

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

**CRIMINAL APPEAL NO. 73 OF 2021**

**JOSEPH MICHAEL @ NHYAMA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**[Appeal from the Decision of District Court of Shinyanga at Shinyanga.]**

**(Hon. U.S. SWALLO PRM)**

**dated the 18<sup>th</sup> day of August, 2021**

**in**

**Criminal Case No. 19 of 2021**

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**JUDGMENT**

1<sup>st</sup> & 29<sup>th</sup> June, 2022.

**S.M. KULITA, J.**

Joseph Michael @ Nhyama, referred to as the Appellant in this appeal, was charged in the District Court of Shinyanga for Stealing by Agent, contrary to the provisions of section 273 (b) of the Penal Code [Cap. 16 RE 2019]. It is in the particulars of the offence that, on the 10<sup>th</sup> day of May, 2019 at Ibadakuli, Jambo Company Industrial area, the

Appellant was entrusted with various types of soft drinks valued at Tshs. 23,667,457/= for sale purpose, but he stole them.

In a nutshell, the prosecution case as it was unfolded by its witnesses is that, on 27<sup>th</sup> December, 2017 the Appellant had entered into an agency agreement with the complainant, Jambo Company. The agreement was to the effect that, the Appellant would receive products from the complainant, sell them and deposit the proceeds in the complainant's account, within 7 days, the money equivalent to the goods supplied.

On that account, on 10<sup>th</sup> May, 2019, the Appellant was supplied with complainant's goods valued at Tshs. 23,667,457/=. The prosecution evidence shows that, after he had received those products, the Appellant neither deposited money into the complainant's account nor did he return to the office for reconciliation. That situation, prompted the complainant to send her Marketing Officer to the route that the Appellant had taken. Astonished, the Marketing Officer found that the Appellant had already sold the products to his customers. As they had waited the Appellant in vain, the complainant decided to report the matter to Police, who then arrested the Appellant.

On his part, the Appellant denied to have stolen from the complainant. He conceded to be in the agency relationship with the complainant. He added that, his last consignment was on 2<sup>nd</sup> May, 2019 for the products valued at Tshs. 8,032,000/= . To that, he testified to have reconciled and remained with no debt. He further added that, apart from the said agency relationship with the complainant, he was also doing another business. While attending that other business at Lindi, he was thus arrested and brought to Shinyanga for this case.

At the conclusion of the trial, the Appellant was accordingly found guilty, and upon conviction, a three years' imprisonment sentence, was met to him. This was on 18<sup>th</sup> August, 2021.

Aggrieved with that decision, the Appellant preferred the instant appeal on four grounds which may be summarized as follows; **One**, the trial court, by misconception considered the documentary evidence tendered by PW2 while the product issued which are read therein, were not ordered by the Appellant. **Two**, the trial court erred to hold the Appellant liable while PW4 did not tender documents showing that the Appellant received the products. **Three**, it was wrong for the trial court to admit the invoice and delivery note which lacks signature or fingerprint

of the Appellant. **Four**, the defense evidence was not considered and the case was not proved at the required standard.

The Appeal was heard on 1<sup>st</sup> June, 2022. On that date, the Appellant appeared in person whereas the Respondent, Republic had the service of Ms. Gloria Ndoni, Learned State Attorney who resisted the appeal.

Submitting in support of the appeal, the Appellant decided to adopt his grounds of appeal as his submission.

In reply Ms. Ndoni submitted that, according to the testimony of PW2 who is the Store Supervisor, the Appellant is the one who ordered the products in dispute. She referred us to page 7 of the lower court proceedings. She added that, the Loading Slip, the document which was tendered by PW1 who is a Chief Security Officer and admitted as Exhibit P1 bears the name of the Appellant.

In corroborating Exhibit P1 Ms. Ndoni stated that, among the admitted exhibits, there is a Gate Pass evidencing that the carrying truck was inspected before it was released. To this, Ms. Ndoni also stated that, the same bears the name of the one who ordered the consignment, the Appellant.

