IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA

CRIMINAL APPEAL NO. 88 OF 2022

(Arising from Criminal Case No.141 of 2021 before Shinyanga District Court)

GEORGE PETER @MWANDU ..... APPELLANT

VERSUS

THE REPUBLIC .....RESPONDENT

JUDGMENT

14th April &17thJuly, 2023

MASSAM, J:

The appellant herein above was arraigned before District Court of Shinyanga at Shinyanga with the offence of stealing by agent Contrary to Section 273(b) of the Penal Code Cap 16 R:E 2019.

It was alleged that the appellant on 07th day of October 2021 at Viwanja vya Mwadui within Shinyanga Municipality did stole to the complainant two motor vehicles with registration number; T 149 DXE make Toyota Fuso Mistubishi, and T 985 DRN make Toyota Dayana both valued Tshs 128,500,000/= being the properties of Fumbuka Jisabo Seme (complainant).

The brief facts of the case are that, the complainant and the appellant are relatives as they are cousins.The complainant was a servant at Williamson Diamonds Ltd at Mwadui Shinyanga, while at work he was injured by security guard as he was mistakenly shot ten by the gun and injured his legs. Following that incidence, he was paid injury benefits by his employer amounting to Tsh.197,000,000/= as he was unable to continue with his employment.

The complainant decided to contact his relative who is the appellant and told him to escort him to Dar es Salaam, so that he may go and purchase vehicles that will help him on daily actives to sustain his life. The complainant trusted the appellant as he knew that he is familiar with the environment of Dar es salaam City since he was living there for long time.

The other reasons for involving the appellant were that the complainant did not know how to read and write, he was unable to speak well Swahili language and he never been in Dar es salaam before. The appellant agreed the same and complainant started the arrangement and the date to travel to Dar es Salaam. On their arrival they went to the yard and the appellant choose the mentioned cars. The

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complainant went to withdraw money from his bank account (CRDB Mlimani City) and paid to the seller of the said cars.

The said vehicles were transported to Shinyanga, on transit one of the hired driver asked the complainant why the documents for vehicles had the names of the appellant as the owner of it and not his name. The complainant asked that question to the appellant, who told him that the said document is just for transportation but upon arriving at Shinyanga all those documents will be changed and bear complainant names. The complainant was satisfied by the answer of the appellant.

They reached at Shinyanga and do minor service where the vehicles were arranged to start business of carrying cargo. The complainant hired drivers and the appellant was put as a supervisor to the effect.

The complainant was worried when the proceeds accumulated from the business carried by his vehicles were not deposited in his bank account despite the facts that he was informed about the generated income. When he asked the appellant, he turned hostile and informed him that he own nothing and that the vehicles belongs to him (the appellant) and not the complainant.

The complainant was totally shocked and decided to report the matter to police station. The appellant was arrested and charged with the offence of stealing by agent. The matter was heard on merit and the appellant was convicted and sentenced for term of five years imprisonment.

Aggrieved by the decision of the trial Court, the appellant has appealed before this Court with limbs of 15 grounds of appeal, whose major complaints are that; the prosecution case was not proved beyond reasonable doubts and thus there was contradiction of evidence.

During the hearing of this appeal, the appellant enjoyed legal service of Mr. frank Samweli Learned advocate while the respondent/ Republic was represented by Ms. Glory Ndondi learned State Attorney. Mr. Frank Samweli dropped grounds No.5, 14 and 15 of his petition of appeal.

Mr. Frank Samweli opted to begin with second ground of appeal. Arguing ground No.2 Mr. Frank Samweli argued that, the prosecution case was not proved beyond reasonable doubts. Mr. Frank Samweli further argued that, pursuant to the charge against the appellant, it was alleged that on 07 /10/2021 at Mwadui ground play, the appellant did stole two motor vehicles which are: T DXE make Fusso Mistubishi and T

985 DRJ Toyota Dayana, all of them was total amounted to Tshs. 128,500,000/= the property of the Complainant.

Mr. Frank Samweli, further submitted that, according to the charge sheet the properties belonged to the complainant. He referred Section 2 of the Road Traffic Act, which define the word owner of the motor vehicle. He averred a person appearing its registration names as the owner of the vehicle is deemed to be the owner.

