

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
DISTRICT REGISTRY OF BUKOBA
AT BUKOBA
(PC) CRIMINAL APPEAL NO. 9 OF 2021

(Arising from Criminal Appeal No. 30 of 2018 at Bukoba District Court and Original Criminal Case No. 696 of 2018 at Bukoba Urban Primary Court)

ELIETH CHRISTIAN----- APPLICANT

VERSUS

GODWIN GAUDIOZA-----RESPONDENT

JUDGMENT

Date of last Order: 07.02.2022

Date of Judgment: 18.02.2022

Hon. A.E. Mwipopo, J.

This appeal arises from Criminal Appeal No. 30 of 2018 at the District Court of Bukoba at Bukoba. The appeal in the District Court originate from Criminal Case No. 696 of 2018 at Bukoba Urban Primary Court where the Respondent herein namely Godwin Gaudioza charged the Appellant herein namely Elieth Chrisant for the offence of obtaining money by false pretences contrary to section 305 of the Penal Code, Cap. 16, R.E. 2002. The Primary Court after hearing the evidence from both sides delivered its judgment dated 03rd August, 2018 where the Court convicted the Appellant for the offence charged and sentenced her to six months conditional discharge. The trial Court also ordered the Appellant to compensate

the Respondent a total of shillings 1,400,000/= within 3 months. The Appellant was not satisfied with the trial Court decision and filed an appeal in the District Court which was dismissed her appeal and upheld the trial Court conviction, sentence and order. Once again the Appellant was aggrieved and she filed the present appeal in this Court.

The Appellant filed her Petition of Appeal which contains two grounds of appeal. The said grounds of appeal are as follows:-

- 1. That, the appellate Magistrate vehemently erred in law and fact for failure to identify that the issue of Bukoba Urban Court to try an offence of obtaining money by false pretences contrary to section 305 of the Penal Code, Cap. 16, R.E. 2002, which had no jurisdiction to try rendered the whole proceedings and judgment a nullity.*
- 2. That, the appellate Magistrate grossly erred in law and fact for failure to identify that the trial Court wrongly charged the Appellant generally under unspecified provision of the law which occasioned failure of justice to the appellant.*

When the appeal came for hearing, it was the Appellant who appeared in Court as the Respondent was absent and there was proof from his Street Executive Officer that he rejected to be served with summons to appear twice. The Appellant who was represented by Mr. Gildon Mambo, Advocate, prayed for the hearing of the appeal to proceed in absence of the Respondent the prayer which was granted.

The Counsel for the Appellant submitted on the first ground of appeal that the offence of obtaining credit by false pretences contrary to Section 305 of the

Penal Code, Cap. 16, R.E. 2002, is not triable by the Primary Court. The offence is not among the offences found in the 1st scheduled part 1 of the Magistrates Court Act, Cap. 11, R.E. 2002, which they are triable in the Primary Court. For that reason, the proceedings and the Judgment of the Primary Court was a nullity.

In the second ground of appeal the Counsel argued that the charge sheet which the appellant was convicted with by the Primary Court was defective. He said that section 305 of the Penal Code has subsection (a) (b) and (c) which provides different categories of the offence but the charge sheet did not disclose the specific offence the appellant was charged with. For that reason, the Appellant was prejudiced as she was not properly informed of his offence to be capable of forming her defence. He cited in support of his submission the case of Court of Appeal in **Mussa Nuru @ Saguti v. The Republic**, Criminal Appeal No. 66 of 2017, Court of Appeal of Tanzania at Tanga, (Unreported), at page 10, where the Court held that indicating the specific provision of the law creating the offence and its punishment in the charge is very crucial. The Counsel prayed for the court to quash and set aside the proceedings of the Primary Court and District Court and the conviction against the Appellant has to be set aside.

From the submission, the issue for determination is whether the Appellant was properly charged, convicted and sentenced by the trial Court.

The criminal jurisdiction of the Primary Court is provided by section 18(1) (c) of the Magistrate Courts Act, Cap. 11, R.E. 2002, read together with the first schedule thereto. The said section provides that a primary court shall have and exercise jurisdiction in all proceedings in respect of which jurisdiction is conferred on a primary court by the First Schedule to this Act. The first schedule to the Act provides that Primary courts shall have jurisdiction to try any offence contrary to any of the following provisions of the Penal Code, then, it went on to list the sections of the penal code and the respective offences which Primary Court has jurisdiction to try. Offence of obtaining money by false pretences contrary to section 305 of the Penal Code is not in the list of those offences which are triable by the Primary Court. This means that the Primary Court has no jurisdiction to try such an offence.

The Appellant raised the issue in her appeal before the District Court, but the District Court was of the view that the issue of the jurisdiction of the trial Court to determine the offence not triable by the Primary Court is technical. The suit before the Primary Court are determine without relying on technicalities. The District Court was not correct in holding that the issue of jurisdiction of the trial Court to entertain the criminal offence not in the list provided by the 1st Schedule to the Magistrate Courts Act is a technical. The question of jurisdiction is fundamental one as it goes to the mandate of the trial court to entertain the case.

As the trial Primary Court tried and determine the offence under section 305 of the Penal Code which it has no jurisdiction to entertain, it means that the whole proceedings before the trial Primary Court was a nullity. Thus, I find that the trial Primary Court had no jurisdiction to entertain the offence under section 305 of the Penal Code.

Therefore, the appeal has merits and is hereby allowed. The proceedings in the trial Primary Court and appellate District Court are quashed and the sentence and order arising therefrom are set aside. It is so ordered.



A.E. Mwipopo

Judge

18.02.2022

The Judgment was delivered this 18th February, 2022 under the Court seal in the presence of the Appellant and Respondent's counsel. The Right of Appeal explained



A.E. Mwipopo

Judge

18.02.2022