

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

RM. CRIMINAL APPEAL NO. 103 OF 2021

PAULINA ALBERT STIMA APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

(Appeal from the Judgment of the Court of Resident Magistrate of Sumbawanga at
Sumbawanga)

(J. O. Ndira, RM)

Dated 24th day of June 2021

In

Criminal case No. 2 of 2020

JUDGMENT

09/08 & 08/09/2022

NKWABI, J.:

The trial court did not purchase the defence of the appellant to the effect that she did not commit the offences but the charge was instigated by bad blood between the appellant and PW3 for she complained against him about call on duty allowance payment as the same were not paid on time. The trial court rejected that line of defence on the ground that the defence did not cross-examine on the same. Another line of defence that was rejected by the trial court is that she returned the money and confessed

because she was promised by PW4 that the matter would end in her favour.

Finally, after analyzing the evidence of both parties, the trial court found the appellant guilty of both offences as charged, convicted her and sentenced her on each count to pay fine of T.shs 500,000/=. In default of payment of the fines she was condemned to serve terms of three years imprisonment to be served concurrently. The offences themselves were corrupt transaction contrary to section 15 (1) and (2) of the Prevention of Corruption Act No. 11 of 2007.

Agnes Chisote, a pregnant woman, who was sent to the health center by her mother-in-law one Venansia Alex (PW1) for delivering a child. Due to requirement of a major surgery, Venancia was told there was needed some money at T.shs 49,000/= in total for blood transfusion and medicine, which she complied. When she went to demand for her change, only to be told by PW2 that the service was offered for free to pregnant women. Thus, the reporting of the incidence to the authorities, investigation and prosecution of the appellant which led to her conviction and sentence.

The appellant was working as a nurse at Mazwi Health Centre. The incidence happened on 10/08/2020 when she was attending to PW1's daughter-in-law.

Disgruntled with both conviction and sentence, the appellant preferred this appeal to this Court having four grounds of appeal which are reproduced here below:

1. That, the Trial court erred in law and fact convicting the appellant for the offences of corruption in absence of poof of the alleged money involved in corrupt transaction.
2. That, the trial court erroneously relied on the evidence of PW1 Vanancia Alex who by herself had interest to serve hence her evidence was greatly doubtful to base conviction.
3. That the trial court erred in law and fact for failure to analyze properly evidence adduced before it hence reached to a wrong and unjust decision to the accused.
4. That the conviction of the appellant is vitiated for failure to consider the defence case which was coherent and consistent with the innocence of the accused.

The counsel for the appellant, thus prayed this Court allows the appeal, the judgment of the trial court be quashed and set aside and any other order that this Court deems proper and just to grant.

The hearing of this appeal was conducted through written submissions. Mr. Mathias Budodi, learned advocate, admirably argued the appeal for the appellant. It was Ms. Marietha Maguta, learned State Attorney, who skillfully maintained the stance of the respondent in reply submission.

Elaborating on the 1st and 4th grounds of appeal, Mr. Budodi ventured that exhibit P2 that is T.shs 49,000/= was not the exact money allegedly involved in the corruption transactions. It was equivalent sum (the money) belonging to the appellant. It was the appellant who sent the money to the PCCB on 11/08/2020. He reasoned that the money could be proved to have been corruptly obtained if the same would have been seized on search on the appellant by the investigating officer.

Mr. Budodi also pressed that there is no clear explanation given by the prosecution as to why immediately upon being informed they did not arrest and search the appellant to test the veracity of the information of

corruption given and more so to seize the alleged money. He added, in corruption transaction, the money involved in the saga is essential proof and lack of it in evidence renders the prosecution case unproved. He cited **Evodius Jasson v. Republic**, Criminal Appeal No. 17 of 2020 H.C. (Bukoba).

It was also the contention of Mr. Budodi that the prevailing embarrassment and disturbances compared to the little and affordable amount requested by promise by PW4 that an act paying 49,000/= would settle the matter and leave the appellant free from disturbances. The appellant was called to charity to hand over the money which disproves *mens rea* on the appellant. He added, the defence of the appellant was neither seriously contested nor shaken. He relied on **DPP v. Ngusa Keleja @ Mtangi & Charles Mtokambali**, Criminal Appeal No. 276 of 2017 CAT at Mbeya (unreported) to assert that had the trial court realized that there was no *mens rea*, it would have arrived at the different conclusion and acquitted the appellant bearing in mind the principle that coherent evidence by accused by itself casts doubts to prosecution case.

