

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

CRIMINAL APPEAL NO. 14 OF 2022
(Arising from Kahama District Court Criminal Case no. 95/2020)

DIRECTOR OF PUBLIC PROSECUTION (DPP).....APPELLANT

VERSUS

MWAJUMA D/O GRANT NGOWELA.....RESPONDENT

JUDGMENT

28th July, 2022

MATUMA, J;

The respondent Mwachuma d/o Grant Ngowela stood charged in the District Court of Kahama for obtaining money by false pretences contrary to section 302 of the Penal Code, Cap. 16 R.E 2002.

She was alleged to have defrauded one Martha d/o Mwanzilwa Tshs. 9,600,000/= by falsely pretending to sell a house while knowing she was not the owner of the said house.

After a full trial, the trial Magistrate Hon. D.D. Msalilwa (RM) found that the prosecution case was not proved beyond any reasonable doubts. He thus acquitted the respondent, such acquittal aggrieved the appellant hence this appeal with two grounds;

- i) That the trial Magistrate erred in law and facts to acquit the accused despite the fact that the case was proved by the prosecution beyond reasonable doubts.*

ii) *That the trial Magistrate erred in law and facts to consider the defence of the accused that she borrowed the said money and not to sale her house without considering the fact that the accused didn't cross examine on the fact.*

Before dealing with the merits or otherwise of the afore grounds of appeal, down here is the brief facts of the matter.

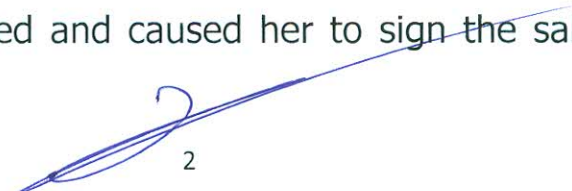
On the 30th April, 2019, the respondent entered into a sale agreement with the victim herein of a house on plot no. 184 Block "N" Nyahanga at Kahama town for Tshs. 9,600,000/=.

According to the sale agreement exhibit P4, the buyer gave the Respondent three months time to vacate from the purchased house. Subsequent to the sale agreement, the two executed the transfer documents, Land forms no. 29, 30 and 35.

Both the sale agreement and Land forms supra were executed in the office and presence of Angelina Kalenzi learned advocate. The three months expired without the respondent vacating which necessitated the victim to issue a seven days notice of vacant possession, exhibit P3. The Respondent did not vacate on the ground that she was not the owner of the house in question but one Frank Kachemba Silinde her deceased husband, and now a family property.

From the a foregoing facts, she was alleged to have obtained the sale price by false pretence hence this case.

During trial the respondent fended herself that she did not sale that house but merely mortgaged it for a loan of Tshs. 6,000,000/= only but they fraudulently prepared and caused her to sign the sale documents



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without her knowledge. At the end, the trial court believed her and acquitted her for failure of the prosecution to prove the "**intent to defraud**" as one of the ingredient of the offence.

At the hearing of this appeal, M/S Edith Tuka learned State Attorney represented the Appellant while the respondent was present in person.

The learned State Attorney submitted in the first ground of appeal that, with the evidence of PW1, PW2 and PW3 the prosecution proved beyond reasonable doubt that the respondent obtained the money by false pretences as she defrauded the victim that she was the administratrix of the estate of her deceased husband and was selling the house in question under such capacity.

That, her representations was believed by PW1 and PW2 and she personally did not dispute to have obtained the money in question from the victim.

That, during the defence the respondent disputed to have ever been an administratrix of the estate, her earlier on representation was thus deceitful hence the intent to defraud proved.

The respondent on her side, did not properly address on this ground. She consetrated in reproducing her evidence she gave at the trial Court that she did not sale the house but mortgaged it to the victim.

On my side on this ground, I am of the firm view that the same is without any substance because neither the charge nor the sale documents exhibit P4 indicates that the respondent introduced herself as an administratrix of the estate in question. Had it been so the victim's advocate, a learned sister PW2 would have demanded the letters of