Mr. Frank Samwel submitted that, all documentary evidence grounded during the trial concerning the registration of the said vehicles bears the names of the appellant.

Mr. Frank Samweli also argued that, the complainant admitted during the trial that, when the said motor vehicles transported from Dar es Salaam to Shinyanga the relevant documents bear the names of the appellant and therefore the charge of stealing by agent was not proved. He referred the case of; **PETER JAMES MAKALAGALE VERSUS REPUBLIC, DC CRIMINAL APPEAL NO. 32 OF 2019, (Moshi HC *at page 3)***

Mr. Frank Samweli, arguing ground No. 3 submitted that, in order to prove the charge of stealing by agent, prosecution was supposed to prove the principal and agent relationship. The relationship between the

appellant and the complainant. The prosecution did not bring any agreement to prove the same, it was only mentioned that the appellant was entrusted with vehicles to do business.

Mr. Frank Samweli, submitting on to ground No.4 he said that, the trial magistrate erred to issue order that, the said vehicles be handled to the complainant who did not prove the ownership. Further, to that on ground No. 6, he submitted that according to the charge sheet the alleged stolen vehicles bears registration No. T 985 DRN Toyota Dayana, but during the hearing of the case it was proved by defence evidence that there is none existence of that car instead there was a car with registration NO. T 985 DRJ which had no plate Number. So according to that the respondent did cooked and fixed the alleged plate number bears no T.985 DRN.

Moreover, Mr. Frank Samweli argued that, the trial Magistrate erred to convict the appellant basing on contradictory evidence and added that , PW1 testified that, he did not know that the motor vehicles does not bear his name before transporting it, till when he was informed by one Lubiso as he don't know how write and read and PW8 police investigator testified that he went to the seller of the vehicles and informed that PW1 was the one who went there and choose the said

vehicles and PW1 is the one who was given the price of buying it. And PW1 is the one who told the seller that he does not have TIN number and so they agreed to use TIN number of the appellant for registration.

Mr. Frank Samweli argued on that point that PW8 had different version as compared to PW1 who knew from the beginning that his names will not appear to the vehicles registration documents instead the appellant's names, that was so contradictory.

Mr. Frank Samweli connected ground No.7 with ground No.8 that the prosecution failed to prove their case by failure to call material witness the seller of the vehicles who would have cleared contradiction between the evidence of PW1 and PW8.

Also in ground No 9 he argued that, the trial magistrate erred to admit exhibit from the bank officer because there were photocopies and not original. He also argued ground No.10 that the conviction of the appellant by the trial Court was posed basing on the evidence of PW8 the investigator while in facts PW8 attested hearsay evidence and not in corroboration with evidence by PW1.

On ground No. 11 he argued that, the trial magistrate erred to hold its conviction basing on evidence of PW8 who testified that the PW1 on the material date were together with the appellant at Mlimani

City CRDB bank, and thus PW8 witnessed the same by looking CCTV Video, but CCTV video were not delivered before the court during the trial to prove the same in ground No.12 he complained that, the trial magistrate erred in law when rejected to admit the exhibits which were tendered by the appellant to wit the agreement which shows that the appellant borrowed some money tsh (50,000,000) to his friend and which is in facts used to purchase the said vehicle and Tshs 82,000,000/= had its own cash.

Mr. Frank Samweliin arguing ground No.13 he submitted that the trial Court erred when shifted the burden of proof to the appellant. To him the prosecution failed to prove their case and therefore the appellant was wrongly convicted.

In arguing ground No 1, appellant averred that the evidence of prosecution was too contradictory so prayed for the release of the appellant as he was wrongly convicted.

