IN THE HIGH COURT OF TANZANIA

DAR ES SALAAM DISTRICT REGISTRY

AT DAR ES SALAAM

CRIMINAL APPEAL NO. 77 OF 2023

(Arising from the judgment and Decree of the Resident Magistrates' Court of Dar es Salaam at Sokoine Drive (Hon. V. C. Mtele, SRM) dated 22nd December 2022, in Criminal Case No. 85 of 2022)

PENINSULAR HOSPITAL .....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGEMENT

25th & 25th October, 2023

MWANGA, J.

The Appellant was charged before the Resident Magistrate Court of Dar es Salaam at Sokoine Drive with failure to pay the refuse collection fee contrary to regulation 27 (1) (2) and (3) of the Kinondoni Municipal Council (Healthy and Environmental Sanitation) by-laws GN No. 183 of 6th March 2020. The Trial court found her guilty and imposed a fine of Tshs.

200,000/= or save 3 months of imprisonment and also pay compensation of Tshs. 7,187,500/= to the complainant.

Being aggrieved with the said outcome, the Appellant has appealed to this court raising five grounds of appeal as enumerated herein.

1. That, the trial court erred in law by convicting the appellant based on a defective charge which mentions someone else's name while the appellant's name is Msasani Peninsula Hospital Limited.
2. That, the trial court erred in law and facts by failing to analyze evidence properly and ordering the appellants to pay Tshs. 7,187,500/= as a refuse collection fee for services that were not provided to the appellant.
3. That the trial court erred in law and fact by disregarding the appellant's evidence that it received refuse collection services from another company and for which proper refuse collection charges were paid.
4. That the trial court failed to analyse the evidence properly in ordering the appellant to pay Tshs.7,187,500/= as a refuse collection fee an amount for which no evidence was adduced by the Respondent to prove/substantiate the same.

5. That the trial court failed to analyze the evidence properly as there was no proof which was tendered to show that Abby Environmental and Agricultural Services Limited was introduced to the appellant as the only authorized contractor to collect refuse at its premises.

In the first grounds of appeal, the appellant contended that the charge against the appellant was defective for failure to mention the correct name of the appellant. It was argued that the chargesheet contained the name of Peninsular Hospital instead of the correct name of Msasani Peninsular Hospital Limited. He argued that such wrong names were also referred to by PW1 on page 9, PW2 on page 10, and PW2 on page 12 of the proceedings. According to him, the incorrect names that appeared in the chargesheet contravene the requirements of section 132 of the CPA. The counsel referred to the case of **Shimbi Shija vs. the Republic**, DC-Criminal Appeal No. 68 of 2019(unreported) where the court of appeal held that failure of the prosecution to prepare a chargesheet and charge the appellant on a proper offense leaves doubt as to whether the appellant was availed the right to know the contents and particulars of the charges.

On top of that, the counsel argued that, with such defects, the appellant did not receive a fair trial and ought to be given the benefit of the doubt.

The learned State Attorney Ms. Nura Manja supported the appeal. It was her submission that, indeed the name of the appellant appearing in the chargesheet was incorrect because the testimony of DW2 on page 15 of the proceedings the appellant portrayed before the court that the correct name of the appellant is Msasani Peninsular Hospital Limited instead of Peninsular Hospital. She also had an observation that exhibits DE1 which is a bundle of invoices between the appellant and the refuse collection contractor indicating that the appellant is Msasani Peninsular Hospital Limited. She admitted that a defective charge which is not amended equals no trial at all. She concluded that any order of retrial would cause injustice to the appellant because it would allow the prosecution to fill gaps.

I have digested this point. In the cited case of **Juma Charles @ Ruben & Another Vs Republic**(supra), the Court of Appeal insisted that drafting a charge is a matter of law and that no charge shall be valid unless it complies with the requirements of sections 132 and 135 of the CPA. In particular, section 132 reads as follows:-

> ***"Every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific***

offense or offenses with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offense charged"

Since the prosecution was aware of the correct name of the appellant and opted not to effect amendment of the charge at the earliest possible times, it is equally unfair and prejudicial on the part of the appellant.

The appellant argued ground No. 2 and No. 3 of the appeal together. He argued that as per the testimony of PW3 on page 13 paragraphs 1 and 2 of the proceedings, the prosecution witnesses testified during examination in chief that, that they did not collect refuse from the appellant. So, how was it possible for the court to order the appellant to pay Tshs. 7, 187,500/= for the services they did not render? The counsel referred to testimony reproduced as hereunder.

"We were to collect refuse from Peninsular on Tuesdays and Sundays which is two days a week." We sent vehicles but we were denied access. They had their contractor..."

