**IN THE HIGH OF TANZANIA**

**DODOMA SUB REGISTRY**

**AT DODOMA**

**DC CRIMINAL APPEAL NO. 133 OF 2023**

*(Originating from Criminal Case No 4/2022 of the Resident Magistrates Court of Singida at Singida)*

**SALIMU MOHAMED SUNGI.....APPELLANT**

**VERSUS**

**THE REPUBLIC .....RESPONDENT**

**JUDGMENT**

*Date of Last Order:* 15/05/2024

*Date of the Judgment:* 30/05/2024

**LONGOPA, J.:**

In the Resident Magistrate Court of Singida, the Appellant was charged with two counts. The first count was corrupt transactions contrary to section 15(1) (a) and (2) of the Prevention and Combating of Corruption Act, Cap. 329 R.E 2019. It was alleged that on or about 21st day of May, 2022 during evening time at Misake village office in Ikungi District within Singida Region, appellant being the Village Executive officer of Misake did corruptly solicit the sum of TZS 1,500,000/= (one million five hundred thousand only) from one Mwanaharusi Mwangoi Senge as an inducement so as not to take her son one Rajabu Dulle Kitiku to police station for

having sexual relationship with the student, the matter which was in relation to his Principal's affairs ( the Executive Director of Ikungi District Council).

The second count was corrupt transactions contrary to section 15(1) (a) and (2) of the Prevention and Combating of Corruption Act, Cap. 329 R.E 2019. It was alleged that on or about 21st day of May, 2022 during evening time at Misake village office in Ikungi District within Singida Region, appellant being the Village Executive officer of Misake did corruptly obtain the sum of TZS 830,000/= (eighty hundred thirty thousand only) from one Mwanaharusi Mwangoi Senge as an inducement so as not to take her son one Rajabu Dulle Kitiku to police station for having intimacy relationship with the student, the matter which was in relation to his Principal's affairs ( the Executive Director of Ikungi District Council).

To the conclusion of trial and upon hearing six prosecutions witnesses and one defence witness, the learned trial Magistrate found the prosecutions to have proved the case beyond reasonable doubt thus convicted the appellant and sentenced him to serve three years imprisonment without fine for the first count and to pay a fine of TZS 500,000/= or to serve three years imprisonment. The Appellant being dissatisfied with the decision challenged the said conviction and sentence on the following six grounds of appeal: -

1. *That the trial magistrate erred in law and fact for convicting the Appellant on relying on hearsay evidence only without any corroborated evidence or facts which could assists the court to proof the alleged offence, as testified by PW1 who us the PCCB Officer at 2nd page on paragraph 3 that he told PW5 on 25/ 05/ 2023 that she Corrupted the appellant on the 21/05/2023 just 4 days later from the alleged transaction and taking the appellant to court just relying on story telling.*

2. *That the trial magistrate erred in law and fact for convicting the Appellant on relying on trained witnesses and fabricated evidence since no doubt that PW2, PW3, PW5, PW6 belongs to the same family except PW1 who is the PCCB Officer and the alleged transaction happened on 21/05/2023 but the said information reported on 25/5/2023 and the appellant arrested on 29/05/2023 basing from information cultivated from the family members only and left the 2nd Paramilitary (Mgambo) and the alleged victim student's family.*

3. *That the trial magistrate erred in law and fact for convicting the Appellant relying on contradictory evidence as it was seen in the judgment on 2nd page at last paragraph PW1 testified that he told by PW5 the Paramilitary gave the appellant Tshs 800,000/= to Appellant from one Idd Omary once the same PW2 said on page 4 at 2nd paragraph that the appellant received Tshs 800,000/= from Mzee Dule while at the same time PW1 on page 3 at last sentence on the 1st paragraph said he has not sure with the alleged transaction since he did not confirmed and seen the alleged transacted money and had never seen the appellant received the money.*

4. *That the trial magistrate erred in law and fact for convicting the Appellant relying on bias evidence which was maliciously procured in bad faith and with the intention to ruin the appellant's status.*

