

**IN THE HIGH COURT OF TANZANIA**

**DODOMA SUB-REGISTRY**

**AT DODOMA**

**DC. CRIMINAL APPEAL NO. 154 OF 2023**

*(Arising from Criminal Case No. 140 of 2022 in the District Court of Dodoma at Dodoma)*

**SAIMON MAPUNDA JUMBE .....APPELLANT**

**VERSUS**

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

**JUDGMENT**

*3<sup>rd</sup> May & 07<sup>th</sup> June, 2024*

**MUSOKWA, J.**

Before the District Court of Dodoma (trial court) in Criminal Case No. 140 of 2022, the appellant herein was charged and convicted of three counts. On the 1<sup>st</sup> and 2<sup>nd</sup> counts, the appellant stood charged with the offence of personating a public officer contrary to section 100 (b) of the Penal Code, Cap. 16, R.E 2022 (Penal Code). For the 3<sup>rd</sup> count, the appellant was charged with obtaining money by false pretense contrary to sections 301 and 302 of the Penal Code.

According to the prosecution, the incidents occurred at diverse dates between March, 2020 and 11<sup>th</sup> April, 2020 at Makulu area within the District of Dodoma in Dodoma Region. The facts are that the appellant falsely represented himself to James Edward Mshina and Edward William

Kulwa as an employee of the Prevention and Combating of Corruption Bureau (PCCB) and promised to secure a job for them by virtue of his employment. Further facts are that the appellant on diverse dates between 18<sup>th</sup> March, 2020 and 11<sup>th</sup> April 2020, with intent to defraud, obtained money from the victims, totaling TZS 2,484,500/=.

The trial court found the appellant guilty of all three counts and subsequently convicted him accordingly. For each count, the 1<sup>st</sup> and the 2<sup>nd</sup> counts, the sentence of two (2) years imprisonment was issued against the appellant. For the 3<sup>rd</sup> count, the appellant was sentenced to serve five (5) years imprisonment. The trial court ordered the sentences to run consecutively. The sentences were to be served with hard labour.

The appellant, disgruntled by both the conviction and sentence imposed by the trial court, lodged this appeal predicating it on the following grounds quoted verbatim: -

*1. That, your honor Judge, the trial court erred in law and in fact in basing and/ or sustaining tory, inconsistent and implausible evidence of the six (6) prosecution witness which did not prove the charge against the Appellant.*

*2. That, your honor Judge, the learned trial Magistrate grossly erred in law and fact by convicting the accused person (Appellant) basing on the procedural irregularities.*

*3. That, your honor Judge, the trial Court grossly erred in law and fact when did not consider the need of corroboration evidence since there was no evidence justifying that real the Appellant received that amount of money fraudulently from (PW3 and PW4).*

*4. That, your honor Judge, the Magistrate grossly erred in law and fact by failing to notice that, there was no any concrete evidence to prove that the alleged cellphone number 0745934267 owned by the Appellant.*

*5. That, your honor Judge, the trial court grossly erred in law and fact when offends both provision of section 10 (3) and 9(3) of the CPA (Cap. 20 R.E 2019) as this enable the prosecution side to pirate the court and vaguely injects it's witness and build up its case from case already heard in court.*

*6. That, your honor Judge, the learned trial magistrate erred in law and fact by failing to comply with section 192(3) of the Criminal Procedure Act (Cap 20 R.E 2019) whereas it's not clear from the court record whether the memorandum of undisputed facts of the P.H were read over to the Appellant as this is fatal render both trial sentence nullity.*

*7. That, your honor Judge, the trial Court grossly erred in law and fact by failing to give due consideration the defense raised by the Appellant.*

*8. That, your honor Judge, the case at hand the identification evidence relied by the trial court was dock identification which could not ground conviction.*

Before scheduling the date of hearing, the appellant prayed for leave to file additional grounds of appeal. The appellant's prayer was granted and subsequently a date of hearing was scheduled. However, on the date

scheduled for hearing, the court observed that the additional grounds of appeal had not been duly filed by the appellant as per the order of the court.

In providing an explanation to the query raised by the court, the appellant stated that he was of the belief that the additional grounds had already been filed in court. Explaining further, he stated that he timely prepared the additional grounds of appeal and submitted them to the prison authorities to proceed with the filing process. Therefore, the appellant was surprised that the said grounds of appeal had not yet been filed. The appellant further stated that he had in his possession the original handwritten document of the additional grounds of appeal and he prayed for leave for their admission to form part of the court records. In response thereof, the respondent had no objection.

The court considered the circumstances of the appellant; that being a prisoner, the filing of court documents was largely dependent on the assistance provided by the prison authorities. Therefore, failure to comply with the order of the court was due to circumstances that were beyond the control of the appellant. In consideration thereof, the court admitted the additional grounds of appeal which formed part of the court records.

By consent of both parties, the hearing of the appeal proceeded on the same day. The appellant who was unrepresented, waived his right to begin therefore Ms. Patricia Mkina, learned state attorney representing the respondent, took the floor.

