

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

CRIMINAL APPEAL NO. 32 OF 2023

(Originating from Criminal case No. 171/2020 of Shinyanga District Court)

KHALFAN ISACK alias RWEYEMAMU APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

JUDGMENT

Date of last order: 30th October, 2023

Date of Judgment: 7th November, 2023

MIRINDO, J.:

In early 2020, Issa Hamad Omary, a resident of Kahama, was one of the driving course students at Modern Technical and Driving School at Ibinzamata in Shinyanga Municipality. A short while after commencing the driving course, it transpired that the College had no vehicles for practical driving course. The College hired a taxi, something that was not in satisfaction of the students. Reports reached investigation organs, inspection was conducted and it was discovered that training was being conducted under unfavourable conditions. After further investigations, students were ordered to leave the College because it was not registered.



The owner of the College, Mr. Khalfan alias Isack s/o Rweyemamu, the appellant, was arrested and charged before Shinyanga District Court with 21 counts of obtaining money by false pretenses in contravention of sections 301 and 302 of the Penal Code [Cap 16 RE 2019]. It was the prosecution case that since the College was once registered but deregistered by the Vocational Education Training Authority (VETA) to offer vocational training by 7th March 2016, it could not by 2020 offer driving course. It was the defence case that the College properly offered the driving course on the grounds that it was registered by the Traffic Division of the Tanzania Police. The trial magistrate was convinced that although the College was duly registered to offer the driving course, it was not authorised to admit students outside Shinyanga Region. He convicted the appellant of one count of obtaining money by false pretenses and sentenced him to pay a fine and if he failed to do so he would be imprisoned for one year. The appellant was further ordered to refund the Issa Hamad Omary, the victim of false pretense.

Khalfan was not satisfied by the decision of the trial court and appealed to this Court. The appellant was represented by Mr Frank Samuel, learned advocate, while the respondent was represented by Mr Leonard Kiwango, learned State Attorney. After obtaining leave to file a supplementary petition of appeal, the appellant abandoned the grounds in the Petition of Appeal and was allowed to argue the supplementary ground of appeal. The appellant



complained that the offence of obtaining money by false pretenses was not proved beyond reasonable doubt. Thus, the appellant's conviction, the resultant sentence and orders of the trial District Court of Shinyanga were wrong.

Mr Samuel, argued that for a valid conviction for the offence of false pretense under section 302 of the Penal Code [Cap 16 RE 2022], the prosecution must prove that:

- (a) there was a false representation made by the accused person,
- (b) the accused knew that the representation made was false,
- (c) the false representation was intended to deceive the complainant,
- (d) the complainant acted on the false representation to his or her detriment.

The learned counsel referred me to the judgment of this Court in **Jumapili Masanja v Republic** (Criminal Appeal 204 of 2020) [2021] TZHC 2506 (15 March 2021) where Ismail,J reiterated these elements of the offence of false pretense.

In this appeal, Mr Samuel argued that the trial court, having agreed that the College was registered to offer driving course, it was bound to hold that there was no false representation on the part of the appellant. As there



was no false representation, other ingredients of the offence of false pretense were not proved as well.

In response, Mr. Kiwango, learned State Attorney, pointed out that the offence was proved beyond reasonable doubt. The prosecution proved that the appellant's College was not registered to offer driving course and was unqualified to offer driving course because of the poor conditions at the College including lack of vehicles for practical training of drivers.

It is clear from the evidence that the College's registration and deregistration with VETA was in connection with adult education, early vocational training and tailoring courses. In his defence, the appellant produced the following documents which were duly admitted by the trial court to show that: (i) he had a Taxpayer Identification Number (TIN) from the Tanzania Revenue Authority of 21st July 2010, (ii) a business licence from Business Registrations and Licensing Agency (BRELA) of 13th May 2013, and (iii) certificate of registration from the Traffic Division of the Tanzania Police dated 23rd April 2013 authorizing him to offer driving course.

In view of the defence evidence, there was reasonable doubt in the prosecution case. The prosecution was duty bound to establish the validity of the certificate of registration authorizing the appellant's College to conduct driving course within Shinyanga Municipality in absence of registration from



VETA. The prosecution should have called key persons from the Traffic Office to clarify who between VETA and the Traffic Division was the registration authority for the driving course. In this regard, the evidence of investigation officers from the Police Force was insufficient.

As the matter now stands, the appellant is entitled to the benefit of doubt because the offence against the appellant was not proved beyond reasonable doubt. Where the prosecution does not discharge its burden to prove the offence beyond reasonable, the accused is entitled to benefit of doubt as was reaffirmed in **Haruna Bernado and Another v Republic** (Criminal Appeal 13 of 2013) [2013] TZCA 304 (9 May 2013):

It is cardinal principle of criminal law that the prosecution are the ones who have the burden of proving the charge against an accused person....The prosecution did not discharge this burden.. Whenever there is doubt in the prosecution case, the doubt must always be resolved in favour of the accused.

At the trial before the District Court there was evidence that the appellant failed to provide adequate training conditions and students were disallowed to continue with their driving course. In these circumstances, it remains open to the appropriate organs within the Traffic Division and any other aggrieved person to have recourse to appropriate legal redress.

It follows that this appeal is allowed. I quash the conviction and set aside the sentence and orders made in respect of the appellant. I order that if the fine has already been paid by the appellant, it should be refunded to him.


F. M. Mirindo
Judge
07/11/2023

Order: Judgment delivered this 7th day of November, 2023, in the presence of the appellant in person and Mr Leonard Kiwango, learned State Attorney, for the Respondent. **B/C** Ms. Sumaiya Hussein- RMA, present.

Right of appeal explained.




F. M. Mirindo
Judge
07/11/2023