In her reply Ms. Glory Ndondi learned State Attorney opposed all grounds of appeal. She consolidated ground No. 2,3,4,5,7,9 and 12. Ms Glory averred that based on the consolidated grounds, she found out that the appeal has no merit. She said the facts that the vehicles bear names of the appellant does not mean that are his own property instead

the Court should look as how they were obtained, in which the facts are that the vehicles were obtained by fraudulent means.

Ms. Glory further argued that PW1 testified before the Court how he got the said money for buying vehicles. Ms Glory also submitted that the prosecution tendered relevant exhibits to the effects and therefore managed to prove their case to the required standard. The PW1 also testified how he entrusted the appellant and in turn he manipulated the trust.

The appellant used an opportunity of the complainant for not being able to read and write, and he was not familiar with Swahili language. And therefore, the appellant decided to present false statements to the complainant.

Ms. Glory also averred that, the PW1 testified the whole story how they moved by the appellant and how they bought the vehicles.

She also argued that the evidence of ownership of motor vehicles are also reflected on page 49-54 of the typed proceedings, where PW7 testified that he was called by PW1 and went to his house and found the PW1 with the appellant who informed him that he had purchased the vehicles. She also averred that on page 50 of the typed trial proceedings the appellant admitted exhibit P2 and P3 which proof that it belonged to

the PW1. Ms Glory referred this Court to the case of: **POSOLO WILSON @MWALYEGO VERSUS REPUBLIC,** at page No. 7.

Ms. Glory further added that during the trial the appellant confessed that the PW1 is the owner of the motor vehicles, the evidence which were corroborated by PW5, also the evidence of PW2 who proved that he is the one who escorted PW1 and the appellant while traveling to Dar es Salaam to buy the motor vehicles. Ms Glory also averred that PW8 witnessed to have seen the CCTV camera of the CRDB bank of Mlimani City and saw the appellant while together with PW1, and PW1 withdraw money from his bank account.

PW8 went on to state that, he went also to the yard and meet with the seller who informed him that the PW1 was the one who bought the said motor vehicles. Ms Glory submitted that with all those facts it is clear that the said vehicles belonged to the PW1 and that is to say the questions of ownership were fully proved to that effect.

Ms. Glory further submitted that in order to prove the offence of stealing by agent, the law requires the prosecution to prove as to whether the appellant was entrusted by the PW1 and he came to the possession of it as agent and stole it that property. Basing on that principle the PW1 testified before the Court that, the said motor vehicles

were put under supervision of the appellant. After three days the appellant claimed that those motor vehicles belonged to him and not the complainant. Ms Glory concluded that basing on those facts it true that the PW1 entrusted the appellant but later turned hostile and stole the said cars from the complainant (PW1), and the issue of agreement which raised by appellant respondent said that there was no necessity of agreement to the effect as PW7 proved to the court that the said motor vehicles were owned by the PW1 but they were put under supervision of the appellant by the complainant, also as per exhibit P1 and P2 prove the same. Ms Glory referred this Court to the case of: **Christian Mbunda versus Republic** which held that for appellant to be convicted under section 273 (b) the prosecution must prove that he/she came into possession of the allerged stolen property as an agent of either the real owner or special owner.t

Ms. Glory further submitted that the acts by appellant for his misrepresentation and using advantage of the PW1 for being not able to read and write and therefore after the PW1 had purchased and paid for motor vehicles the appellant used to present his names which were put to all documents relating to motor vehicles registration and purchase. And if is not enough he informed the PW1 that such documents to bear

appellants names it was only for the purpose of transportation of the said vehicles and thus upon reaching at Shinyanga all those will be changed as PW1informed appellant that he had no NIDA identity. That facts was found in page no 15 of the court proceedings.But later on, the appellant turned hostile and claimed to be lawful owner of the alleged vehicles.

