

appellant was aggrieved with the decision of the trial Court and instituted an appeal in this Court.

The petition of appeal filed by the appellant contains the following grounds of appeal:-

- 1. That, the learned trial Magistrate erred in law and facts for entertaining the case while PW1 has no locus standi for the fact that PW1 is sued for trespassing over the suit premise where the case originated.*
- 2. That, the learned Magistrate erred both in law and facts in entertaining the case in criminal nature while the same is lucidly a premise in nature.*
- 3. That, the learned trial Magistrate erred in law and facts in entertaining the case while ignoring the fact that the same had no jurisdiction.*
- 4. That, the learned trial Magistrate erred in law and facts by convicting and sentencing the appellant by his name while he was acting under the course of business of his employer Majembe Auction Mart Limited.*

On hearing date, the appellant was present in person and the respondent was represented by Ms. Magreth Mahundi, State Attorney. The appellant prayed for the court to consider all grounds of appeal in his petition of appeal and allow the appeal.

Ms. Magreth Mahundi, State Attorney, supported the appeal based on the last ground of appeal that the trial court erred to convict and sentence the appellant in his name while he was acting under the cause of business of his employer namely Majembe Auction Mart Ltd. She said that the evidence adduced proved that the appellant was employee of Majembe Auction Mart Ltd and he was acting on behalf of his employer. This is found in the testimony of PW2, PW3, PW5 and PW6. PW3 who is the village chairman where the sold by the appellant in the auction was located testified that the appellant submitted introduction letter showing that he is court broker from Majembe Auction Mart Ltd. Also, PW5 who is chairman of the Njombe District Land and Housing Tribunal testified at page 55 of typed proceedings that the Majembe Auction Mart Ltd was appointed by the Tribunal to be court broker in the respective execution case. PW6 who is employee of Majembe Auction Mart Ltd testimony at page 57 of the typed proceedings show that appellant was his fellow employee at Majembe Auction Mart Ltd.

The State Attorney said in her submission that on the basis of the evidence available in record, it was Majembe Auction Mart Ltd who was supposed to deliver money to Njombe District Land and Housing Tribunal or to one Ethro Mgani, and not the appellant. This is due to principal agent

relationship. To support the position, the counsel cited the case of **Machame Corporation Ltd (Lambo Estate) vs. Aikael Mbowe (1984) TLR 70.**

She added that the act done by the appellant was not supposed to be punished by criminal charges but rather it was Civil Case against his employer.

The appellant did not have any rejoinder.

From submissions, the only issue for determination is whether the present appeal has merits.

The counsel for the respondent supported appeal on ground that the trial court erred to convict and sentence the appellant in his own name while he was acting under the cause of business of his employer namely Majembe Auction Mart Ltd. She said that the evidence adduced proved that the appellant was employee of Majembe Auction Mart Ltd and he was acting on behalf of his employer.

I have read the record of the trial Court. The charge sheet shows that the appellant was charged and convicted by the trial Court for the offence of stealing contrary to section 258 (1) and 265 of the Penal Code, Cap. 16, R.E. 2019. Particulars of the offence of the charge sheet discloses that on the 30th January, 2019 at Madilu Village within the district of Ludewa in Njombe region the appellant did steal Tanzania shillings Eight Million (Tshs. 8,000,000/=) the property of Ethro Mgani. However, the evidence adduced

by prosecution witnesses does not support at all the particulars of the charge sheet. The evidence adduced by PW2, PW3, PW5 and PW6 proved that the appellant was employee of Majembe Auction Mart Ltd. That, Majembe Auction Mart Ltd as a Court Broker was appointed by the District Land and Housing Tribunal for Njombe District to execute decree in Application No. 02 of 2016. The appellant being employee of the Court Broker followed all procedures of execution and sold through auction the property of judgment debtor for Tshs. 8,000,000/=. The buyer paid all the purchase price to the appellant and the receipt was issued.

According to the testimony of PW5 who is the Chairman of the Tribunal, the court broker was supposed to pay 90% of the selling price equivalent to Tshs. 7,200,000/= to the decree holder or to deposit the said amount to the Tribunal. But, the court broker did not deposit the said amount to the Tribunal or paid the decree holder. From this evidence, it is without doubt that it is Majembe Auction Mart Ltd as Court broker who was supposed to deposit the money to the Tribunal or to Decree Holder. The employer is liable for employee's acts which has occasioned injury when such employee was acting in the course of employment even when the act was improper. In **Machame Corporation Ltd (Lambo Estate) vs. Aikael Mbowe, (supra)**, it was held that:

"It is a well settled law that a master is liable even for acts which he has not authorized provided they are so connected with the acts which he authorized that may be regarded as modes, although improper modes, of doing them."

Despite the fact that it was appellant acting as agent or employee of the court broker who auctioned the attached property and received the purchase price, the same was done on behalf of Majembe Auction Mart Ltd. The said money obtained in auction was still not the property of the decree holder hence it could not be said that the appellant has stolen the same from the decree holder. But, the court broker is owed to deposit the required amount to the tribunal or the decree holder. In such circumstances, it is clear that particulars of the offence in the charge sheet and the evidence adduced by prosecution witnesses differs.

Thus, I agree with the counsel for the respondent that due to the presence of employer employee relationship between appellant and Majembe Auction Mart Ltd, it was Majembe Auction Mart Ltd who was supposed to deliver money to Njombe District Land and Housing Tribunal or to decree holder. Decree holder or the Tribunal were supposed to claim for the money from the court broker through civil means. This ground dispose of the appeal. As I find that the 4th ground of appeal has disposed of the matter, there is no need to determine the remaining grounds of appeal.

Therefore, I find the appeal to have merits and it is allowed. The judgment of the trial Court is quashed and the sentence and order imposed therein are set aside. The appellant has to be released from prison with immediate effects otherwise he is held for other lawful reason. It so ordered accordingly.

A handwritten signature in blue ink, appearing to read "A.E. MWIPOPO", is written over a horizontal line.

A.E. MWIPOPO

JUDGE

17/03/2023