

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF MOSHI**

**AT MOSHI**

**CRIMINAL APPEAL NO. 12 OF 2022**

*(Originating from District Court of Moshi Criminal Case No. 296 of 2019)*

**BENSON DAVID MKONYI @ RASTA .....APPELLANT**

**VERSUS**

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

*01/08/2022, 05/09/2022*

**JUDGMENT**

**MWENEMPAZI, J**

The appellant named herein is aggrieved by the decision of the District Court of Moshi dated 29<sup>th</sup> January 2021 delivered by Hon. S. S. Massati, SRM.

In the District Court the appellant was charged with two counts; first count is forgery contrary to Section 333,335 (a) and 337 of the Penal Code, Cap 16, R.E. 2002 and second count is conversion not amounting to theft contrary to Section 284 of the Penal Code, Cap 16 R.E 2002. In the first count it was alleged that the appellant with intent to defraud or deceive he forged a sale agreement purporting to show Benson David Mkonyi bought

a motor vehicle with Registration No. T450 CMA make Suzuki Samurai from **MICHAEL PAUL MKONYI** while knowingly was not true.

In the second court it was alleged that on the 20<sup>th</sup> September, 2018 within Moshi District in Kilimanjaro Region, the appellant (accused) did convert to his use a motor vehicle with Registration No. T450 CMA make Suzuki Samurai the property of Kirsten D/O Margareta Gronenpott. The accused pleaded not guilty in all two counts. Upon hearing of the case, he was acquitted in the first court and convicted with the second court. The appellant was sentenced to 12 months community service.

He is appealing against both conviction and sentence. The grounds of appeal which have been raised are two: -

1. That, the trial Magistrate grossly erred in law and facts for failure to consider the evidence tendered by the appellant.
2. That, the trial Magistrate grossly erred in law and in fact for convicting the appellant basing on unjustifiable evidence adduced by the Respondent.

The appellant prays that the appeal be allowed, conviction be quashed and sentence set aside.

At the hearing the appellant appeared in person, unrepresented and the Respondent was being represented by Ms. Mary Lucas, learned State Attorney.

The appellant was brief in his submission in chief. He referred this court to page 37 of the proceedings where he informed the court that he will call two witnesses. He complained that the trial court did not receive his

evidence in that his witnesses were not allowed to come and testify. On the second ground of appeal the appellant complained that the prosecution did not bring evidence including exhibits they claimed they have.

He submitted that a letter was sent by the prosecution to him looking for the evidence which they said they had. The case therefore, in his opinion, has not been proved beyond reasonable doubt. He therefore prayed this court to allow the appeal, quash the Judgement and conviction and set aside the sentence.

In reply to the submission by the appellant, Ms. Mary Lucas the learned State Attorney submitted that the respondent is supporting conviction and sentence.

The appellant was convicted with the offence of conversion not amounting to theft contrary to Section 284 of the Penal Code, Cap 16 R.E 2019. The evidence which was relied to prove the offence is the testimony by PW1 Kirsten Margareta Gronenpott and that of Michael Paul Mkonyi.

The appellant and the victim were boyfriend and girlfriend. The victim at the time was living with the appellant at the appellant's parent homestead at Kirua Vunjo\_Moshi. The victim found there was an inconvenience to reach public transport from where they reside. She therefore decided to buy a motor vehicle; she made arrangement with Michael Mkonyi a cousin to the appellant. Michael was selling cars. Kirsten Margareta Gronenpott sent money to the account belonging to Michael Mkonyi, CRBD account. The money was sent while the victim was in German. It was Euro 2250 equivalent to Tshs. 6,000,000 (Tanzania Shillings Six Million only). It was evidenced by Exhibit P3, Bank Statement of CRBD account No.

01J20448382200 in the name of Michael Paul Mkonyi (PW4). The motor vehicle was then brought to Moshi by PW4 without an original Motor Vehicle Registration Card. PW4 explained that he had forgotten. The car was a Suzuki Samurai, Black in colour Registration No. T450 CMA.

The appellant knew all these facts. He processed a sale agreement using his name and processed a registration card in his name. Thus, ownership was converted from Michael Paul Mkonyi to Benson D. Mkonyi instead of PW1's name. The sale agreement which was later used to process the Motor Vehicle Registration in his name was signed before Bashir Abdul Kasama, chairman of the local government.

In the testimony of PW1, she planned to register her name although the appellant was allowed to drive and the car would remain with him. Upon the appellant being asked why he had registered the car in his name he started to insult and blackmail the victim.

According to the testimony by PW4 Michael Paul Mkonyi, the appellant informed him that they had a case with PW1 over ownership of the motor vehicle and it was decided in his favour. So, he requested the original motor vehicle Registration Card. Michael Mkonyi sent it to the appellant by bus and the latter registered the motor vehicle in his name.

The learned State Attorney insisted the position by the Respondent that there was evidence to prove the offence, they therefore do not support the appeal.

According to the appellant the victim PW1 was a foreigner. She has no Tax Identification Number (TIN) our laws do not allow one to own a motor

vehicle without having TIN number. The appellant's claim to have paid for the motor vehicle to Michael Mkonyi by instalment and then they signed a contract. Thus the ownership of the car moved from the PW4 to the appellant.

Section 284 provides as follows:-

*"Any person who unlawfully and without colour of right but not so as to be guilty of theft, takes or converts to his use or to the use of any other person any draught or riding animal or any mechanically propelled cycle of any description or any vessel shall be guilty of any offence and is liable to imprisonment for six months or to a fine not exceeding **fifty thousand shillings** or to both."*

It is on record that the victim PW1 out of her awareness and or recognition of the inconvenience to reach a public transport to go anywhere for their daily activities she decided that they buy a car. She made arrangement with the appellant's cousin and paid for the Suzuki Sumarai, Registration T.450 CMA. She demanded original registration card she never received from PW4 until when she came to be informed that, the vehicle had changed name into Benson's name. She never consented to the change.

After the money were paid for the motor vehicle, it is the appellant who made the process of signing a contract before PW3 Bashiri Abdul Kasama. However, the contract was taken there while all parts filled except the witness area. It is the appellant who facilitated the conversion.

The appellant's submission has not raised any doubt which skipped the attention of the trial magistrate. The fact that PW1 is a foreigner does not turn the decision to register in the appellant's name lawful. In any case, it was necessary to seek consent. It is also open, the appellant allegations to have paid for the car in installment is not substantiated by evidence. His allegations are betrayed by the testimony of PW1 and PW4 who specifically show that it was the victim who purchased the motor vehicle. No other evidence of payment by appellant shown.

Under the circumstances, this appeal has no merit and it is therefore dismissed in its entirety.

It is ordered accordingly.

Dated and signed at Moshi this 5<sup>th</sup> September, 2022



  
**T. M. MWENEMPAZI**  
**JUDGE**