5. *That, the trial tribunal erred in law and facts by failing to evaluate, consider, disregards and ignores the heaviest and truth worth evidence adduced by the Appellant which were enough to disapprove the said corruption allegation rather*

*relied upon the circumstantial facts, imagination and cooked stories from the prosecution witnesses.*

6. *That, the Trial Magistrate erred in law and fact when it convicted the Appellant without assigning plausible reasons for so doing while knowingly there were no any real evidence brought to prove the offence alleged.*

On 15th of May 2024, the appeal was heard. Mr. Yusuph Mapesa, learned State Attorney represented the Respondent Republic whereas the appellant appeared in person. The appellant adopted his grounds of appeal and submitted that the witnesses who appeared at the trial Court were family members who could have conspired and planned against the appellant. He had not committed the offence save for serving of the people in that particular village. All the witnesses were members of a particular political party who were against the public servants.

The parents and student who were alleged to have reported the matter at the Village Office were not called to testify to the effect that they had reported the matter. This would have been the evidence that he had been entrusted duty to undertake by ensuring that offenders were arrested. It was not possible to say he demanded bribe while there was no evidence from the person who allegedly to have reported. As a result, the

prayed that this Court be pleased to set him free as there was no evidence to convict and sentence him on the alleged offence.

In reply, Mr. Mapesa supported the appeal and submitted that upon the perusal of the whole of the proceedings of the trial court, there was no evidence that there was bribe accepted/ received by the appellant.

PW 1 did not explain if the Prevention and Combating of Corruption Bureau (PCCB) went to arrest the appellant nor if there was trap money that found in the hands of the appellant. This matter was not proved.

The respondent cited the case of **Jonas NKIZI VERSUS REPUBLIC** [1992] TLR 213 where the Court stated that it is the duty of the prosecution to prove the case beyond reasonable doubts. There was no tangible evidence to show that the money was solicited, given and accepted/received.

Further, it was submitted that there was delay in the reporting of the alleged incidence of corruption. Failure to report the occurrence of incident should raise reasonable doubt on the prosecution's case. The testimonies of PW 3 and PW 1 at pages 5 and 7 state that bride was solicited on 21/05/2023 while the reporting was done on 25/05/2023.

In the **DIRECTOR OF PUBLIC PROSECUTIONS (DPP) VERSUS JUMA CHUWA ABDALLAH**, Criminal Appeal No. 85 of 2018, the Court of Appeal of Tanzania noted that failure to report the incident of offence should be considered as the reasonable doubt on part of the prosecution.

Also, in **Marwa Mangiti Mwita and Another vs Republic** [2002] TLR 39 where the Court emphasized on the need to report the crime at the earliest opportunity.

Also, it was the respondent's view that credibility of the prosecution witnesses who failed to report timely was questionable thus cannot be said that their testimonies proved the case beyond reasonable doubts.

Further, it was reiterated that there was no any other documentary evidence regarding the arrest of the appellant. PW 6 was not arrested something which could have established possibility of demanding the bride. Failure to bring witnesses allegedly reported the matter- parents and student entitles this Court to draw inference adverse against the prosecution's case.

However, the respondent informed this Court that ground/ argument that witnesses were coming from the same family does not hold water. There was no law prohibiting people from the same family to tender

evidence if they witnessed the incident. The most important aspect is the credibility.

In totality, the case was not proved on the required standards set by the law. This was the major reason. This was despite that evidence was properly analysed by the trial court and reasons for finding guilty of the appellant herein were stated in pages 11 and 12 of the judgment of the Court.

In rejoinder, the appellant had nothing useful to add apart from supporting the submission made by the learned State Attorney.

I have carefully gone through the records and submissions of both parties. The issue to be determined is whether the prosecution did not prove the case beyond reasonable doubt.

