

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM DISTRICT REGISTRY

AT DAR ES SALAAM

CRIMINAL APPEAL NO. 49 OF 2020

(Arising from the decision of the Resident Magistrate's Court of Kisutu, at Kisutu in Economic Crimes Case No. 17 of 2013 by Hon Rwezile, SRM (As he then was) dated 30th October 2019)

ENGELS ENDA MRIKARIA..... APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

MKWIZU, J:

In this appeal, the appellant is challenging the conviction and sentences by the resident Magistrate court of Dar es Salaam at Kisutu, Hon. A. K Rwezile SRM (as he then was) in Economic case No. 17 of 2013 dated 30th October 2019.

It is from the records that the appellant was working with the Open University (OUT), Department of Expenditure, Payroll section in the years between 2009 to 2011 dealing with the preparation of payrolls for payment of salaries of lawful workers of the Open University by using the salary software called EXACT. In April 2011, it was discovered that the Open University-master payroll systems contained fictitious names of people (not employees,) paid salaries through bank accounts. The

investigation and a special audit were mounted thereafter exposing an enormous amount of money paid as salaries to fictitious employees through NBC, CRDB, and NMB bank accounts some belonging to the appellant himself, his co-accused, and other individuals, and overpayment of salaries to the appellant beyond his entitlement. The appellant was accused of having fraudulently forged the payrolls (Bank salary Lists) by inserting payroll names of people who were not the Open University's employees including the name Lucy Engels Mrikaria, Boniface John Msofe, Stanley January Msofe, Rose Silas Maungu, and Marietha Boniface Milinga purporting that they were employees of the Open University of Tanzania. On that account, the appellant together with five others was charged with several counts, 53 counts of forgery contrary to 333,335(a)337 of the penal code, 15 counts of money laundering contrary to section 3(), 12(b) and (13)(a) of the Anti-Money laundering Act No.12 of 2006 and one count (the 69th count) where all accused persons were charged jointly for occasioning loss to a specified authority (Open University of Tanzania) contrary to paragraph 10(1) of the 1st schedule to and sections 57(1) and 60(2) of the Economic and Organised Crimes Control Act.

The prosecution paraded thirty-five (35) witnesses and a list of exhibits. At the end of the trial, the 1st accused was convicted on all counts and accordingly sentenced to 7 year jail term on all 53rd counts of forgery; He was as well sentenced to pay a fine of 100,000,000/= or serve 5 years imprisonment in default in counts 54,55,56,66,67, 68 and 69 and was in addition ordered to compensate the Open University a total sum of 566,133,500/= under paragraph 10(4) of EOCCA and the land in Morogoro and Bagamoyo district in Coast Region purchased with the

tricked money were forfeited to the government. The 2nd to 5th accused persons were all acquitted.

The appellant is aggrieved by the trial court's decision hence this appeal on nine (9) grounds of appeal filed in court through an amended petition of appeal dated 4th June 2021.

The appeal was disposed of by written submissions. The appellant was a person without legal representation while the Respondent/Republic had the services of Mr. Theofil Mutakyawa learned Principal State Attorney.

In the 1st and 8th grounds of appeal, the trial court was faulted for finding the appellant to have forged the payroll without cogent proof that he held that position at any time of his employment. The appellant contended that he was employed as an assistant accountant and the argument that he was assigned other duties was contradictory and lacked proof. Citing to the court the case of **Michael Haishi vs. Republic** 1992 TLR 92 the appellant said, the contradiction of the respondent's witnesses during the trial was enough to raise reasonable doubt on the prosecution's case stressing that his letter of employment he tendered in court managed to prove his position as Assistant Accountant, and the duties that were assigned to him by the said letter of employment. He relied on section 11 of the Evidence Act Cap 6 R: E 2019 to establish his stance.

