of proof in criminal cases is always on the prosecution as it was held in the case of **John Makolobola v. Republic (2002) TLR 296**, and the same is beyond reasonable doubt. The Appellant defense that he was acting under instruction of the Village Council does not raise doubt to prosecution evidence which has proved that the applicants were not supposed to pay anything in the process of applying for the post. The evidence by PW2 and PW3 proved that the Village Council was supposed to meet on 29th August, 2019 to discuss the applications for the post and the Council has no mandate to impose any payment to the applicants. For that reason, the offence was corrupt transaction where the Appellant received shillings 5,000/= from 20 applicants of the post of fumigator was proved.

This being a first Appeal, the Court has room for scrutiny of the records of trials without limitations. I have read the record and the judgment of the trial Court which reveals that the Appellant was charged and convicted for 25 counts for the corrupt transactions contrary to the law. Unfortunately, the evidence available proved that the Appellant obtained advantage from 20 applicants and soliciting advantage from 3 witnesses who are PW4, PW5 and PW7. In the 1st and 2nd Count the Appellant was charged for soliciting and obtain advantage of shillings 5,000/= from Adam Msangi Mussa. However, the said Adam Msangi Mussa was not in the list of the 20 applicants who paid shillings 5,000/= to the Appellant as allowance to the Village Council members– Exhibit E1. Also, Adam Msangi Mussa is not among the witnesses who testified. His name appears in the names of the members of Village Council who attended meeting to discuss the names of the persons who applied for the post of fumigators. Thus, the first two counts were not proved.

In the 23 counts which remains, the Appellant was charged with 11 counts for the offence of corrupt transaction by soliciting advantage and 12 counts for obtaining advantage. On the 11 counts of soliciting advantage, it is only the evidence of PW7 which shows that the Appellant solicited advantage from him. This means that the count no. 11 was proved against the Appellant. The remaining 10 counts for corrupt transaction by soliciting advantage was no proved against

the Appellant. This means that the evidence available in record proved counts no. 4,6,8,10,11,12, 14,16,18,20,22,24 and 25 against the Appellant and the remaining counts were not proved.

Therefore, I set aside conviction and sentence of the trial Court in Count No.1,2,3,5,7,9,13,15,17,19,21 and 23. The conviction and the sentence of the Trial Court against the Appellant is upheld in Count No. 4,6,8,10,11,12, 14,16,18,20,22,24 and 25. The sentence to run consecutively if the Appellant pays fine and it has to run concurrently when he fail to pay the fine. The trial Court order for shillings 100,000/= to be returned to the victims is also upheld.



A.E. Mwipopo

Judge

27.08.2021

The Judgment was delivered today, this 27.08.2021 in chamber under the seal of this court in the presence of the Appellant and Mr. William Fusi, State Attorney for the Respondent.



A. E. Mwipopo

Judge

27.08.2021