The offences for which the appellant was charged are found in section 15 of the Prevention and Combating of Corruption Act, Cap 329 R.E 2022, provides that:

> *15 (1) Any person who corruptly by himself or in conjunction with any other person a) solicits, accepts or obtains, or attempts to obtain, from any person for himself or any other person, any advantage as an inducement to, or reward for, or otherwise on account of, any agent,*

*whether or not such agent is the same person as such first mentioned person and whether the agent has or has no authority to do, or for bearing to do, or having done or forborne to do, anything in relation to his principal's affairs or business.*

The main issue is whether the appellant did solicit or received an advantage from the Complainant thus committed a corrupt transaction. The evidence on record indicates that: First, PW 2 was sent to arrest PW 6 on 21/05/2022 at around 16:00 hours. Second, PW 2 is the one who was informed by the appellant to communicate with complainant to find TZS 1,500,000/= to be assisted not to hand over the Complainant's child to police. Third, the money was received by the appellant from Idd S/O Omary through PW 2 at around 21:00 at the appellant's home. Fourth, in arresting the alleged offender as directed by Village Executive Officer there was no need to pass through the local leader/Hamlet Chairman.

In the case of **Director of Public Prosecutions vs Juma Chuwa Abdallah & Another** (Criminal Appeal No. 85 of 2018) [2023] TZCA 17800 (2 November 2023) (TANZLII), at pages 14-15, the Court of Appeal stated that:

*It is settled that delayed reporting dents the credibility of the evidence of the victims. In Marwa Wangiti Mwita and*

*Another v. Republic, [2002] T.L.R. 39, the Court underscored that, the ability of a witness to name a suspect at the earliest opportunity is an all- important assurance of his reliability, in the same way as unexplained delay or complete failure to do so should put a prudent court to inquiry The victims' delay in reporting the incidents in this appeal until they were quizzed by the school administration dented their credibility and reliability of their evidence to prove the charged offences.*

In the instant case, the incident allegedly occurred on 21/05/2022 but it was not reported until 25/05/2022. There are no reasons whatsoever adduced by the prosecution to substantiate failure of the complainant to report the same timely.PW 2, PW 3, PW 4 and PW 5 all allegedly were present on 21/05/2022 when the amount of TZS 830,000/= was being received by the appellant but none took any action to report the incident immediately. It took about four days for the complainant to report to the Prevention and Combating of Corruption Bureau (PCCB) about the incident. Failure to state the reasons for the failure by the complainant to report the matter raises doubt as to the incident having happened.

The evidence on record leaves a lot to be desired. First, there is no description of the money allegedly given to the appellant. No witnesses

testified regarding the denominations of the allegedly TZS 830,000 that are said to have been given to the appellant. Second, though PW 5 stated that the paramilitary (PW 2) had a letter from the appellant indicating instructions to arrest PW 6, nothing was tendered to substantiate its existence. Third, PW 2 testified to have been called outside the office of Village Executive Officer by the complainants and that he communicated the amount demanded by appellant. PW 4 and PW 5 evidence is that the appellant informed them directly in his office to bring TZS 1,500,000/= to be assisted. Fourth, timing of the appellant allegedly to have received money TZS 830,000/= is not well established as it is only PW 2 who stated that it was around 21:00 hours outside the appellant's home. There is no description of the conditions thereat regarding existence of any lights or otherwise. Fifth, the prosecution witnesses did not testify regarding the location of the appellant's home and whether any of them was familiar with the appellant or otherwise.

All these circumstances cast doubts on proper identification of the appellant having received the money. It is illustrative that time of the receipt was so crucial to establish that there was a proper identification that it is the appellant that PW 2, PW 3, PW 4 and PW 5 alleged to have accepted the money.

