

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CRIMINAL APPEAL NO. 248 OF 2021

(Originating from Criminal Case No. 280 of 2020 of Kinondoni District Court)

OBOTE JOASH ETTA APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

21st & 28th September, 2022.

MWANGA, J.

The Appellant, **Obote Joash Etta** was charged with two counts of corrupt transactions, both contrary to Sections 15(1)(a) and 15(2) of the Prevention and Combating of Corruption Act No. 11 of 2007. The first count, which is the subject of this appeal, was that, the appellant being employed as trade officer in Kinondoni Municipal Council on diverse dates between 18th to 20th June, 2020 at Kinondoni area within Kinondoni District, Dar es Salaam Region corruptly solicited an advantage of Tshs. 200,000/= from one Gladen Kafanabo, a sub-lessee of business frame No. 62 & 63 at Mikocheni B market property of Kinondoni Municipal Council



as an inducement for him to unlock the stated frames, a matter which is in relation to his principle's affairs.

The second count of corruption transactions related to the facts that the appellant corruptly obtained an advantage of Tshs. 500,000/= from the same Gladen Karanobu, on the same subject matter, time and place, as in the first count. The appellant was found guilty and convicted on the first count. He was sentenced to pay fines of 500,000/= or serve a prison sentence of three years. It is on record that he paid fines instead of imprisoned sentence, hence this appeal. The appellant prays that the court do the following orders:

1. That the trial court erred in law and fact in convicting the appellant based on the 1st count of corrupt transactions while the same was not proved to the standard required.
2. That the trial court erred in law and fact in convicting the appellant based on the circumstantial evidence, and
3. That the trial court erred in law and fact in holding that the prosecution had proved its case against the appellant beyond reasonable doubt.

What in fact happened was that, the appellant was an employee of the Mwanikini Municipal Council and one of his duties were to oversee all markets, collect levies from the market, ensuring security and maintain

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good environment for business. It is also relevant that, frames No. 62 and No. 63 located at Mikocheni B Market areas, are among the businesses owned by Kinondoni Municipal Council. The mentioned frames were hired to one Jane Mushi (Frame No. 62) and Mercy Mongi (Frame No. 63).

It came later that; the said frames were sub-leased by Jane Mushi to one Gladys Kafanabo at Tshs. 450,000/= to run Pub business. It appears that, the rent in respect of the frames was accumulated to the tune 240,000/ and it was until during the special operations on 18/06/2022 the Municipal Council, through the appellant locked the said business premises due to non-payment of rent.


It followed that, Ms. Gladen Kafanabo contacted the WEO of Mikocheni who immediately helped the opening of the frames with a promise for Gladen Kafanabo to give 400,000/= to the Municipal officer whom he did not disclose at that time. The promise by Gladen Kafanabo (PW1) was not honoured so, the frames had to be locked gain. It became clear later that, the appellant herein was the one who demanded the Tshs. 300,000/= from PW1 in order to unlock the businesses in frames No. 62 and No. 63. The appellant promised PW1 to transfer ownership of the frames to the PW1.

In the afternoon, PW1 and PW2 reported the matter to the Prevention and Combating of Corruption Bureau (PCCB) and trap against

the appellant was set in. The appellant, PW1 and PCCB officers arrived the scene of crime i.e Kibo Complex in Tegeta area. The appellant was netted on the spot with Tshs. 200,000/=, a trap money belonging to the PCCB. The soonest he received a trap money, he handed over the keys to the sub lessee (PW1).

In support of the first ground of appeal, Mr. Wabeya Kung'e, Counsel for the appellant submitted that the prosecution had failed to call on material witness to this case. He was referring to one Mzaganya, who was the WEO of Mikocheni B and successfully helped the opening of the business premises at the first instance. He considered him to be a material witness because he was the one who assured PW1 for a help with the condition of payment of 400,000/=. He then referred this court in the case of **Raphael Muhando V. R**, Criminal appeal No. 54 of 2017 CAT where it was held that if a party fail to call a material witness in a case, then he do that at his own risk.

By way of reply, Ms. Jenipher Masue, learned Senior State Attorney submitted that, WEO was not a material witness, he was just a connecting factor between PW1 and the municipal officer. She added that what was important is that PW1 went to the municipal officer and he was connected with the appellant.