And that, PW3 on page 13 of the proceedings the prosecution testified that the appellant had their contractor, the same being

corroborated with the evidence of DW2. DW2 tendered bundles of invoices which the prosecution did not object and marked exhibit DE1. It is the submission of the appellant that, there was no proof that the respondent was denied access to the appellant's premises. Again, the prosecution failed to prove any invoices of the awarded amount. According to the counsel, Exhibit DE1 shows that the appellant paid Mtimi Environmental and General Services as refuse collection fees, He added that, the claim of Tshs. 7, 187, 500/= was not proved. The counsel cited the case of **Agasto Emmanuel vs. the Republic**, Criminal Appeal No. 8 of 2020 stating that the judgment must show the point of evaluating evidence and giving reasons.

Moving on to grounds two, three, four, and five the trial court failed to analyze the evidence thus ordering the appellant to pay Tshs. 7,187,500/= as compensation, disregarding the appellant's evidence that it received refuse collection service from another company not the complainant, no evidence adduced by Respondent to substantiate the amount of Tshs 7,187,500/= as refuse collection, no proof to show that Abby Environmental and Agricultural Services Ltd was introduced to the Appellant as the only authorized contractor to collect refuse at its premises.

All the above grounds can be summarized as a failure by the Respondent to prove the case beyond reasonable doubt.

The learned State Attorney submitted that the prosecution witnesses PW1, PW2, and PW3 on their testimony stated that the appellant was a hospital located at Msasani Ward and that Abby Environmental and Agricultural Services Ltd was the company contracted to collect refuse within Msasani Ward. PW3 tendered the tender issued by Kinondoni Municipal to Abby Environmental and Agricultural Services Ltd in this instance it is imperative to know whether the law prohibits a company or person from contracting with another company apart from the one that won the tender.

I have sailed through the by-law GN No. 183 dated 6th March 2020. The Kinondoni Municipal Council (Healthy and Environmental Sanitation) by-laws Regulation 28 provides as follows, I quote

> ***"Halmashauri litakuwa na jukumu la kuhamasisha uundaji wa vikundi jamii na kuvitambua ili kuiwezesha kufanya shughuli za udhibiti wa taka ngumu pamoja na usafi wa mazingira baada ya kuingia mikataba na Halmashauri...that the council must encourage the start of community boards and may appoint them, enable, and***

contract with them to ensure health and environment sanitation is conducted."

In the said by law there is nowhere provided that a company or a person may not contract with another company to collect refuse. Since the by-law is silent on that, the appellant had no obligation to allow Abby's company to collect refuse from them. Further, it is evident from the record that information that Abby Company had won the tender to collect refuse at Msasani Ward was not portrayed to the appellant and further Abby Company Ltd never collected any refuse from the area of the appellant.

Thus, I find it unjustifiable and unlawful for the court to order the appellant to pay compensation for services she never received.

The Respondent further never proved how Tshs. 7,187,500/= was the refuse collection fee amount owed to the appellant. PW3 stated that the same was the amount due for 23 months from January 2020 to November 2021. However, he never justified how the amount was reached.

Again, I have sailed through GN No. 183 dated 6th March 2020, the Kinondoni Municipal Council (Health and Environment Sanitation) by law. On the second schedule, No. 10 shows that the refused collection amount for the hospital is Tshs. 300,000/= per month. Therefore, the amount

owed for 23 months equals Tshs. 6,900,000/= Respondent never stated how the amount reached Tshs. 7,187,500/=.

Since the Respondent side failed to substantiate the amount of Tshs. 7,187,500/=, that Abby Refuse Contractors Co Limited is the only allowed company to collect refuse at Msasani Ward and ordering the appellant to pay Tshs…7,187,500/= unjustifiable therefore prosecution side failed to prove its case in this matter. Thus, it is my prayer that these grounds have merit and should be allowed.

In conclusion, as rightly contended by the learned State Attorney, **one** that she agreed with the observation of the appellant that, no proof was offered to substantiate the claims of the prosecution of Tshs. 7, 185, 500/-. **Two,** there was no proof that it was only ABBY Company allowed to collect refuse and not independent contractors. **Three,** there was no analysis made as to why the appellant should make double payments only because she did not opt for the chosen company by the council. **Fourth,** there is no evidence to show that the company ABBY Environmental and Agricultural Service Limited was introduced to the appellant.

Based on the evidence adduced at the trial court, and submissions of both counsel for the appellant and respondent, the case against the

appellant was not proved beyond reasonable doubt. As a result, I allow this appeal and quash and set aside the trial court's decision.

Order accordingly.

H. R. MWANGA

JUDGE

25/10/2023