In the case of **Francisco Daudi & Others vs Republic** (Criminal Appeal No. 430 of 2017) [2021] TZCA 299 (14 July 2021)(TANZLII), at pages 8-9, the Court of Appeal stated that:

> *It is trite law that no court should act on visual identification evidence unless all possibilities of mistaken identity are eliminated, and the court is fully convinced that the evidence about to be relied is watertight. In the case of* ***Waziri Amani v R*** *[1980] T. L. R. 250, the Court laid down guidelines on factors to be established before the evidence adduced is relied on in convicting the accused person. The pointed-out factors are: (a) The time the witness had the accused under observation (b) The distance at which he observed him (c) The conditions in which such observation occurred; for instance, whether it was day or night-time, whether there was good or poor lighting at the scene (d) Whether the witness knew or had seen the accused person before or not.*

In my view all these conditions were not established by the prosecution thus making the whole charge remain unproved. Neither of the witnesses managed to adduce evidence to establish conditions that were prevailing at the scene of crime on that material date.

Also, Exhibit D.1 which is the letter written by the appellant on 20/05/2022 directed to the Hamlet Chairperson requiring to them to facilitate the paramilitary to apprehend the persons listed on the letter is important. It rebuts the possibility of the appellant having sent PW 2 on 21/05/2022 to arrest one of the suspected culprits without adhering to the procedure appellant stated in the letter. Exhibit D1 waters down the evidence of PW 2. It raises doubts as to the truthfulness of PW 2's evidence. Neither the Hamlet Chairperson appeared to testify if the alleged arrest by PW 2 to PW 6 was effected, nor adhered to the procedure by assisting PW 2.

In **John Mwendamaka vs Republic** (Criminal Appeal No. 38 of 2021) [2024] TZCA 260 (12 April 2024) (TANZLII), at page 8, the Court of Appeal reiterated that:

> *The charge is the foundation of the trial upon which the prosecution case hinges. Therefore, it is incumbent on the prosecution to adduce sufficient evidence to prove the allegations contained in the charge or else the allegations remain not proved beyond reasonable doubt.*

I am of the view that given the scanty and disjointed evidence of the prosecution in this case there was no proof the case against the appellant to the required standard. The prosecution's evidence was not watertight to warrant conviction of the appellant for both counts of corrupt transactions

namely soliciting TZS 1,500,000/= and corrupt transaction namely receiving TZS 830,000/=.

In the case of **John Makobela Kulwa and Eric Juma alia Tanganyika** [2002] T.L.R. 296 the Court held that:

> *A person is not guilty of a criminal offence because his defence is not believed; rather, a person is found guilty and convicted of a criminal offence because of the strength of the prosecution evidence against him which establishes his guilt beyond reasonable doubt.*

There was no sufficient evidence by the prosecution to substantiate conviction and sentence of the appellant for the two charges. The evidence of PW 2 contradicts with that of PW 4 and PW 5. PW 2 stated that he is the one who communicated the soliciting of TZS 1,500,000/= from the Complainant while both PW 4 and 5 stated that appellant told them in person while in his office to look for that amount. Similarly, the charge indicated that the money was solicited from one Mwanaharusi Mwangoi Senge while the testimony indicates that TZS 830,000/= were given/handed over by PW 3 Idd Omary Kipandwa through PW 2 Idd Shaban Njiku. There is nowhere indicated that alleged money was received by the appellant from the person named in the charge. PW 2 and PW 3 stated that after receiving TZS 800,000/= the appellant demanded addition

of TZS 30,000/= while PW 4 and PW 5 stated that additional demanded money was TZS 50,000/= but they managed to add TZS 30,000/=. Allegedly, all these persons were at the same scene of crime. There is no explanation as to why they parties heard different amounts from the same person at the same time. It brings doubts about occurrence of the incident at all.

In totality of the evidence, there was no sufficient proof of the case to the required standard. Thus, both conviction and sentence of the appellant was improper and lacked back up of evidence. I allow the appeal for being meritorious.

The appeal is hereby allowed. The conviction and sentence against the appellant for both counts are hereby set aside. The appellant is set at liberty forwith unless there is a lawful cause to detain him.

It is so ordered.

**DATED** at **DODOMA** this 30th day of May 2024.

Longopa.

**E.E. LONGOPA**
**JUDGE**
**30/05/2024**