She added that the said acts of the appellant contained evil intention which carries malice a fore thought and actus reus as elaborated in the case of **CHRISTINA MBUNDA VERSUS REPUBLIC *(*1983) TLR 340**which held that in order to prove the case of theft prosecution must prove the mens rea and actus reus. So she said that the mens rea and actus reus of appellant was seen when appellant opted to write his name to the transportation document and refused to return the said motor vehicles to the PW1.Again the appellant complained that prosecution failed to prove the charge of stealing by agent but in her side she said that they establish the said charge as PW1 had a knowledge that the said motor vehicles was written the name of appellant temporary for transportation and on arrival to Shinyanga the names will change failure of appellant to change his names proves his evil motive so the charge charged was right. This also was supported by

the evidence of defence side which found in page no 83 of court proceedings where the appellant averred to be an agent but he refused to be at DSM and no one was there where he was purchasing the said motor vehicles. The said piece of evidence was not true because there was a prove that appellant and complainant was at DSM that was proved by the evidence of PW8 through CCTV camera and the said evidence was not disputed. In page 84 of court proceedings shows that appellant was living to DSM but he told the court that he brought the said motor vehicle to shinyanga for maintanance while DSM there was many garage so the lies of appellant give credit to the prosecution evidence as elaborated in the case of **FELEX LUCAS KISINYIKA VRS REPUBLIC** which held that the lies of appellant can collaborate the evidence of the prosecution.

In regards to the admission of documents which was not original, Ms Glory argued that, there was no such issues raised during the trial and thus no dispute to that effect so the issue of bringing that issue in this stage is afterthought.Meanwhile she argued that some of the documents tendered by PW5 its explanations were given to the effects that the transaction of withdrawing money was made at CRDB Mlimani City Dar es Salaam and therefore such documents were sent via email

and were reliable for identifications by PW5 and that was in compliance with Section 78(A) (1) (2) of The Evidence Act, but the rest of documents were original.

Whereas on the issue of plate number Ms glory averred that the prosecution did not provide wrong plate number.

However, Ms. Glory further argued that, the appellant documents were not admitted because were not genuine and the amount bear in the document was not enough to buy the vehicles as compared to its value. The appellant failed to explain where he got the money for buying Car with exclusion of Tshs. 50,000,000/= which the appellant alleged to have acquired.Again the issue of contradiction of evidence between PW1 and PW8 as contemplated by the appellant Counsel in their side they denied the same as PW1told the court that he was the one who went to DSM to buy the said motor vehicle and PW1 after being asked by bank when withdrawing the said money he told them that he want to buy some motor vehicles that was supported by evidence of PW8 who went to the yard where PW1 bought the motor vehicles and been told that PW1 went there with appellant and PW1 was the one who choose the said motor vehicles, so there was no need of calling the manager of that yard as appellant did agreed that PW1 was the owner of the said

motor vehicles. Also he said that appellant had a chance also to call the said witness to prove on that issue as it is trite law that who alleges must prove as per section 112 of Tanzania Evidence Act. All issues doubted by the appellant counsel were cleared by PW1 during his testimony. PW1 narrated the whole tale about how the plan for buying vehicles begun, who involved, how the journey from Shinyanga to Dar es Salaam took place, how the process of purchasing vehicles was carried out and lastly how the appellant misrepresented and stole the complainant. Likely PW8 testified how the appellant manipulated the complainant.

Arguing ground No. 13 Ms Glory submitted that the trial Court properly evaluated the evidence and came up with rational judgement which emanated from evidence of both parties. Therefore, the prosecution managed to prove its case to the required standard. She then pressed before this Court to uphold the decision of the trial Court.

In his rejoinder Mr. Frank Samweli reiterated what he submitted in chief.

Having heard both parties, I have to determine the appeal, and the issue to be determined is **whether this appeal has merit.**

I have gone the trial Court records, judgment, petition of appeal and submission of both parties, and here under are my findings.

The appellant was charged with the offence of Stealing by agent Contrary to Section 273(b) of the Penal Code Cap 16 RE 2019.