On the second ground, the appellant urged the court to find that the decision that he was the only personnel who operated the payroll accounting software (EXACT) to key in names of ghost employees and other false parameters was premised on contradictory evidence by the prosecution. He said PW28 being a person employed at the Open University in 2007 could not have proved the fact that the appellant was

the person who ran the payroll system installed in 2006, that PW33, the General Manager of the Company that developed the Exact software failed to prove that appellant is the only person who was trained to use the system. He insisted that the prosecution ought to have tendered in court the attendance certificate and other credentials that enabled the appellant to access the said software.

On the 3rd, and 4th, grounds of appeal, the honorable trial magistrate was censured for failure to properly consider, analyze, and determine the contradiction and inconsistencies in the prosecution evidence leading to a wrong and unfair decision.

The appellant's complaint in the 7th ground is that the defence was improperly considered. The appellant's contention here is that both, PW28 and PW30 employees of the Open University of Tanzania testified that they found the appellant working as a payroll Accountant while the Appellant's exhibit DW1 showed that he was employed as an assistant Accountant, the facts that remained undisputed. The appellant submitted further that Exhibit P40 the tabular summary that was claimed to have been prepared by the appellant had the signature of PW28 and the official stamp of the Open University of Tanzania and not his and that while PW28 told the court that purported EXACT software was replaced by new software named ACCPAC after the forgery incident at issue, PW 16 who is the University's IT technician said both systems were working together hence raising doubt on their credibility.

Exposing more contradictions on the prosecution evidence on the points, the appellant said, that while PW28 mentioned him as in charge of sending the payroll to different banks, PW20 and 21 named Luanda as the person

responsible for that assignment whereas, PW 31 said she was the one responsible for submitting the payroll list to the banks. He also condemned the trial court for admitting exhibit P 47 the bank statement of the Open University of Tanzania account No. 01103002560 without having it read in court leaving the appellant unaware of its contents. He cited the case of **Godfrey Isdory Nyasio vs. Republic**, Criminal Appeal No. 270 of 2017 CAT, and **Faraji Augustine Chambo vs. the Republic**, Criminal Appeal No. 346 of 2015(unreported) to bolster his submissions.

On the 5th and 6th grounds of appeal, the appellant faulted the trial magistrate for basing his conviction on circumstantial and hearsay evidence from the prosecution. Relying on the decision of **Kisonga Ahmad Issa and Ramadhani Amani Kasanga vs. the Republic**, Criminal Appeal No. 171 of 2016, Consolidated with Criminal Appeal No. 362 of 2017(unreported) he said to form the basis of conviction, the circumstances from which an inference of guilty is sought to be drawn must be cogently and firmly established; the circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused, and circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused person and no one else.

The variance between the charge and evidence is another issue raised by the appellant in his submissions arguing that the charge sheet reads a total sum of Tshs.566,446,500/- while the evidence gives a total sum of Tshs 566,133,500/ as the amount fraudulently stolen from the Open University of Tanzania. Reliance was made on **Mashalanjile vs.**

Republic, Criminal Appeal No. 179 of 2014 CAT, Tabora(unreported) to the effect that he was tried on a defective charge sheet.

On the ground, 9 the appellant faulted the trial court for allowing the prosecution to take the admitted exhibits from the court file to the police without notice and consent from the defence. He contended that, during the trial, the prosecution asked the court for some of the tendered exhibits to take them to the DCI without recording the same in the records and without the appellant's knowledge contrary to the court's procedure. Lastly, the court was invited to allow the appeal.

The learned State Attorney on the other hand opposed the appellant's appeal. He stated that the appellant's 1st, 3rd, 5th 6th, 7th, and 8th grounds appear to be intertwined such that his submissions is forward-backward repeatedly on the same point and across all the grounds together. He said proof of forgery of payrolls against the appellant in counts numbers 1-53 and counts number 54,55,56,57,66,67 and 68 was watertight. PW 28 Azimio James Taluka, the Director of Finance and Accounts of OUT testified that out of three departments that constituted the Directorate of Finance and Accounts, the appellant worked in the Department of Expenditure in particular to the section of payrolls between July 2009 to April 2011, the witness narrated duties of appellant in the said section at (page 446 and 447 of typed proceedings) that they included preparation for payment of salaries of lawful workers of OUT by using salary software known as EXACT. The names of persons who were not OUT employees, their bank details, and salaries paid throughout the period were well described in the matrix from pages 25 – 49 of the judgment and pages 457 to 493 to 511 of the typed proceedings.

