

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MWANZA

AT MWANZA

(HC) CRIMINAL APPEAL No. 141 OF 2021

(Originating from the District Court of Ukerewe in Criminal Case No. 23/2020)

NAMANDA LWEYOGA APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

24/2/2022 & 19/4/2022

ROBERT, J:-

The appellant, Namanda s/o Lweyoga was accused of committing multiple offences at the District Court of Ukerewe. In the first and fourth counts, he was charged with Personating Public Officer contrary to sections 100(b) and 35 of the Penal Code, Cap. 16 (R.E.2019) and Forgery of Government Stamp contrary to section 340(1) and (2)(a)(g) of the Penal Code respectively. In the second and third counts, he was charged together with one Yacob s/o Msipi for committing the offences of Conspiracy to commit an offence contrary to section 384 of the Penal Code and Obtaining Credit by false pretences contrary to section 301 and 305(a) of the Penal Code respectively. At the end of the prosecution case, he was discharged for having no case to answer in respect of the 2nd and 4th counts. After the hearing, the trial court convicted him of the

1st and 3rd counts and sentenced to one year imprisonment in respect of the first count and three years' imprisonment in respect of the third count. The sentence to run concurrently. Aggrieved, he preferred this appeal challenging his conviction and sentence in respect of the 1st and 3rd counts.

Evidence adduced by prosecution in respect of the first count alleged that on the 1st day of April, 2020 at the village of Gallu within the District of Ukerewe, the appellant presented himself to one Sylvia d/o Lomwadi @ Masami as an officer of Tanzania Intelligence and security Service while knowing that information to be untrue. Similarly, in the third count, it was alleged that on the same date and place, the appellant together with one Yacob s/o Msipi, with intent to defraud, obtained TZS 20,000/= from Sylvia d/o Lomwadi @ Masami purporting that they would rescue her kidnapped young brother Nasis s/o Lomwadi @ Masami while knowing that to be false.

In the preferred appeal to this Court, the appellant raised the following grounds of appeal against the decision of the trial Court:-

- 1. That, trial court incurably and grossly erred in point of law and fact to convict and sentence the appellant while the case against the appellant had not proved beyond reasonable doubt.*

- 2. That, trial court erred in law and fact to convict the appellant for offence charged with, without the prosecution evidence and was no any exhibit document from prosecution side to prove that the appellant was personating or introducing that as officer of Intelligence and security service and no data transaction money system from Vodacom to implicate the appellant that was offender for offence charged with.*
- 3. That, the trial court misdirected for failure to consider the weight of the appellants defence which was corroborated with a photocopy of the police form 3 (PF3) which proved that the appellant's was beaten by police and recorded the caution statement forcefully.*
- 4. That, the learned magistrate erred in law to convict the appellant basing on the caution statement and justice of peace statement that exhibit without considering the exhibit PE2 and PE3 was recorded out of time.*
- 5. That, the trial court erred both in law and fact to convict the appellant for hearsay evidence.*
- 6. That the trial court erred both in law and in fact to convict the appellant's with the offence charged with, while there was no scintilla of evidence to show whether and how PW1 and PW2 identified the appellant at the material time.*

At the hearing of the appeal, the appellant appeared in person without representation whereas the respondent was represented by Gisela Alex, Senior State Attorney. The appeal was argued orally.

When the appellant was invited to address the Court on his grounds of appeal he simply asked the Court to consider his grounds of appeal to determine the merit of this appeal.

In her response, Ms. Alex, SSA opted to support the appeal by submitting generally to the grounds of appeal. She maintained that, the trial court was not properly guided in deciding the matter. She argued that, there was no proof that the appellant is the one who impersonated himself as security officer and received money sent by PW1 through the mobile money agent, PW3.

She clarified that, what gave rise to this matter is the fact that PW1 lost her younger brother and on 1/4/2020 PW2, the hamlet chairman, gave her a phone number of an individual who had introduced himself to him as State Security Officer and claimed that he knew whereabouts of PW1's lost brother. Acting on that information, PW1 called the said person who demanded to be given TZS 20,000/= for fuel which PW1 sent to him through the mobile money agent (PW3) to the phone number of that person. Thereafter, the said person could not be reached any more. PW3, the agent who transferred the said money told PW1 that there was a person who went to withdraw money from his office one day prior to the transaction done by PW1 using the

same name as the one PW1 sent money to. It was alleged that the person who withdrew the money was the appellant. She faulted the trial Court for relying on these allegations to convict the appellant without proof.

With regards to the cautioned statement and extrajudicial statement, Ms. Alex faulted the manner in which the trial Court admitted the said exhibits. She argued that the said exhibits were tendered by the public prosecutor and not the witness as noted at page 46 of the proceedings. She maintained that, this was a fatal irregularity because the competent person to tender exhibits is the witness and not the public prosecutor. She also noted that the trial magistrate did not act on the objection raised by the appellant at the time of tendering the said exhibits by admitting and considering the PF3 tendered by the appellant to discredit the cautioned statement and extra judicial statement.

On allegations of impersonation, she submitted that there was no evidence to establish that a person who spoke with PW1 and introduced himself as State Security Officer through the phone was the appellant because PW1 didn't identify the person who spoke with her through the phone.

On the basis of the reasons given, she prayed for the appeal to be allowed.

The appellant had no rejoinder submissions but he implored the court to consider his grounds of appeal and submissions made by the learned State Attorney to determine the fate of this appeal.

Having heard submissions from both parties and examined the records of this matter, I will now make a determination on the merit of this appeal.

I will start by considering evidence adduced to establish allegations of impersonation and obtaining TZS 20,000/= by false pretences. As rightly argued by Ms. Alex, records indicate that PW1 and PW2 did not identify the person who allegedly demanded payment of the said money for fuel either by voice or otherwise. Evidence adduced by both witnesses indicates that they didn't meet this individual as they only communicated through their respective phones. Although two mobile phones were seized from the appellant's house (exhibit PE1), the prosecution did not bring any evidence to establish that the said phones were the ones used in the alleged communication or to establish that the SIM card bearing the phone number alleged to have received TZS 20,000/= from PW1 was either found in possession of the appellant or

registered in his name. According PW3 who handled the alleged mobile money transaction, the said amount was deposited in the phone number registered by the name of Anthony Stakabadhi Ihando which is not the same as the appellant's name.


Further to that, records indicate that the appellant's cautioned statement sought to be tendered by the prosecution was not admitted in Court yet the trial Court relied on it to establish confession of the appellant. The proceedings indicate that the trial Court conducted an inquiry to find out if the cautioned statement was admitted voluntarily from page 56 to 57 of the proceedings. However, the trial Court did not proceed to determine if the statement was made voluntarily or decide on whether it is admitted or otherwise as the matter proceeded right to the defence case before making that determination. It was therefore not correct for the trial Court to rely on the statement which was not part of the records admitted in court to convict the appellant.

Consequently, this Court finds that prosecution failed to prove the charges filed against the appellant to the required standard. I therefore proceed to allow this appeal, quash the conviction and set aside the sentence imposed by the trial Court. I hereby order for the immediate

release of the appellant from custody unless he is held for other lawful cause.

It is so ordered.




K.N. ROBERT
JUDGE
19/4/2022