The section so reads 273.

"Where the thing stolen is any of the following things, that is to say- (b) property which has been entrusted to the offender either alone or jointly with any other person for him to retain in safe custody or to apply, pay or deliver it or any part of it or any of its proceeds for any purpose or to any person; the offender is liable to imprisonment for ten years".

The records of the trial Court provides that, the accused misrepresented the complainant from the point when they started the purchase of the said vehicles. The accused started to show evil intention when introduced his names and recorded in the purchasing documents knowingly that he is not concerned with those vehicles. When he was asked by PW1 about the incidence the appellant replied that the names introduced were for the purpose of transportation of vehicles and after reaching to Shinyanga everything will be changed and will bear the

names of the complainant and he said he did that because complainant had no NIDA number.

Furthermore, the records reveal that when the PW1 and the appellant reached to Shinyanga, the appellant turned hostile and claimed that the vehicles belonged to him.

Therefore, from the facts of the case it is my considered view that, the appellant ought to be charged with the offence of obtaining property by false pretence. I so hold because, the trial Court looked the offence at the apex stage and not from the beginning. There was no principal and agent relationship which establishes the relationship between the appellant and the complainant.

According to Section 30 of the Penal Code Cap 16 RE 2022, provides that any representation made by words, writing or conducts of a matter of fact or of intention, which representation is false act and the person making it knows it to be false or does not believe it to be true, is false pretence.

Meanwhile, Section 300(1) of the Criminal Procedure Act, Cap 20 RE2022, provides that where a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved

but the remaining particulars are not proved, he may be convicted of the minor offence although he was not charged with it.

But also, Section 306(1) of the Criminal Procedure Act (supra) provides that where a person is charged with stealing anything and the court is of the opinion that he is not guilty of that offence but that he is guilty of an offence in respect of that thing under one of the sections 302, 304, 311 and 312 of the Penal Code, he may be convicted of that offence although he was not charged with it.

There is no dispute that the prosecution case against the appellant was exclusively based on circumstantial evidence which, simply stated, means evidence that relies on the inference to connect it to a conclusion of fact rather than direct evidence.

In other words, it is proof of the existence or nonexistence of an alleged or disputed fact, based on reasoning and not on personal knowledge or observation.

I am aware that there are people who consider circumstantial evidence as weak and unreliable. In my view, that is a misconception. As was restated i**n the cases of SAMSON DANIEL V. R.** ***(1934) 1 E.A.C.A. 154 and R.*** **V. SABUDIN MERALI AND UMEDALI MERALI, Uganda High, Criminal Appeal No. 220 of 1963**

(unreported), the mere fact that evidence is circumstantial is far from saying that the prosecution case is weak because circumstantial evidence is sometimes the best evidence.

In the latter case of ***R. V. S*ABUDIN MERALI AND UMEDALI MERALI, SIR UDO UDOMA,** C.J. said that:-

> *"...it is no derogation to say that it was so; it has been said that circumstantial evidence is very often the best evidence. It is the evidence of surrounding circumstances which, by undersigned coincidence is capable of proving a proposition with the accuracy of mathematics."*

From the point of view, I am contrary with the arguments of Mr. Frank Samweli on the facts that the prosecution case was not proved beyond reasonable doubts, the only reasons for misconception is that the particulars proved before the trial Court and looking the commission of the offence, the appellant ought to be convicted with minor offence that is obtaining property by false pretence as stated herein above.

Again, the appellant Counsel submitted that the appellant bought the vehicles in dispute through his own money. Mr. Frank further argued that the appellant had Tshs. 82,000,000 cash in hand and Tshs 50,000,000/= borrowed to his friend, and therefore the appellant had a

total of Tshs 132,000,000/= he said that the source of income of for buying the said cars cars resulted from his agricultural activities, as he had farms at Morogoro Kilosa where he used to cultivate crops. He also averred that he bought the Cars from the company namely Mohamed Motor Limited, for a tune of total of Tshs. 128,000,000/= and the Cars were transported to Shinyanga on 1/10/2021.

