IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

CRIMINAL APPEAL NO. 7 OF 2021

(Originating from Criminal Case No. 137 of 2020 at the District Court of Babati)

ADELTUS RICHARD RWEYENDERA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

29/7/2021 & 29/10/2021

ROBERT, J:-

The appellant, Adeltus Richard Rweyendera, was charged and convicted by the District Court of Babati at Babati for two counts of Corrupt transactions contrary to section 15 (1) (a) and 15 (2) of the Prevention and Combating of Corruption Act, Cap. 329 R.E 2018. After a full trial, he was sentenced to a fine of TZS 500,000/= for the first and second count or a custodial term of three years for each count. Aggrieved, he preferred this appeal challenging the decision of the trial Court.

The prosecution case was to the effect that, on diverse dates between 6th and 19th August, 2020 at Magugu Primary Court within the

District of Babati in Manyara region, being the trial Magistrate in Criminal Case No. 242/2020, the appellant corruptly solicited the sum of Tanzanian Shillings One Hundred Fifty Thousand (TZS 150,000/=) from one Issaya Kiluma Mangu, Said Selemani Mtaturu and Marcelina Ambros Mdimi who are some of the parents and relatives of Musa Issaya Kiluma, Omary Jumanne and Maris Basily Muna respectively as an inducement to favour them in the ongoing criminal case No. 242/2020 was pending before the appellant at Magugu Primary Court.

The appellant was arrested on 19/8/2020 in his office at Magugu Primary Court by officers from the Prevention and Combating of Corruption Bureau (PCCB) who found him in possession of TZS 221,500/= part of it was a trap money from PCCB which amounted to TZS 110,000/=, the remaining amount came from the persons he solicited money from. Thereafter, he was arraigned before the court on 20/8/2020 at Babati District Court where he pleaded not guilty.

After a full trial, he was convicted as charged and sentenced to pay fine or serve three years in jail for each count. Aggrieved, he filed this appeal armed with five grounds of appeal:

1. *That, the trial court erred in law and fact by convicting and sentencing the appellant based on the prosecution's charge which was brought under wrong citation of the law.*

2. *That, the trial court erred in law and fact by convicting and sentencing the appellant without giving the reason for the change of the trial magistrate which led to unfair trial.*
3. *That, the trial court erred in law and facts by convicting and sentencing the appellant by relying on exhibits P1, P2, P3, P4, P5 and P6 which were after admission the contents were not read and explained to the appellant as required procedure.*
4. *That, the trial court erred in law and fact for failure to evaluate properly the written and oral evidence tendered before it by both parties.*
5. *That, the trial court erred in law and fact by convicting and sentencing the appellant without considering the fact that the prosecution case was not proved beyond reasonable doubts.*

At the hearing of this appeal, the appellant appeared in person without representation wheras the respondent was under the services of Ms. Mary Lucas, learned state attorney. At the request of parties, hearing proceeded by way of written submissions and both parties adhered to the filing schedules.

Amplifying on the first ground of appeal, the appellant submitted that, the charge sheet was brought under a wrong citation of the law as the Prevention and Combating of Corruption Act, Cap. 329 was revised in 2019 but the charge sheet was cited R.E 2018 which make the charge sheet defective.

Responding to this ground, Counsel for the respondent submitted that, the difference noted in the citation of the charge sheet was not fatal as the appellant was not prejudiced and it didn't ocassion miscarriage of justice to the appellant. He maintained that, as long as the appellant understood the nature of the offence, the gravity of the offence and the seriousness of the offence facing him as explained to him, then the said mistake cannot be fatal and is curable under section 388 (1) of Cap. 20 (R.E 2019). To support his argument, he cited the case of **Mohamed Clavery vs The Republic**, Criminal Appeal No. 470 of 2017 TZCA (unreported).

On the second ground, the main issue was a change of magistrate without assigning any reasons which is contrary to the law. The appellant submitted that, the proceedings were conducted by different magistrates without assigning any reasons which is contrary to section 214 (1) of the Criminal procedure Act, Cap 20 R.E 2019. He maintained that, the trial magistrate was assigned by the Hon. Judge in charge who instructed a time frame to determine the matter, thus, the trial magistrate was working under pressure which led to miscarriage of justice where the trial magistrate failed to record some statements of the witnesses. Further to that, exhibit P1 and P2 were objected but the ruling was never delivered

by the trial magistrate and at the end he relied on those exhibits to deliver his decision.