The learned State Attorney submitted further that Exhibit D1 referred to by the appellant is a letter of his appointment dated 9/11/2006 indicating that he was employed by OUT as an assistant accountant tasked with the preparation of the bank reconciliations, submissions of PAYE to TRA in time, reconciling PPF account and any other duties as assigned by the supervisor. The State Attorney said the existence of the said EXACT software to OUT was exhibited by PW33 who installed the said software and provided training to the appellant, PW 16, a computer technician at OUT identified the appellant as the person who operated the software and PW 30 the Deputy Vice Chancellor Resource management by then, produced in evidence a list of genuine OUT staff referred to as Open University Staff list in the period between July 2009 to 2011(exhibit P46)the names of persons who were not OUT employees, their bank details and salaries paid throughout the period between July 2009 to 2011.PW1, PW2, PW3, PW4 and PW6, PW 7, PW9, PW18 PW8 are the employees of the different banks including CRDB, NBC, and NMB who tendered the bank statements like Exhibits P4, P11, P15, P18, P 19, P20, P22, P24, P28, P26 in different accounts 019201046214 & 2062503774 Rose Silas Maungu,0150205110500 names Judiana Stationary,01J2034045500 and 01J2034045501 Boniface John Msofe and Stanley January Msofe, and exhibits P33, P34, P35, P36, P37, P38, and P42 are all payrolls into which the appellant inserted into names of persons who are not OUT employees but who were paid salary from OUT from July 2009 to April 2011 saying that from this evidence the appellant cannot exonerate himself from the forgery of payroll in whatever capacity he was working with OUT at the material period. He cited the case of **Alley Alli & Another vs. Republic** [1973] LRT 43 on the proof of forgery

based on circumstantial evidence and the **Director of Public Prosecution Vs Justice Lumima Katiti & 3 Others**, Criminal Appeal No. 15 of 2018, Court of Appeal Dar es Salaam Registry(unreported) where the court said:

"Once the appellant was found in possession of forged cheque just before encashment then it necessarily follows that he had forged the cheque himself or that the cheque was forged by someone with his knowledge and approval"

Regarding irregular admission of the Bank statement of the Open University of Tanzania Account Number 01103002560 (exhibit P47), the learned State Attorney said, the statement was properly admitted in evidence through PW 32 bank officer from NBC, although there was no dispute if OUT maintained salary account with NBC Corporate Branch was only intended to show that such account existed. The learned state attorney elaborated that PW32 read out the said account number and explained its usage, that the same was used for salary payment of OUT employees whereas she was accordingly cross-examined by the defence team at pages 607 to 610 of the typed proceedings, thus there was no prejudice at all. He cited to the court the decision in **Stanley Murithi Mwaura v The Republic**, Criminal Appeal No .144 of 2019, CAT Dar es Salaam Registry (unreported) to bolster his argument.

In reply to the 5th and 6th grounds about the defective charge due to the variance of figures mentioned in the charge sheet visa vis the amount established by evidence the learned State Attorney said, the amount of money proved as loss resulted from the accumulation of payrolls which fictitious persons were paid as salaries from OUT from July 2009 to April

2011. Each payroll with the amount of money involved constituted an independent and separate count of forgery proved through counts number 1-53,54,55,56,57,66 and 68. He said the amount in the last count was cumulative of all payrolls that the appellant fraudulently paid throughout the period. He maintained that the trial Magistrate rightly convicted the appellant with an order for compensation of the established amount. He relied on Lord Parker CJ in the Queen's Bench Division in the case of **Machent vs. Quinn** [1970]2 All ER 255 which held that;

"If proof is given that the accused stole any of the items as alleged, sentence should relate to articles proved to have been stolen".

