

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

(DC) CRIMINAL APPEAL NO.91 OF 2022

(Original Criminal Case No.23 of 2020 before the Resident Magistrate Court of
Singida at Singida)

REHEMA MOHAMED MAJII.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGEMENT

17/3/2023

MASAJU, J.

Before the Resident Magistrate Court of Singida, the Appellant, Rehema Mohamed Majji, was charged with, tried and convicted of five counts, to wit: three counts of **forgery** contrary to sections 333, 335(a) and 337 of the Penal Code [Cap 16 RE 2019] and two counts of **uttering false document** contrary to sections 342 and 337 of the Penal Code [Cap 16 RE 2019]. She was sentenced to serve two (2) years in prison. Aggrieved by such decision of the trial court, the Appellant has come to the Court by way of an appeal.

The Appellant's Petition of Appeal is made up of three (3) grounds of appeal which centres on the allegation that the prosecution case before the trial court was not proved beyond reasonable doubt.

When the appeal was called upon for hearing today the 17th day of March, 2023, the layman Appellant appeared in person. She adopted her grounds of appeal to form her submissions in support of the appeal before the Court as she stated that he did not commit the offence. She also prayed that the Court to allow the appeal and set her free.

The Respondent Republic, in the service of the learned State Attorney, Mr. Salum Matibu, supported the appeal by stating that the prosecution case was not proved beyond reasonable doubt against the Appellant in the trial court. The Respondent submitted that, the case being forgery of documents, the prosecution witnesses were not able to prove the case beyond reasonable doubt since the would-be key witness (the handwriting expert) did not testify before the trial court. That, since Lawrence Philipo Malangwa (PW3), the Assistant Administrative Secretary, denied to have authored/signed prosecution Exhibit P9 (reinstatement of the Appellant's employment) the same could have even

been taken to the handwriting expert for examination. The Respondent submitted that, the trial magistrate just compared the documents and concluded that the impugned documents were forged (by the Appellant) though he cited a case in support of his position in the judgement. The Respondent Republic submitted that the same was not proper otherwise there could have been no need of handwriting experts whose opinions are important for reaching a just decision though their opinions are not binding.

The Respondent Republic further argued that the prosecution failed to establish the basis for the forgery. That is, how the alleged forgery could benefit the Appellant, i.e in the increase of salary. The Respondent submitted that the prosecution failed to establish whether or not the Appellants' salary was that of primary school graduate or otherwise. The Respondent submitted that, the Appellants' salary was that of standard seven school graduate and not that of ordinary level secondary education as shown in the Appellant's Exhibit D1 (letter of employment) and Exhibit D3 (members statement from LAPF) which were not contested by the prosecution during the trial. The Respondent further submitted that there was no employment opportunities

advertisement by the Appellant's employer which was tendered and admitted in evidence as a proof. The said advertisement, if any, could have been the ground for the Appellant to apply even if on forged qualification. The Respondent was thus of the view that such circumstances leave much to be desired.

The Respondent also submitted that as per the charge sheet, the Appellant was named Rehema Mohamed @ Majii. That, the said charge does not refer the Appellant say by designation known as Rehema M. Majii. The Respondent stated that the Appellant was therefore entitled to defend herself that she was not Rehema M. Majii. The Respondent submitted that there was a variance between the Appellant's names as per the charge and the alleged forged documents which led to her conviction. The Respondent thus argued that since there was such variance between the name of the Appellant and the charge sheet and the forged document it is obvious that the offence was not proved. Further, the Respondent submitted that, if the Appellant had forged the Diploma Certificate (prosecution Exhibit P7) she could have been prosecuted for the forgery of the same but she was not so charged. The

Respondent argued that the Appellant could not have submitted the certificates for vetting when she had already been interdicted.

On the 2nd ground of appeal, the Respondent submitted that the documentary evidence was tendered by Rebeca Marandu (PW2), the Human Resource Officer who was not even the custodian of the documents which were already before the police case file. That the said documents, if any, could have been tendered by the investigations officers (PW4 and PW5) and the letters by Ruvu and Mwenge Secondary schools could have been testified upon by the authors of the said letters for the said schools upon being so tendered by the custodian thereof, the investigation officer. The Respondent, thus concluded that these were the grounds for supporting the appeal.

The Appellant appreciated the submissions in support of the appeal by the Respondent Republic and maintained her submissions in chief.


The Court is of the considered position that the appeal is meritorious as per the parties' submissions in support of the appeal. The Respondent has said it all. The Court agrees *in toto* with the parties that

the prosecution was enjoined to bring-in a hand writing expert witness hence assist the trial court in reaching a fair and balance opinion on whether the prosecution Exhibit P9 (the letter of re-instatement of the Appellant's employment) was forged or otherwise and by whom. In addition, the Court is of the considered view that the ingredients of the offence of forgery itself were not met as per the record of the prosecution case. It was not satisfactorily shown that prosecution Exhibit P2 (the alleged forged certificates of secondary education) were intentionally authored by the Appellant and with intent to defraud or deceive. The evidence of PW2, Rebeca Marando (the Human Resource Officer) who tendered prosecution Exhibit P2 does not prove that, indeed, it is the Appellant who forged the same and that she submitted the same in her personal file since during cross-examination PW2 stated that she does not know the terms under which the Appellant was employed, that she just took the documents from the Appellant's personal file, that the documents in the employees files are kept by different people i.e office attendants up to the DED and that an employee normally fills his information and people at the registry keeps

the documents in the file. Suffice to state here that there was no proof that prosecution exhibit P2 was uttered or forged by the Appellant.

That said, the prosecution case against the Appellant before the trial court was not proved beyond reasonable doubt against the Appellant who pleaded not guilty to the charge, hence was not worth of grounding conviction on the charged counts.

The meritorious appeal is therefore hereby allowed. The conviction and sentence of two (2) years imprisonment against the Appellant respectively are hereby quashed and set aside accordingly.



GEORGE. M. MASAJU
JUDGE
17/3/2023