It was the counter-argument of Ms. Maguta to the above submissions made by Mr. Budodi that PW5 saw the appellant being given some money by PW1 and the appellant confessed the offence freely which backs the evidence of PW1 and PW5. She maintained that the evidence of the respondent is coherent. She urged that every witness is entitled to credence and must be believed as per decision in **Goodluck Kyando v Republic** [2006] T.L.R. 367. She prayed the conviction and sentences be sustained.

I have seriously considered this appeal over a considerable time. For clarity, I will discuss it as per the order of the counsel submissions. To begin with the I have duly considered the elaboration made by Mr. Budodi on the 1st and 4th grounds of appeal, that exhibit P2 that is T.shs 49,000/= was not the exact money allegedly involved in the corruption transaction. It was equivalent sum (the money) belonging to the appellant. It was the appellant who sent the money to the PCCB on 11/08/2020. I have also considered his reasoning that the money could be proved to have been corruptly obtained if the same would have been seized on search on the appellant by the investigating officer.

With respect, I do not accept Mr. Bukodi's view he holds as above shown. Rather, I agree with the trial Magistrate's and Ms. Maguata's reasoning that indeed the money was part of the amount the appellant was given by PW1 based on the appellant's false directive that that money be paid for blood transfusion and purchase of medicines. It was the appellant who was well versed with the procedures and regulations pertaining at her work place that pregnant women do not pay for the services that are rendered at the health center. The appellant took advantage of PW1 being unaware of the exemption of payment for pregnant women. That is also even made clear, just as pointed by the trial court, that PW1 went to demand for change.

Additionally, I, with respect, differ with the view of Mr. Budodi that the money could be proved to have been corruptly obtained if the same would have been seized on search on the appellant by the investigating officer. It should be remembered, that the evidence that establishes the offence does not depend only on the oral evidence, there is also the caution statement of the appellant. The matter also is based on credibility of witnesses. That position of dismissing the complaints about the independent witnesses, such as PW1 and PW5 is reinforced by the decision in **Shamir John v.**

Republic, Criminal Appeal no. 166 of 2004 (CAT) at Mwanza (Unreported)

is very relevant against the appellant in this Appeal, the Court said:

"... The appellant never challenged this evidence at all in his defence. Indeed their evidence which was not disputed by the appellant ... The appellant has not attempted to show why these independent witnesses chose to align themselves with PW2 Zacharia to victimize him. We think the appellant was drawing a red herring in his defence."

Mr. Budodi also pressed that there is no clear explanation given by the prosecution as to why immediately upon being informed they did not arrest and search the appellant to test veracity of the information of corruption given and more so to seize the alleged money. He added, in corruption transaction, the money involved in the saga is essential proof and lack of it in evidence renders the prosecution case unproved. He cited **Evodius Jasson v. Republic**, Criminal Appeal No. 17 of 2020 H.C. (Bukoba).

With respect, I am inclined to reject the complaint by Mr. Budodi because, the reporting of the incidence was related to the law enforcers the PCCB

when the appellant had already left work (after her shift) the respondent therefore cannot be blamed for the alleged delay in reporting the incidence. In any case, the delay is not inordinate and PW1 would not know the work roster at the Health Center.

It was also the contention of Mr. Budodi that the prevailing embarrassment and disturbances compared to the little and affordable amount requested by promise by PW4 that an act paying 49,000/= would settle the matter and leave the appellant free from disturbances the appellant was called to charity to hand over the money therefore disproves *mens rea* on the appellant. He added that also the defence of the appellant was neither seriously contested nor shaken. He placed reliance on **DPP v. Ngusa Keleja @ Mtangi & Charles Mtokambali**, Criminal Appeal No. 276 of 2017 CAT at Mbeya (unreported) to assert that had the trial court realized that there was no *mens rea*, it would have arrived at the different conclusion and acquit the appellant bearing in mind the principle that coherent evidence by accused by itself casts doubts to prosecution case.

I have already shown why the evidence of other prosecution witnesses is cogent. Take for example PW5 who saw PW1 handing over some money to the appellant, with respect, Mr. Budodi appears to turn a blind eye to that

piece of evidence. *Mens rea* could be deduced from the appellant's knowledge that pregnant women are offered the required health services free of charge, but she demanded for the money. That is unacceptable. The offence cannot also be justified by a small amount of money. The defence that that amount of money was the property of the appellant only to let it go to release herself from embarrassment is rejected by this Court.