The learned principal state Attorney contended that though the prosecution is duty-bound to prove its case beyond a reasonable doubt, that obligation does not extend to the standard of disproving every assertion made by the accused even when it does not cast reasonable doubt on the prosecution case. To him, the test to be applied in assessing whether the prosecution has proved its case in a standard required was well elaborated by Lord Denning in the case of **Miller vs. Minister of Pensions**(1947) 2 ALL ER 372 that;

"The law would fail to protect the community if it admits fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favor which can be dismissed with a sentence, of course, it is possible but not in the least probable, the case is proved beyond reasonable doubt but nothing short of that will suffice"

He maintained that the case against the appellant was proved to the standard required and that the trial court rightly convicted the appellant for the offences of forgery, money laundering, and occasioning loss to a Specified Authority (The Open University of Tanzania) as per the charge sheet and further that the ancillary orders of compensation and forfeiture are within the ambit of the law. He finally urged the court to dismiss the appeal for lacking in merit.

I have keenly examined the contending submissions by the parties in line with the grounds of appeal presented in court. I have also inquisitively perused the lower court's records and the impugned trial court's judgment. The 1st, 2nd, and 8th grounds of appeal are intertwined as they all challenge the prosecution's evidence on whether the appellant had acted as a payroll Accountant, alone operating the payroll accounting software known as EXACT at OUT the position that was engaged in gorging the payroll as alleged. The three grounds read:

- 1. The Honourable trial magistrate grossly erred both in law and fact by holding that the appellant did forge payrolls in the capacity of payroll accountant despite there being a contradiction in the evidence of the prosecution in proving the said fact.*
- 2. The Honourable trial magistrate grossly erred both in law by holding that the Appellant is the only personnel who operated payroll holding that the Appellant is the only personnel who operated payroll accounting software (EXACT) to key in names of ghost employees and other false parameters despite contradicting evidence in proving the said fact.*

8. *The Honorable trial magistrate misdirected himself by holding that despite the Appellant being employed as an Assistant Accountant, he was assigned and hence arrived at a wrong and unfair decision.*

Ordinarily, the first appellate court is entitled to re-appraise the evidence in testing the soundness of the trial court's findings before arriving at its independent decision. There is a plethora of authorities by the Court of Appeal on this position including the case of **Standard Chartered Bank Tanzania Ltd v. National Oil Tanzania Ltd and Another**, Civil Appeal No. 98 of 2008 (unreported) where it was held:

"The law is well settled that on the first appeal, the Court is entitled to subject the evidence on record to an exhaustive examination to determine whether the findings and conclusions reached by the trial court stand (Peters v. Sunday Post, (1958) EA 424; William Diamonds Limited and Another v. R, (1970) EA 1; Okeno v. R, 1972 EA 32".

This court is bound by the above principle and will inexorably perform that duty to test the reliability and credibility of evidence on record to arrive at a meriting conclusion.

Parties do not dispute that the appellant was the Open University of Tanzania's employee as supported by exhibit D1, the crucial issue as stated is whether he worked as a payroll accountant, the post that he disputes to have held to enable him to commit the alleged offences.

As far as proof of the appellant's position as a payroll master is concerned, PW16, a computer technician on page 310 of the trial court proceedings told the court that the EXACT Payroll system was being handled by the appellant alone. This evidence was supported by PW.28, PW30, PW31, PW32, PW33 and PW34. On pages 446 to 447 of the trial court proceedings, PW 28 AZIMIO JAMES TALUKA, director of finance and Accounts of the open University informed the court that the appellant worked in the Department of Expenditure in particular to the Section of Payrolls insisting that it is only the appellant who worked in the payroll section between July 2009 to April 2011 administering the payrolls system known as EXACT dealing with the preparation of payrolls for payment of salaries of lawful workers of the University, preparing the payroll lists, payroll cheque, and cheque lists and the custodian of all salary payment documents. On page 555 of the proceedings this witness went further to disclose that if anybody took the salary cheques to the bank, he was so doing under the Payroll accountant's directives. PW31 testimony on page 599 of the proceedings was that it was the appellant alone who had access to the payroll system; PW.33 PAUL KELVIN DICKYIST who installed the EXACT salary software at Open University said after the installation, they provided the training to the appellant Angela Mrikaria (see page 616 4th paragraph). The trial court believed these witnesses as credible. Explaining the credibility of prosecution witnesses on page 21 of the impugned decision, the trial magistrate said:

"Apart from PW8 as shown above, another witness from OUT testified. The witnesses include; PW30, PW31, PW32, PW33 and PW34. In all their evidence, it was stated that although the 1st accused person was employed as an assistant accountant, they

worked with him as the only payroll accountant. I have gone through their evidence with healthy eyes, and I have no reason to believe they did not tell the truth. I hold their evidence to be credible..."(bold is mine)

I do not find any reason to fault that finding. It is expressly indicated in Exhibit D1, a letter of his appointment dated 9/11/2006 relied upon by the appellant that the appellant was employed by the Open University as an Assistant Account with duties including preparation of bank reconciliations, submission of PAYE to TRA, reconciling PPF account and **any other duties as assigned by the supervisor**. With the evidence adduced by the above prosecution witnesses, I find the appellant's argument that he could not work on the salary payments section a misdirection.

Connected to the above are the complaints in grounds 3,4,5,6, and 7 faulting the trial court for failure to evaluate the evidence that resulted in a conviction and sentence without proof of the charged offences. The grounds are drafted thus:

- 3. The Honourable trial magistrate grossly erred both in law and fact by failing to properly consider, analyze, and determine the contradiction and inconsistencies in the prosecution evidence and thus arrived at a wrong and unfair decision*
- 4. The Honourable trial magistrate grossly erred both in law and fact by holding that the prosecution proved the case beyond reasonable doubt despite there being several discrepancies in the prosecution evidence creating doubts thereto.*

- 5. The Honourable trial magistrate grossly erred both in law and fact by convicting the Appellant mainly based on circumstantial evidence.*
- 6. The Honourable trial magistrate grossly erred both in law and fact by relying upon hearsay and uncorroborated evidence from the prosecution in convicting the Appellant.*
- 7. The Honourable trial magistrate grossly erred both in law and fact by not properly considering the weight of the defense of the Appellant which raised reasonable doubts against the claims and evidence of the prosecution and thus arrived at a wrong and unfair decision.*

The five grounds above will be determined collectively. A parsimonious analysis of the evidence demonstrates a watertight proof of forgery of payrolls against the appellant in counts numbers 1-53, a predicate offence to Money laundering in counts numbers 54,55, 56, 57, 66, 67, and 68.

Indubitably, the charges of forgery in counts number 1-53 are premised on fictitious names of persons known to the appellant including himself who are not the Open University employees and bank particulars the appellant inserted into OUT Master payrolls and paid monthly salaries. The prosecution's evidence proves that the salaries were fraudulently deposited to the appellant's account Nos. 012201073622 with the Account holder's name- Engel Enda Mrikaria held at NBC Bank and CRDB Account No. 01j1096192100- with the name Engel Mbeghese Mriakaria. The salaries were also paid to NBC Account No. 040201053680 owned by Mr. And Mrs. Engels Enda Mrikaria; NBC Account No. 04010300249 belonging to Kiungu Hill Co. Ltd, the company that is owned by the

appellant herein; NBC Account No. 0402010146885 owned by Lucy E. Mrikaria, the appellant's wife; CRDB Account Nos 01J2034045500 and 01J201926700 belonging to Boniface J Msofe; CRDB accounts Nos. 01j2012315900 and 015j2034045501 owned by Stanley J Msofe; NBC Account No 019201046241 and NMB account No 2062503774 owned by Rose Silas Maungu; CRDB Account No. 01J2036146800 owned by Marietha Milinga; CRDB Account No. 01J2099012600 belonging to Foibe Paulo(PW11); NMB Account Nos 2182403543 and 2068100960 belonging to Said Milanzi (Pw18) and Priscilla Mbwas(PW15), respectively. The bank mandates and the bank statements of the above respective banks details were tendered in court as exhibit P1, P2, P3, P4, P5, P6, P7, P8, P9, P10, P11, P12, P13, P14, P15, P16, P17, P18, P19, P20, P21, P22, P23, P24, P25, P26, P27, P28, P29, P30 and P31.

