

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB- REGISTRY OF MWANZA

AT MWANZA

CRIMINAL APPEAL NO. 40 OF 2023

(Originating from the District Court of Ukerewe in Criminal Case No.38/2020)

NYENZE KULOLAAPPELLANT

VERSUS

THE REPUBLICRESPONDENT

JUDGMENT

7th & 25th Sept, 2023

ROBERT, J:-

This is an appeal against the decision of the District Court of Ukerewe (hereinafter referred to as "the trial court"), wherein the appellant, Nyenze Kulola, was charged, convicted, and sentenced to four (4) years imprisonment and ordered to pay TZS 15,000,000/= to the complainant. The charges brought against the appellant were in violation of section 273(b) of the Penal Code Cap 16 R.E 2022, which deals with stealing by an agent. Aggrieved, the appellant raised three grounds of appeal to challenge the decision of the trial court.

The prosecution's case, as presented before the trial court, alleged that on the 2nd day of March, 2020, at approximately 1300 hours, within Nakatunguru village in the District of Ukerewe, Mwanza region, the appellant stole fresh fish maws valued at TZS 15,000,000/=, property

entrusted to him by Mathias s/o Mathayo to sell in Nairobi, Kenya. However, the appellant purportedly sold the fish maws and misappropriated the proceeds for his personal use. Following a trial, the trial court was satisfied that the prosecution had established its case beyond reasonable doubt, leading to the appellant's conviction and sentence.

The appellant preferred this appeal based on the following grounds:

- 1. That the trial magistrate erred in law and in fact by failing to consider the inconsistencies in the prosecution witnesses' testimonies, which go to the heart of the matter.*
- 2. That the trial magistrate erred in law and in fact by failing to consider the doubt created on the part of the prosecution.*
- 3. That the learned trial magistrate erred in law and in fact by convicting the appellant based on incredible and unreliable evidence from the prosecution witnesses.*

At the hearing, the appellant appeared in person without a legal representative whereas the respondent was represented by Benedicto Rugoge and Hellena Mabula, State Attorneys.

Addressing the Court on his grounds of appeal, the appellant implored the Court to adopt and consider his grounds of appeal as stated in his petition of appeal for the determination of the appeal. He prayed for the appeal to be allowed.

On the first ground of appeal, the appellant faults the trial Court for failing to give consideration to the inconsistencies in the testimony of the prosecution witnesses, which the appellant claims touched the root of the matter.

In response, the prosecution argued that there were no inconsistencies in the testimony of the six prosecution witnesses who testified before the court. The court notes that although there was an initial discrepancy in the value of the fish maws mentioned by PW1, this discrepancy was rectified during cross-examination, with PW1 indicating that the value was indeed TZS 15,000,000/=. This corrected value aligns with the evidence of PW2 and PW4, who were involved in preparing the luggage and were aware of its value. Therefore, there is no merit in this ground.

The appellant's second ground of appeal challenges the trial magistrate for failing to consider what he referred to as the doubt created on the part of the prosecution side.

In response, the State Attorney argued that there was no doubt in the prosecution's case. The appellant was charged under Section 273(b) of the Penal Code, and the prosecution witnesses proved all the elements of the offense. It was established that PW1 entrusted the fish maws to the appellant for sale, and the appellant did not return the money after conducting the business. The evidence adduced by witnesses at the trial

supported this claim, including the admission of guilt by the appellant in Exhibit P1.

The appellant's failure to return the money after conducting the business constituted the offense of stealing by agent under Section 273(b) of the Penal Code. The appellant didn't specify what he considers to be a doubt in the prosecution case. The evidence adduced by PW1 is well corroborated with that of Pw2 and Pw3 and firmly established the appellant's guilt without any doubt. Thus, this ground lacks merit.

The third ground of appeal faults the trial Court for basing its evidence on unreliable evidence of the prosecution witnesses. The appellant claims that the learned trial magistrate erred in law and facts by convicting him based on evidence that is not credible and unreliable from the prosecution witnesses.

In response to this ground, it was argued that the prosecution evidence was credible and reliable. The trial Court had found that the prosecution witnesses did not have any quarrel or malice against the appellant, and their testimony was coherent when compared with the testimony of the defence.

The Court notes with approval the position in the case of **Robert Sangaya v Republic**, Criminal Appeal No. 363 of 2019, CAT at Dsm

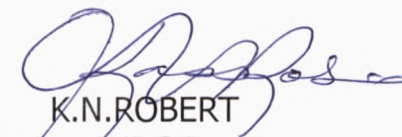
(unreported) cited by the prosecution to establish that the assessment of credibility of a witness is within the purview of the trial court.

From the records of this matter, it is obvious that, the trial Court found that the evidence adduced by the prosecution witnesses was credible and reliable. There is nothing in the record of the trial Court or the appellant's argument to warrant a departure from the trial courts' findings. The Court is aware that credibility could be determined by assessing demeanor and coherence in testimony of witnesses (see the case of **Shabani Daudi v Republic**, Criminal Appeal No.28 of 2001(unreported)). The appellant's claim that the trial magistrate erred in this regard is therefore unfounded.

In light of the above analysis, this court finds that the grounds of appeal raised by the appellant are without merit. The trial court's decision to convict the appellant under Section 273(b) of the Penal Code is upheld. Therefore, the appeal is hereby dismissed, and the appellant's conviction and sentence are affirmed.

It is so ordered.




K.N. ROBERT
JUDGE
25/9/2023