In the circumstances, I certainly join hand with the learned State Attorney that WEO was just a middle man or a connecting factor so to say. His task ended immediately after connecting PW1 and the appellant. As it can be observed in the records, there are other witnesses such as PW1, who was the complainant in this case, PW2 (WEO – Pwani) and PW7 (ten cell leader) who were called to witness search and seizure of a trap money from the appellant. Again, PW3 and PW4 (Business officers of the Municipal Council) who stated that it was the appellant who locked and later on reopened the business premises.

Additionally, PW5 was the one who leased the frames to PW1. PW6 and PW8 were the investigators in the case against the appellant. Therefore, the absence of WEO in this case has no effect as long as there were other prosecution witnesses in respect of corrupt transactions committed by the appellant. As it has been held by courts several times and, according to Section 143 of the Evidence Act, the case can only be proved by a single witness. What matters are credibility and reliability of witnesses.

As to the second ground of appeal, the leaned counsel for the appellant submitted that proceedings in the typed judgement indicates that it was the circumstantial evidence that led to conviction and sentence of the appellant. He referred this court at page 7 and 8 of the typed



judgement. The same was rebutted by the learned State Attorney. For ease of reference, let me reproduce part of page 7 and 8 of the typed judgment where the word circumstances were used. It reads: -At Pg. 7

'With respect to Mr. Wabeya, having carefully considered both arguments visa vis the evidence tendered, I think there are two sets of evidence in support of the affirmative answer to the said question. These are; as Ms. Kisiku rightly stated, the testimony of PW1 who quite categorically stated that the accused demanded Tshs. 200,000/= to pen his frames and second, are the circumstances under which the accused handed over the said keys to the complaint'.

At Page 8

'In these circumstances, it is hard not to suspect a fishy business'.

With reference to the above, the use of the word **circumstances** by the trial Magistrate did not mean **reliance on circumstantial evidence** as known to the law but, rather **situations or conditions or surroundings** with which the appellant handed over keys to PW1.

It was further submitted by the leaned State Attorney that, the prosecution evidence was direct and PW1 was a direct and independent witness who was in the scene of crime at Kibo Complex area. She was also of the view that PW1 witnessed search and seizure of the money



from the appellant motor vehicle and that the PCCB form marched serial numbers of the money seized. He added that the money that were seized were admitted in court as exhibit. In no doubts, the evidence which were relied on by the trial magistrate against the appellant were direct evidence and as a matter of law, direct evidence is the best evidence.

In support of the legal contention, learned State Attorney stated that one of the key elements of the offence of corrupt transactions under sections 5 (1) (a) of the Prevention and Combating of Corruption Act, are solicitation and principal- agent relationship. On element of solicitation, she narrated that PW1 questioned about the closure of his frames and that he promised to give money to the appellant. Further that, PW1 and the appellant met at Kibo Complex areas and gave money to the appellant.

On the same way, the appellant handed over keys soon after receiving the trap money. She referred the case of **DPP V. Peter Kibatata**, Criminal Appeal No. 4 of 2015; CAT at page 11 it was held that one of the crucial elements of the offence of corrupt transactions is that of principle-agent relationship. He stated that the principal was Municipal Council while the agent was PW1 who received Tshs. 200,000/= . In his rejoinder, the counsel for the appellant rebutted on the existence of principal-gent relationship, and stated that the tenant of the Municipal



Council was PW5, who had contractual obligations with the Municipal Council.

I do agree with learned state attorney with regard to who was the principal and agent in the case above. However, I do not agree with both counsels as to who was the agent in this particular case. The existence of principal- agent relationship in this case as per Section 15(1) (a) of the PCCA was between the municipal council as the principal and appellant as an agent.

Coming now to the last question, whether the prosecution has established its case beyond reasonable doubt. I find no doubts. The wordings of Section 15(1) (a) of the PCCA and considering the submissions availed to this court, it points out irresistibly that, indeed there was solicitation, use of public power for private gains, proof of principal -agent relationship and element of contract between economic agent and public officer. As rightly held in **Junta Joseph Komba and others V. R**, Criminal Appeal No. 95/2006 CA (Unreported) conviction in criminal matters must be based on good ground.

It is therefore sufficient to state that, the prosecution proved its case beyond reasonable doubt. Appeal dismissed. Conviction and sentence of the trial court upheld.

It's so ordered.






H. R. MWANGA

JUDGE

28/09/2022

ORDER:

Delivered in Chambers this 28th day of September, 2022 in the presence of Mr. Wabeya Kung'e, learned counsel for the appellant and absence of the respondent.




H.R. MWANGA

JUDGE

28/09/2022