The Prosecution evidence shows that the appellant himself received over 50 entries of salary payments in his three bank accounts during the period between 2009 to 2011. And on how the other person's account got into the Open University's payroll systems the appellant had an answer. Responding to the question put to him by the State Attorney during cross-examination on page 873 of the trial court records, the appellant said, I quote for convenience;-

"...it was me who requested them to give me their Bank Accounts. Yes, I asked Boniface(3^d Accused) to give me his bank account because we know each other and he agreed to give me his Bank account knowing money would be credited into his bank account

...even the 4th accused Stanley January Msofe agreed to give me his account number...with full knowledge that money should be credited into his account. This also was done to Rose Maungu (5th accused...I also asked Marietha to give me her Bank account and she responded freely.

Rose Maungu indeed gave me two Bank accounts as I had requested her to do..."

In paragraphs 3,4 and 5 of Page 875 the appellant admitted to having supplied his wife (Luce E Mrikaria) Accounts No 04020101485 to the Open University of Tanzania but without disclosing the name. On this, he was recorded thus:

"...it is me who submitted the Bank account to OUT but I did not write the name but OUT knows it. "

The obvious here is that the appellant knew the place he took the accounts numbers he collected from his co-accused, PW11, PW15, PW18, and PW19 and the purpose for the said accounts Numbers and it was for no other purposes than for the payment of money from the university salary system he was personally operating.

To establish that the named accused persons and others were indeed inserted in the Out payroll system and paid salary from the Open University Salary system from JULY, 2009 to April 2011, the Open University Payroll details were tendered in court as exhibits P33, P34, P35, P36, P37, P38, and P42. The fact that money was being deposited into the aforesaid bank accounts of persons who were not Open University employees was not disputed by holders of those bank accounts save that

they did not know if the money was paid into their accounts as salaries from The University. The appellant himself admitted to the fact. On page 873 last paragraph of the trial court's proceedings, the appellant was recorded to have said:

"It is true before the period from July 2009 to April 2011 then Bank Accounts were credited with the money. It is true that the money that was credited to those accounts was from the Open University of Tanzania (OUT). Yes, indeed, those were not workers of OUT. Yes, they gave me their Bank Accounts ..."

The appellant maintained the above position throughout cross-examination. He in fact on page 879 admitted that the insertion of the above names in the payroll and payment of salaries to them all was erroneously done. Supporting the above evidence, the defence witness No. 2(DW2) on pages 919 to 923 agrees that the salaries were flowing to both her account, their joint account(with the appellant), and the Kiungu Hill Company's (Appellant company)account. This Defence witness went even further to demonstrate how the Appellant was receiving double salaries in the same account with two different names.

Identifying to the court Open University's salary payment for August 2009, on page 926, Dw2 said her husband was paid 1,001,000/= as salaries through account No 40201053680 in their joint account which was baptized the name of EM Mushi and an amount of 4,587,000/- on the same account number but with the name Engels Mrikaria which, to her amounted to a double payment.

Likewise, DW3(3rd accused) said he received the alleged money which was sent to him by the appellant who also was to decide on the use of the same(see page 935 of the trial court records). DW4 admitted as well to have received the salaries from the Open University unknowingly. She said the money was being paid to her by the appellant for the purchase of the air tickets. DW5 and DW6 had also the same story.