Replying to this ground, counsel for the respondent submitted that, section 241 (1) of Cap 20 R.E 2019 is applicable where the case is at the stage of the trial and the evidence was adduced in court and recorded by the former magistrate. However, in the present case the case was re-assigned to another magistrate prior to the preliminary hearing and the former magistrate was only adjourning the case, hearing of the entire case was presided over by one magistrate. In that situation the said magistrate was not duty bound to give any reasons for the reassignment.

Regarding the third ground, the central issue was that, exhibits P1, P2, P3, P4, P5 and P6 were not read over and explained to the accused person after being admitted which is contrary to the law. He made reference to the case of **Robinson Mwanjisi and Others vs Republic**, 2003 TLR 218 which emphasized on the need for a document admitted in evidence to be read over in Court to enable the accused person to understand the contents of the document.

Responding to this counsel for the Respondent maintained that, exhibits P1, P2, P3, P4, P5 and P6 were properly tendered and received before the court. He argued that, when PW1 was testifying in Court, he

tendered exhibits and prayed to be supplied with them so as to read them in court. Thus, the requirements established in **Robinson Mwanjisi's case** (supra) was observed by the trial court.

Coming to the fourth issue, the appellant faulted the trial court for failure to properly evaluate the written and oral evidence tendered before the court by both parties. He maintained that, first, there were contradiction on the prosecution side regarding the amount alleged to have been solicited and received by the appellant. While Pw2 and Pw3 submitted that the appellant received TZS 150,000/= and put it in a drawer, PW1 testified that during the search TZS 110,000/= was found in the drawer and it matched the trap money from the PCCB.

Resisting this ground, counsel for the respondent submitted that, the evidence was properly evaluated by the trial court. There was no contradiction regarding the money alleged to have been solicited and the amount received by the appellant. The appellant solicited TZS 150,000/= while PW2 and PW3 had TZS 40,000/= only, thus, the PCCB added them TZS 110,000/= which made the total of TZS 150,000/= which was demanded by the appellant. At the time of the arrest the appellant was found with TZS 221,500/= which included the trap money of TZS

110,000/= the other amount was found in a mobile phone with Registration No. 0757780375.

Further to that, she maintained that, there was no any variation between the amount indicated on the charge and those received by the appellant at the scene of crime. The appellant was charged and convicted based on TZS 110,000/= which was the trap money with serial numbers as indicated on exhibit P1 "Fomu ya Fedha za mtego". Therefore, the evidence adduced proved the offence charged.

Responding to the argument that the person who conducted search was not called to testify, she submitted that, the said witness was not a material witness and his role was played by PW1 and PW4 who participated in the seizure and filled certificate of seizure which were received as exhibit P2. She maintained that under section 143 of Cap. 6 (R.E 2019), a person is convicted on the strength of prosecution evidence and not the number of prosecution witnesses who testified in court.

With regards to the fifth ground, the appellant alleged that the prosecution's case was never proved beyond reasonable doubt. He maintained that, the evidence adduced did not support the charge as the prosecution failed to prove their case to the standard required by the law.

He made reference to section 3 (2) of **the Evidence Act**, Cap 6 R.E 2019 and the case of **Director of Public Prosecutions vs Peter Kibatala**, Criminal Appeal No. 4 of 2015, CAT at DSM (TANZLII). Thus, he prayed for this appeal to be allowed and the decision of the trial court to be quashed and set aside.

On this ground, counsel for the respondent replied that, the evidence tendered at the trial court proved beyond doubts that the appellant committed the alleged offence. Thus, she prayed for the appeal to be dismissed in its entirety for lack of merit.

In a brief rejoinder, the appellant reiterated what he submitted in his submission in chief and maintained his prayer for the appeal to be allowed.

I have carefully considered the submissions of both parties and examined the records of this matter. I will now determine the merit of this appeal in light of the grounds argued by the parties.

Starting with the first ground, as rightly submitted by the appellant, since the alleged offences took place between 6th and 19th August, 2020 when the law used to charge him (the Prevention and Combating of Corruption Act, Cap. 329) was already incorporated in the Revised Edition of 2019, the correct citation was supposed to be (R.E.2019) and not

(R.E.2018). However, considering that the appellant was charged for violation of section 15 of Cap. 329 which did not undergo any changes apart from the law being incorporated in the revised editions of 2019, the Court is not satisfied that the alleged error occasioned failure of justice. Therefore, I find the alleged error curable under section 388 of the Criminal Procedure Act, Cap. 20 (R.E. 2019) which provides that:-

> *"(1) Subject to the provisions of section 387, no finding sentence or order made or passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or in any inquiry or other proceedings under this Act; save that where on appeal or revision, the court is satisfied that such error, omission or irregularity has in fact occasioned a failure of justice, the court may order a retrial or make such other order as it may consider just and equitable"*