The suggestion by Mr. Budodi that only trap money proves receiving of bribes (corrupt transaction) is, with respect, not tenable with this Court. Corrupt transaction can, in my view, be proved by other pieces of evidence, provided that evidence is cogent and worthy credible. It is because of such view of mine that the reply submission by Ms. Maguta that PW5 saw the appellant being given some money by PW1 and the appellant confessed the offence freely which backs the evidence of PW1 and PW5. Further that the evidence of the respondent is coherent, that every witness is entitled to credence and must be believed as per **Goodluck Kyando v Republic** [2006] T.L.R. 367 finds purchase with this Court as such it is approved.

Next, I turn to consider the 2nd and 3rd grounds of appeal. On them Mr. Budodi suggested that the offence of corruption did involve a giver and receiver. He pointed out that PW1 seems to have bribed. He added, it is elementary truth that both the giver and receiver of corruption are guilty of offence. He expounded, assuming there was such a transaction, the giver PW1 had knowledge that the act is illegal as at first paragraph of page 13 of proceedings she testified that she was warned not to disclose to anybody and she acted accordingly. He further argued that it is the prudence of criminal jurisprudence that such kind of evidence from that kind of witness should not on its own base conviction. He referred this Court for that position the case of **Abraham Saiguran v. Republic**, [1981] T.L.R. 265.

Mr. Budodi also pointed out that when PW3 was cross-examined, twice at page 19 said that the amount of money paid to the appellant was 53,000/= while the rest of evidence suggests that it was only 49,000/=. Again, at the second paragraph of page 13 PW1 categorically informed the court at the time she was effecting the said transaction of money there was no one who saw her, but the testimony of the investigator PW4 and PW5 contradicts the testimony of the victim herself PW1 as their testimony

suggests PW5 saw PW1 when she was effecting the transaction. These contradictions and lies did introduce great doubts on prosecution case and that would the trial magistrate directed properly his mind on them he could have resolved the doubts in favour of the accused person and acquit the appellant.

On the 2nd and 3rd grounds of appeal, Ms. Maguta contested the submission of Mr. Budodi and maintained that the evidence of PW1 was straight forward that the appellant ordered her to pay for blood transfusion and medicine for her patient. She had also a counterstatement that PW1 was unaware giving the money was lawful or not, it was due to the unawareness that she innocently went to demand for balance to PW2. It was when informed by PW3 a medical doctor that the services are offered for free to pregnant women that she became aware of the fact. She insisted PW1 is exonerated from evil mind though a giver.

She threw the blame to the appellant, the evil, as she demanded the money as a bribe while knowing that that patient is subject to free service on blood transfusion but took the money which did not even not buy any medicine. Ms. Maguta disputed existence of any discrepancies in the

respondent's evidence. She stressed that all the evidence adduced by the respondent is strong pointing to the guilty of the appellant. She exemplified the case of **Nsamba Shapwata & Another v. Republic**, Criminal Appeal No. 92 of 2007 (unreported) where it was stated:

"It is not every discrepancy in the prosecution case that will cause the prosecution case to flop. It is only where the gist of the evidence is contradictory then the prosecution case will be dismantled."

Ms. Maguta urged me to find the respondent's witnesses' discrepancies if any are normal which do not go to the root of the case. She then invited this Court to hold that the respondent proved her case against the appellant beyond reasonable doubt. The appeal be dismissed for lack of merit and uphold the decision of the trial court.

I have had a considerable time while considering this set of the grounds of appeal and the submissions thereto. I am persuaded by Ms. Maguta that the complaints in the above mention last complaints in the appeal are unmerited. PW5 did not say that she was the witness of the transaction, all she said is that she merely saw the transaction happen. The fact that PW1 did not look for persons who saw the transaction backs her veracity.

Apart from other pieces of evidence, however, there is the caution statement of the appellant which corroborates the other pieces of evidence to ground conviction. The trial court correctly applied the principles of law regarding the evidential value of the caution statement in this case. It is for the caution statement and evidence of the other prosecution witnesses that it is not true that the trial court based conviction on the testimony of PW1 as Mr. Budodi wants this Court to make a finding to that effect.

The trial court was not persuaded by the defence of the appellant, so do I, I am not persuaded. The above said and done, I dismiss the appeal for being wanting in merits. Conviction on both counts and the sentences thereto are accordingly upheld.

It is so ordered.




J. F. NKWABI

JUDGE

08/09/2022