PW11, PW15, and PW18 testimonies were categorical that they sold to the appellant lands and the payment was made through their bank accounts as salaries. PW11 for instance told the court that he sold the appellant land measuring half an acre located at Kiwawa village within Arumeru DISTRICT in Arusha Region. PW15 sold to the appellant the land measuring one and a half acres located at Kiharaka Village within Bbagamoyo District in Coast Region and PW18 purchased the land for the appellant measuring 130 acres located at Muungano Village within Kongwa District in Dodoma Region and all the payments were made through the Bank accounts flowing from the Open University Salary system.

There is nothing in the defence stated as to why all the prosecutions and defence witnesses should team up to implicate the appellant. Indeed. the appellant cannot in any way exonerate himself from the forgery of payrolls in whatever capacity he was working with the Open University during the material period.

There is yet another complaint, irregular admission of the Bank Statement of Open University of Tanzania Account Number 01103002560 which was tendered in evidence without objection and admitted as an exhibit without

being read out in court. I have scrutinized the evidence on this aspect. Indeed, the Named account above was admitted without being read to the appellant. It is evident in the records that, after its admission on page 609 of the trial court's records, PW32, BEATRICE KIWINGWA (PW32) bank officer from NBC Corporate Branch read out the counts number with the explanation that the account was used for salary payment of the Open University employees. There was nothing intense told to the court concerning this exhibit by the said witness even during the cross-examination session apart from showing that the Open University of Tanzania maintained a salary account with the NBC Corporate Branch. Fortunately, I have also read the entire trial court's decision, and the complained exhibit did not form any base for the appellant's conviction and therefore no prejudice was occasioned to the appellant.

My reading of the records has also failed to notice any contradiction between PW28 and PW16 on the usage of the EXACT Payroll system and ACCOPAC system after the forgery allegations in court. PW28 on page 557 of the trial court records told the court that they acquired another payroll system called ACCPAC after the alleged theft which is still in existence. He was on this recorded to have said "*The Exact ware system is today still present*". PW16 evidence is silent on this point. In any case, the co-existence of the two systems after the forgery would not have served the appellant in this case. I thus find grounds 3,4,5, 6, and 7 above unmerited.

The appellant is also complaining about the variance in the figures between the charge sheet and the evidence. He contends that the charge sheet reads 566,446,500/= while PW34 managed to prove only

566,133,500/ meaning that he was tried on a defective charge. As rightly submitted by the learned State Attorney, the amount of money proved as loss resulted from the accumulation of payrolls through which fictitious persons were paid salaries from OUT from July 2009 to April 2011. Each payroll with the amount of money involved constituted an independent and separate count of forgery. So the amount of money that the appellant tapped through fraudulent salary payment was proved through counts number 1-to 68 and therefore the last figure was a cumulative of all payrolls that the appellant fraudulently paid throughout the period. A mere variance in the amount charged and that proved doesn't make the charge incurably defective, more so in this case where the appellant understood the accusations as he thoroughly defended the accusations and the compensation order was based on the proven amount, that is 566,133,500/=, and not the amount disclosed in the charged sheet. I am on this persuaded by the decision of the Queen's Bench Division in the **Machent versus Quinn** (1970) 2 All ER 255 (annexed hereto) where it was held that if a proof is given that the accused stole any of the items, the sentence should relate to articles proved to have been stolen. The complaint is well unfounded.

In the last ground of appeal, the trial court is being censured for mishandling the exhibits to the detriment of the appellant. The grounds reads:

9. The conduct of the trial was unlawful and procedural as some of the admitted evidence (Original Exhibits) was unlawfully taken from the court file by the prosecution to the police without notice and consent from the defense and thus the Appellant was

subjected to refer to copies of the said exhibits during the defense case.

This complaint is, vacuously brought to court without explanation naming the exhibit (if any) that was erroneously taken out of the records by the prosecution without the appellant's consent and the perusal of the records has failed to notice any leaving the complaint unshielded.

As a result, the appellant's appeal is held unmeritorious, the same is dismissed in its entirety.

Order accordingly.

Dated at Dar es Salaam, this 22nd Day of September 2023



E. Y Mkwizu
Judge
22/9/2023