Coming to the second ground, this court is aware of section 214 (1) of Cap. 20 (R.E 2019) which provides that;

> *"Where any magistrate, after having heard and recorded the whole or any part of the evidence in any trial or conducted in whole or part any committal proceedings is for any reason unable to complete the trial or the committal proceedings or he is unable to complete the trial or committal proceedings within a reasonable time, another magistrate who has and who exercises jurisdiction may take over and continue the trial or committal proceedings, as the case may be, and the magistrate so*

taking over may act on the evidence or proceeding recorded by his predecessor and may, in the case of a trial and if he considers it necessary, resummon the witnesses and recommence the trial or the committal proceedings."

The quoted provision requires that, where there is a change of magistrate the reason for the first magistrate's failure to complete the trial must be recorded. However, such a requirement is needed the presiding magistrate having heard and recorded the whole or any part of the evidence in any trial or conducted in whole or part any committal proceedings.

The rationale for this requirement was properly articulated by the Court of Appeal of Tanzania in the case of **Priscus Kimaro v.R**, Criminal Appeal No. 301 of 2013 (unreported) where the Court observed that:

"*Where it is necessary to re-assign a partly heard matter to another magistrate the reason for the failure of the first magistrate to complete must be recorded. If that is not done, it must lead to chaos in the administration of justice. Anyone for personal reasons could pick up any file and deal with it to the detriment of justice"*

In the present case, records indicate that change of magistrate occurred at the earliest stage of the case before hearing. Therefore, the predecessor Magistrate did not hear or record any part of the evidence in the trial. Thus, section 214 (1) of Cap. 20 (R.E 2019) is not applicable in the circumstances since hearing of all witnesses and delivery of judgment took place before one magistrate.

Coming to the third ground, the appellant alleged that exhibits P1, P2, P3, P4, P5 and P6 were not read over and explained to the appellant after being admitted in evidence. It is a trite law that, once the court admits a document as exhibit it has to be read out to the appellant, failure to do that is fatal as the appellant is presumed not to be aware of the contents of exhibit used against him. The rationale behind it is to to enable him understand the nature and substance of the facts contained in it.

In **Robinson Mwanjisi and Others Vs. Republic** (supra) the court stated that:

> *"Whenever it is intended to introduce any document in evidence, it should first be cleared for admission and be actually admitted, before it can be read out Reading out document before they are admitted in evidence is wrong and prejudicial."*

I have revisited the proceedings of the trial court and noted that the Court admitted only exhibits P1 to P5, there is no exhibit P6 as submitted by the appellant. When the prosecution tendered exhibits P1, P2, P3 and P4 the appellant's counsel raised objection in relation to exhibit P1 and P2 and the same was overruled (See page 15 of the trial court proceedings). Therefore, the allegation that the trial magistrate was never ruled out in respect of the said exhibits is just an after thought of the appellant.

With regards to reading of the tendered exhibits, records indicate that, when the court admitted exhibits P1, P2, P3 and P4 the Public Prosecutor prayed to be supplied with those exhibits so as to read them in court and the Court recorded that "dully supplied". Considering the purpose for which the said documents were requested and the fact that the Court supplied the documents as requested, in the absence of the evidence to the contrary, this Court is convinced that the documents having been so supplied were read as requested by the prosecutor. Similarly, with respect to exhibit P5 records indicate that when the public prosecutor prayed to be supplied with exhibit P5 so as to supply to his witness, the court recorded "Dully Supplied" which means the Court supplied the document as requested. That said the Court is of the firm view that the appellant was enabled to understand the nature and substance of the documents tendered.

On the fourth ground, the appellant alleged that, the amount of money alleged to have been solicited differ from the amount of money stated during the hearing. The charge sheet indicates that, the appellant solicited the sum of TZS 150,000/=, the proceedings clarified further that, the trap money was TZS 110,000/= and one Issaya (PW2) had another 40,000/= which made a total of TZS 150,000/= therefore, this Court finds

that there was no contradiction in respect of the money alleged to have been solicited. Thus, this court is convinced that the evidence was properly evaluated by the trial court and both parties' evidence was considered in preparing the decision.

Lastly, the appellant alleged that the prosecution failed to prove their case on the standard required by law. However, given the reasons stated above and the fact that the appellant failed to point out any doubt in the prosecution's case, this court is of the considered view that the prosecution case was proved beyond reasonable doubt.

In the event, I find and hold that the finding of the trial court cannot be faulted. The appeal is hereby dismissed.

It is so ordered.

K.N.ROBERT
JUDGE
29/10/2021