

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DODOMA DISTRICT REGISTRY)**

**AT DODOMA**

**DC CRIMINAL APPEAL NO. 20 OF 2022**

(Originating from Criminal Case No. 33 of 2019 of Kongwa District Court)

**MARTIN NDAHANI DANIEL..... APPELLANT**

**VERSUS**

**THE REPUBLIC..... RESPONDENT**

*17/6/2022 & 13/7/2022*

**JUDGMENT**

**MASAJU, J**

The Appellant, Martin Ndahani Daniel, was charged with, and convicted of two counts of CORRUPT TRANSACTIONS contrary to sections 15(1)(a)(2) of the Prevention and Combating of Corruption Act, 2007 in the District Court of Kongwa that being a Clinical Officer at Kongwa District Hospital within Kongwa District in Dodoma Region on the 18<sup>th</sup> day of April, 2019 did corruptly solicit and receive at TZS 80,000/= from Gozbert Bernard Mgina (PW1) as inducement for helping him get blood transfusion for his sick relative, one Cosmas Lugala, a matter which was in relation to his Principal's affairs. He was sentenced to pay a fine of TZS 500,000/=

or to serve three (3) years imprisonment in default thereof on each count. Hence, this appeal in the Court against the conviction and sentence thereof.

The Appellant's Petition of Appeal was made of two grounds of appeal but when the appeal was called on for hearing in the 16<sup>th</sup> day of June, 2022, his learned counsel, Sosteness Mseligwa dropped one of them and retained the 1<sup>st</sup> ground, thus,

*" 1. That, the Hon. Resident Magistrate erred in law and facts to sentence and convict the Appellant for three (3) years imprisonment or pay of one million for two counts while the prosecution failed to prove their case beyond reasonable doubt" (sic)*

Through the service of his learned counsel, the Appellant, argued that the prosecution case was not proved beyond reasonable doubt before the trial court because there was no any witness amongst the six (6) prosecution witnesses who directly eye witnessed the commission of crime allegedly by him, the Appellant. That, all prosecution witnesses were hearsay witnesses. That even the patient, one Cosmas Lugala, did not testify before the trial court. The said patient is the one who allegedly needed blood transfusion hence allegation against the Appellant that he solicited

bribery so that he could provide blood for transfusion, which blood otherwise was for free. That, the prosecution was therefore duty bound to produce before the trial court the said patient in order to confirm as to whether or not he was indeed a patient who needed blood transfusion. That, the Appellant defended himself along with his two other defence witnesses, Melidelick Kongola (DW2) and Scolastica Henry Ngunyaii ( DW3), the nurses who were attending patients, including Cosmas Lugala, in the ward but had not heard the Appellant soliciting bribery for his medical service to patient. The Appellant prayed the court to allow the appeal accordingly.

The Respondent. Republic, on her part, in the service of the learned State Attorney, Ms. Bernadetha Thomas, contested the appeal desperately submitting that the prosecution case before the trial court was proved beyond reasonable doubt as she fronted arguments which were not supported by the evidence on record, and prayed the Court to dismiss the appeal for want of merit.

That said, the Respondent Republic's desparate reasoning on this otherwise meritorious appeal should not detain us.

The material facts of the case as per records of proceedings are simple and clear, thus, that on the 13<sup>th</sup> day of April, 2019, the Appellant being a clinical officer on the duty in the Outpatient Department ( OPD) attended the patient, Cosmas Lugala, whom he diagnosed to have suffered *inter alia*, chronic severe anaemia, hence the need for admission for medication in the Hospital. He prescribed, *inter alia*, for medication, blood transfusion two bottles as per prosecution the patient medical treatment record ( Exhibit P5). That there in the ward, the patient was being attended by the ward medical personnel and the nurses, not him. According to the said medical record( exhibit P5) by the 18<sup>th</sup> day of April, 2019, the patient Cosmas Lugala had four(4) bottles of blood transfusion administered into him. So, the prosecution allegations that by the 18<sup>th</sup> day of April,2019, only one bottle of blood had been transfused into the patient and that the Appellant's solicited TZS 80,000/= for provision of some other blood transfusion were not true.

Secondly, the Appellant did not deny meeting the patient Cosmas Lugala's relatives one Gozbert Bernard Mgina on the 19<sup>th</sup> day of April, 2019 and advising them to go for Forever Living products whose he was an agent, so as to manage the patient's chronic anaemia case. That, they gave him

TZS 60,000/= for the products which would have been supplied to them in three days time. That he was shortly arrested for corruption allegations and that he had that cash in his pocket and never denied. He even didn't contest the admission in evidence of the said trap money prosecution (Exhibit P2). He testified that the said money was intended for Forever Living Products price, not bribery. Defence (exhibit D1) thereof was admitted in evidence without being contested by the prosecution. That being the case, it becomes extremely difficult to successfully implicate the Appellant with corruption transaction, he had been charged with and convicted of before the trial court given the uncontravened evidence on record that even by the 19<sup>th</sup> day of April, 2019 when he allegedly solicited the bribery for provision of some other blood bottles for the patient, Cosmas Lugala's blood transfusion, the Appellant was no longer responsible for prescription of the medical treatment of the said patient who had all along been getting blood transfusion as initially so prescribed by the Appellant on the 13<sup>th</sup> day of April, 2019 and subsequently by another doctor who was attending the patient in the ward. Indeed, pursuant to prosecution exhibit P5 by the 19<sup>th</sup> day of April, 2019, the day the Appellant was arrested on the allegation of Corrupt transaction, four(4) bottles of blood had been transfused into the



patient, Cosmas Lugala, thereby rendering the prosecution allegation that the patient had received only one blood transfusion false.

Thus, the prosecution case against the Appellant before the trial Court was not proved beyond reasonable doubt. As a matter of fact, from the nature of the uncontroverted evidence on record, there could have been no prosecution against the Appellant whose conviction of the impugned offences leaves much to be desired.

With this in mind, the meritorious appeal is hereby allowed accordingly. The conviction and sentence against the Appellant on the two counts of Corrupt Transactions, respectively, are hereby quashed and set aside.



  
GEORGE M. MASAJU

**JUDGE**

13/7/2022