

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

**MUSOMA DISTRICT REGISTRY**

**AT MUSOMA**

**PC CRIMINAL APPEAL NO. 10 OF 2021**

*(Arising from Criminal Appeal No. 03 of 2021 in the District Court of  
Bunda)*

**Between**

**EVA APOLINARY..... APPELLANT**

**Versus**

**DANIEL SINDA ..... RESPONDENT**

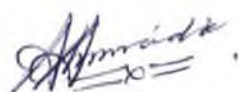
**JUDGMENT**

**4<sup>th</sup> & 14<sup>th</sup> FEBRUARY, 2022**

**A.A. MBAGWA, J.**

This is a second appeal which stems from Criminal Appeal No. 03 of 2021 in the District Court of Bunda. The respondent herein was arraigned in the Primary Court of Bunda Urban for charges of obtaining money by false pretence contrary to section 302 of the Penal Code. It was alleged that on 25<sup>th</sup> day of January, 2021 at the New Bus Stand within Bunda district in Mara region the respondent, by false pretence, obtained a sum of Tanzanian shillings one million three hundred eighty five thousand (1,385,000/=) from Eva Apolinary (the appellant).

In a bid to prove the allegations, the appellant paraded three witnesses namely, Eva Apolinary (PW1), E 940 SGT Richard (PW2) and H. 393 PC Barnabas (PW3).



In her evidence, the appellant told the court that she gave the respondent a sum of Tanzanian shillings one million three hundred sixty (Tshs 1, 360,000/=) for the respondent to buy her one hundred seventy (170) boxes of biscuits. The appellant expounded that she sent the money through mobile money in instalments namely, four hundred thousand (400,000), three hundred thousand (300,000) and two hundred thousand (200,000). Eva continued to testify that she sent the respondent other amount which made a total of Tanzanian shillings one million three hundred sixty thousand (Tshs 1, 360,000/=). According to the appellant, despite sending him the money, the respondent did not deliver the biscuits as agreed. The appellant tendered in evidence printouts of mobile money transaction to show the court the amount she allegedly sent to the respondent. The said mobile money printouts were received in evidence and marked **as exhibit B1**

In addition, H. 393 PC Barnabas (PW3's) evidence was to the effect that he took the respondent from Mugumu Police Station and brought him to Bunda Police Station. PW2 SGT Richard's evidence was that while at Bunda Police Station, the respondent admitted commission of an offence and was ready to pay the appellant Tanzanian shillings eight hundred twenty thousand (Tshs 820,000/=) but the complainant refused the offer on the ground that she wanted to be paid disturbance allowance.

On his part, the respondent denied the allegations. He told the court that appellant was his lover. He said that during their relationship, the respondent lent the appellant money to a tune of Tanzanian shillings five million (Tshs 5,000,000/=) but the appellant failed to repay the same within the agreed period. The respondent averred that when he kept insisting on the repayment, the appellant sent him Tanzanian shillings seven hundred

thousand (Tshs 700,000/=) in two instalments i.e. three hundred thousand shillings (Tshs 300,000) and four hundred thousand shillings (400,000/=). Thereafter the appellant stopped repaying. She also stopped picking the call whenever the respondent called her. The respondent further testified that one day he called the appellant to remind her on the debt repayment but his call was picked up by Richard (PW2) who introduced himself as the appellant's husband and warned the respondent not to interfere their relation. The respondent tendered in evidence the appellant's photos to prove that during their love relation they used to send photos one another. The said photos were received in evidence and marked exhibit C1.

Upon hearing the evidence of both parties, the trial Primary Court found that the appellant failed to prove the charge beyond reasonable doubt. As such, it acquitted the respondent.

Dissatisfied with the decision of the Primary Court, the appellant unsuccessfully appealed to the District Court. Still aggrieved, the appellant brought the present appeal before this court. She filed a petition of appeal containing two grounds as follows:

1. That the appellate District Court erred in law and fact by heavily relying on minor discrepancies in confirming and upholding the decision of the trial Primary Court which acquitted the respondent while the prosecution proved the charge beyond reasonable doubt
2. That the appellate District Court in evaluating the evidence of the two witnesses which was not considered by the trial Primary Court erred in law and fact by holding that the evidence of police officers was merely

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on arrest and investigation and hence the same had nothing to do with M-PESA transaction.

When the appeal was called on for hearing, the appellant was represented by Emmanuel Paul Mng'arwe while the respondent had the services of Emmanuel Werema, both learned advocates.

Before delving into the grounds of appeal, this Court asked Mr. Mng'arwe to address the court whether, on the basis of evidence on record, the ingredients of the offence of obtaining money by false pretence were proved for the issue was sufficient to dispose of the appeal. Mr. Mng'arwe readily conceded that there was no false pretence made by the respondent to the appellant. The counsel admitted that the offence of obtaining money by false pretence was not proved.

Upon concession by the appellant's counsel, Mr. Emmanuel Werema did not have much to submit. He simply emphasized that the offence for which the respondent was charged was not proved. He prayed for dismissal of the appeal.

I have keenly gone through the evidence on record along with the submissions by the counsels. The evidence of the appellant is very clear that it is the appellant who requested the respondent to buy her biscuits from Dar es Salaam and therefore sent him money for that. There is no single piece of evidence to the effect that the respondent, at any time, made false representation to obtain money from the appellant. Section 302 of the Penal Code under which the respondent was charged provides as follows:

**'Any person who by any false pretence and with intent to defraud, obtains from any other person anything**

capable of being stolen or induces any other person to deliver to any person anything capable of being stolen, is guilty of an offence and is liable to imprisonment for seven years'


From the foregoing provision, it is clear that for a person to be charged and convicted of the offence of obtaining money by false pretence there should be evidence showing that the accused made false pretence/misrepresentation and on the strength of that misrepresentation he obtained money. In the instant appeal, there was no any kind of misrepresentation made by the respondent to the appellant. The appellant's evidence is crystal that it is her who requested the respondent to buy her biscuits from Dar Salaam and therefore sent him money. Thus, without inquiring into whether the appellant truly sent the respondent the alleged amount of money or not, the complainant/appellant's evidence negates the offence of obtaining money by false pretence.

Since this ground suffices to dispose of this appeal, I find no need to go into the grounds of appeal contained in the petition of appeal.

That said and done, I find this appeal without merits and consequently dismiss it.

It is so ordered.

The right of appeal is explained.

  
**A.A. Mbagwa**  
Judge  
14/02/2022

**Court;** The judgment has been delivered in the presence of Emmanuel Werema, learned counsel for the respondent and in absence of the appellant this 14<sup>th</sup> day of February, 2022.



*A. A. Mbagwa*  
**A. A. Mbagwa**  
**Judge**  
**14/02/2022**