PW1, testified that he was a servant at Willimson Diamonds Ltd at Mwadui Shinyanga, while at work he was injured by security guard as he was mistakenly shot by the gun and injured his legs. Following that incidence on 27.08.2021 he was paid injury benefits by his employer amounting Tsh197,000,000/= as he was unable to continue with his employment.

The complainant decided to contact his relative to wit the appellant and told him his ambition that he wanted him to escort to Dar es Salaam, so that he may go and purchase vehicles that may help him on daily actives to sustain his life. The complainant trusted the appellant as he knew that he is familiar with the environment of Dar es Salaam City since he lived there for long time.

The other reasons for involving the appellant were that the complainant did not know how to read and write, he was also unable to

speak well Swahili language and he never been in Dar es Salaam before.

After has been involved, the appellant agreed the same and arranged the date where they moved to Dar es Salaam. They went to the yard and the appellant chosen the mentioned cars. He went to withdraw Tshs. 131,000,000/= from his bank account (CRDB Mlimani City) and paid to the seller Tshs 128,500,000/= total costs for the purchase of cars.

The said vehicles were transported to Shinyanga, but during the transportation one of the hired drivers asked the complainant why the documents for vehicles had the names of the appellant as the owner and not the complainant. The complainant asked that question the appellant, whereby he was told that the said document is just for transportation but upon arriving at Shinyanga all those documents will be changed and bear complainant name, something which was not true.

From the above facts, I agree with M/s Glory that the PW1 managed to prove the source of money which was later used to buy the vehicles.

I am against with the testimony of the appellant (accused) on the incidence that, there is no clear source of money purported to have used

to buy the cars. The appellant testified that he borrowed Tshs 50,000,000/= from one Ally Abdallah Rashid. He tendered exhibit D2 being loan contract.

In my view the defence has a burden to call the one Ally Abdallah Rashid to testify the truth on whether he real loaned the appellant. The absence of which makes invalid evidence toward the availability of money used to buy the alleged cars.

In the case of: **HEMED SAID VERSUS MAHAMED MBIU (1984) TLR 113,** it was held that where for undisclosed reasons a party fails to call a material witness on his side, the Court may draw inference that if the witness were called, they would have given the evidence contrary to the party's interest.

Whereas, in the course of studying, I have identified that Exhibit D2 which is the loan agreement was unprocedural admitted. Section 5 (1) (a), item 5 of the Schedule of The Stamp Duty Act, Cap 189 RE 2019, requires that contract and other attestation for them to be admitted in Court needs to be furnished with stamp duty.

In the case at hand, stamp duty was not paid. Meanwhile a person attested the loan agreement was not called to witness before the Court for the alleged contract. Therefore, being the case Exhibit D2 is

expunged from the court records. The remaining evidence concerned source of money used to buy the alleged cars remain only Tshs. 82,000,000/= whereby the appellant alleged to have in cash through agricultural activities.

Mr. Frank when arguing appeal submitted that, the appellant has cash in hand which he got from doing business and Tshs. 50,000,000/= borrowed from his friend. Now, there is no any piece of evidence proving that the appellant had been engaging himself in certain business to enable him to have such huge amount of money, i.e. no business license.

The appellant when testifying before the trial Court stated that, he had Tshs 82,000,000/= cash in hand, as he used to involve in agricultural activities where he used to cultivate crops and selling crops, he also has farms in Morogoro Kilosa.

From such piece of evidence, there is no evidence to prove that the appellant has involved in agricultural activities as alleged. He did not prove to the Court how and at what quantity he harvested from farming and how much and what rate did he get from selling those crops. Also, there is no evidence to prove that he engaged in selling crops, no license to the effects.

Therefore, from the analysis I have made, it is easy to conclude by saying that, there was no sufficient proof of source of money which allegedly used to buy cars as compared to the complainant who managed to prove the same.

Mr. Frank argued that, the trial Court erred to conclude that the appellant was guilty with the offence of stealing by agent without establishing the ownership of the alleged stolen property. According to him the motor vehicles ownership is acquired through registration as was done by the appellant and apart from that registration the purchasing documents bear the names of the appellant. This proves that the appellant is the owner of the alleged stolen cars.

I disagree with the argument by Mr. Frank, on the facts that where the registration of vehicles had been obtained fraudulently then the ownership of such vehicles is shaken and can't be trusted. See 301 of the Penal Code Cap 16 R:E 2022, on the effects representation made by words, writing or conducts of a matter of fact or of intention, which representation is false act and the person making it knows it to be false or does not believe it to be true, is false pretence.

In the case at hand the, the buying and registration of alleged vehicles was full filled with bad smell and not attractive to any sound person.

As I held prior that the appellant ought to be convicted by the offence of obtaining property by false pretence Contrary to Section 304 of the Penal Code. (Supra)

As argued latter, the case at hand is full covered with the circumstantial evidence. Looking at the principles of applicability of circumstantial evidence as was held in the case o**f Sadiki Ally Mkindi V.THE D, P. P.**(supra) These principles include;

1. That in a case which depends wholly upon circumstantial evidence, the circumstances must be ofsuch a nature as to be capable ofsupporting the exclusive hypothesis that the accused is guilty of the crime of which he is charged. The circumstances relied upon as establishing the involvements of the accused in the crime must clinch the issue ofv guilt.

2. That all the incriminating facts and circumstances must be incompatible with the innocence of the accused or the guilt of any other person and incapable of explanation upon any other hypothesis than

that of his guilt, otherwise the accused must be given the benefit ofdoubt

3. That the circumstances from which an inference adverse to the accused is sought to be drawn must be proved beyond reasonable doubt and must be closely connected with the fact sought to be inferred therefore.

4. Where circumstances are susceptible of two equally possible inferences the inference favouring the accused rather than the prosecution shouldbe accepted.

5. There must be a chain of evidence so far complete as not to leave reasonable ground for a conclusion therefrom consistent with the innocence of the accused, and the chain must be such human probability the act must have been done by the accused.

6. Where a series of circumstances are dependent on one another they should be read as one integrated whole and not considered separately, otherwise the very concept of proof of circumstantial evidence wouldbe defeated.

7. Circumstances of strong suspicion without more conclusive evidence are not sufficient to justify conviction, even though the party offers no explanation of them.

8. If combined effect of all the proved facts taken together is conclusive in establishing guilt of the accused, conviction would be justified even though any one or more of those facts byitselfis not decisive.

Looking at the extract above and clear findings which I have made especially on the availability of money used for purchase of the alleged cars, the remained evidence incriminate the appellant with the offence of obtaining property by false pretence.

The prosecution evidence before the trial Court is in chain line to prove the offence of obtaining property by false pretence committed by the appellant and there is no broken of chain to that effect.

In the case of: **PROTAS JOHN KITONGOLE AND ANOTHER VS REPUBLIC *(1992) TLR 51,* MAKUNGIRE MTANI VS. REPUBLIC *(1983) TLR 179 and M*AJID MUSSA TIMOTHEO VERSUS REPUBLIC *(1993) T.L.R 125,*** it was held that *for circumstantial evidence to be the ground of conviction, it must be incapable of more than on interpretation, i.e un broken chain of*

circumstantial evidence proving the offence beyond reasonable doubts against the accused person can legally ground the conviction against him.

According to Section 306(1) of the Criminal Procedure Act (supra) provides that where a person is charged with stealing anything and the court is of the opinion that he is not guilty of that offence but that he is guilty of an offence in respect of that thing under one of the sections 302, 304, 311 and 312 of the Penal Code, he may be convicted of that offence although he was not charged with it.

In the case of **OMARI KHALFAN V. THE REPUBLIC, Criminal Appeal No. 107 of 2015** whereas the Court of appeal having found that both sides of the case were prejudiced by the omission of the trial Court to give adequate appreciations on the evidence adduced and none compliance to the law quashed the findings of the trial court. The anomaly in that case was affecting the entire proceedings but in the instant matter the parties are not at issue on the proceedings of the trial court. In that respect such proceedings remain intact.

In the case at hand the appellant through misrepresentation, cheating and fraudulently obtained the properties belonged to the complainant by false pretence. The prosecution evidence incriminated

the appellant with the offence of stealing by agent, but the particulars and facts of evidence during the trial proved the offence of the obtaining property by false pretence.

Based on those facts and in pursuant to Section 306 of the Criminal Procedure Act (supra) the appellant is reliable with the offence of obtaining property false pretence contrary to Section 304 of the Penal Code.

Mr. Frank also complained the admission of exhibits P3, P2 which were bank documents from where monies were withdrawn by the PW1 on the facts that they were photocopies. I have looked upon those exhibits which were tendered by a bank officer. According to him PW5 testified that he received that documents through official email from Mlimani City CRDB Dar es salaam particularly when needed to come to testify before the Court on the incidence. Now, being the case, I think Mr. Frank is not aware with current jurisprudence which dictates that documents sent through email and other electronic devices are taken to be genuine.

See the case of: ***TRUST* BANK TANZANIA LIMITED VERSUS LE -MARSH ENTERPRISES LTD AND 2 OTHERS,** ***Commercial Case No. 4 of 2000 (unreported)*** and the case of: **SALUM SAID**

SALUM VERSUS THE D.P.P, Criminal Appeal No. 3 of 2013. (Unreported)

Further to Sections 63 and Section 67 (1) (c), (d) of the Evidence Act, clearly provides for the reasons of admissibility of secondary evidence. By so speaking I conclude that the trial Court was Correct to admit the mentioned exhibits.

There was also an issue of contradictory evidence as raised by Mr. Frank Samweli. According to him he averred that PW1 and PW8 have different version on their testimony which invalidate their testification.

I have looked for the same, but I do not see any contradiction of testimonies between the two. Every witness has its own version. PW8 testified on how investigation process took place and thus he went up to the yard where cars were bought. The PW1 did not confess that he had no TIN number and thus he agreed the names of the appellant to be put on the cars purchasing documents as argued by Mr. Frank Samweli. See at page 56 of the typed proceedings.

PW8 stated *"....accused on his statement said that the cars are the properties of his relative Fumbuka Jisabo Seme and what made the Car appear in his names because the complainant did not know how to write ad read as well the victim had no TIN Numbers"*

From the extract above, it is the appellant who asserted that the PW1 had no TIN number that why the Cars were registered in the appellant names, something which was not correct.

Furthermore, Mr. Frank Samweli argued that the trial Court erred in law to pose its decision based on CCTV video which was not tendered before the Court.

In my view PW8 testified what he saw on the CCTV Camera owned by Mlimani City CRDB bank in Dar es Salaam. According to him he stated that he saw the PW1 while together with the appellant withdrawing money from the bank. To me this was direct evidence to the effects, because he testified what he saw it, that was direct evidence.

With all those findings, I therefore find the appellant GEORGE PETER @MWANDU guilty of the offence of obtaining property by false pretence contrary to Section 304 of the Penal Code, Cap 16 R.E 2022.

I therefore substitute the conviction from the offence of stealing by agent to the offence of obtaining property by false pretence. And I accordingly proceed to sentence the appellant for a term of two years imprisonment. The order issued by the trial court in regards to the alleged motor vehicles remains the same, consequently the appeal by the appellant is partly allowed.

It is so ordered.

DATED at **SHINYANGA** this 17th day of July 2023

R.B. Massam
JUDGE
17/7/2023