Ms. Mkina opposing the appeal, submitted on the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> grounds of appeal collectively. The learned state attorney averred that the prosecution proved all the three (3) counts beyond reasonable doubt, upon parading six (6) witnesses before the court. Ms. Mkina, submitted on the testimony of the witnesses stating that PW1 Emmanuel Prosper, an investigation officer from PCCB testified that he interrogated the appellant. PW1 further stated that during the said interrogation, the appellant confessed that he personified himself before PW3 and PW4 as an officer of PCCB. The appellant further testified that he obtained money through false pretense, by promising to assist PW4, one James Edward Mshina to get a job. According to the testimony of PW1, the appellant was advanced TZS. 793,500/= and TZS 1,691,000/= by PW3 and PW4 respectively. The transactions were effected through mobile number 0745-934267, which was being used by the appellant.

The counsel for the respondent further submitted that the testimony of PW1 was corroborated with the testimony of PW3 and PW4; who testified

that the appellant personified himself as an officer of PCCB. These witnesses also testified that the appellant promised to find them a job upon making payment to him of TZS. 2,484,500/=. PW2, one Mwazani Salum informed the court that she registered the mobile number 0745-934267 using her personal national identification card. However, she stated that the said mobile number was being used by the appellant.

Ms. Mkina contending further, asserted that the testimony of PW2 was corroborated with the testimony of PW5, a security manager from Vodacom, one James R. Wawenje. This witness testified that he received a letter from PCCB which required him to investigate and provide information regarding the registered owner of the mobile number 0745-934267. The letter further required him to investigate cash transactions from the period between 1<sup>st</sup> January 2020 until 17<sup>th</sup> April 2020. PW5 testified that the findings revealed that, the aforementioned mobile number was registered under the name of PW2 Mwazani Salum. Regarding the cash transactions in accordance with the specified dates, the findings were that PW3 and PW4 sent money to the mobile number under investigation. The findings also revealed that the aforementioned mobile number was registered under the name of Mwazani Salum (PW2). In support of this testimony, Exhibit P3 was tendered before the court

which provided details of cash transactions in question. Additionally, PW5 produced an authenticity certificate which was admitted as Exhibit P1.

The counsel for the respondent asserted that PW6, a human resources officer, testified that upon examining the database of PCCB, the name of Saimon Mapunda did not appear as an employee of PCCB. In the circumstances, the state attorney contended that the prosecution witnesses proved the offences of personation and obtaining money by false pretense, beyond reasonable doubt.

On the 2<sup>nd</sup> ground of appeal, Ms. Mkina submitted that all the evidence that was presented before the trial court, was in accordance with the requirements of the law. In emphasis on this point, the respondent's counsel asserted that the evidence presented before the trial court was duly admitted. According to Ms. Mkina, the admission of the evidence at the trial court, was an indication that proper procedure was followed during the trial.

The counsel for the respondent arguing on the 5<sup>th</sup> ground of appeal contended that the proceedings do not indicate that the appellant made any request before the trial court to be issued with a copy of the complainant's statement. Further, the appellant had the opportunity to cross examine the complainant (PW3).

On the 6<sup>th</sup> ground of appeal, Ms. Mkina averred that after the preliminary hearing, the facts were duly read out to the appellant. Thereafter, the appellant, having understood the facts, admitted facts relating to his name and his address. However, the appellant disputed the facts relating to his place of abode. Therefore, it was the assertion of the learned state attorney that the undisputed facts were well understood by the appellant and this is evidenced by his signature at page 4 of the typed trial proceedings.

In opposing the 7<sup>th</sup> ground of appeal, the respondent's counsel submitted that the trial court considered the defense of the appellant, contrary to the assertions of the appellant. In explaining this ground, Ms. Mkina referred to page 9 of the judgment whereby the trial magistrate recorded failure by the appellant to explain in his defense, the purpose of the amount of money he had received. According to Ms. Mkina, this was proof that the appellant obtained the money by false pretense.

The appellant, under the 8<sup>th</sup> ground of appeal challenged the identification evidence presented at the trial court. In response, the counsel for the respondent argued that the appellant was identified by PW4 who testified as to how they met and how he was defrauded by the appellant as per page 15 to 16 of the typed trial proceedings.



In conclusion, Ms. Mkina, proceeded to consider the additional grounds of appeal. The learned state attorney opined that the additional grounds were largely repetitive of the initially filed grounds of appeal. Therefore she opted to only address the 3<sup>rd</sup> additional ground of appeal. The learned state attorney conceded that upon being filed in court, the case was later withdrawn under section 225(5) of the CPA. The provision permits the respondent to discharge the accused on the charged offence. However, under the same section, the respondent is not barred from instituting a subsequent charge against the accused for the same offence. Finally, the respondent's counsel, prayed for dismissal of the entire appeal and the decision of the trial court be upheld.

The appellant on his part attacked the testimony of the witnesses at the trial court. In particular, the appellant referred to the testimony of PW1, the PCCB officer. The appellant asserted that in cross examining PW1, the said witness was not able to state the date he arrested the appellant, neither was he able to state the date the appellant was arraigned before the trial court. The appellant further challenged the failure by PW1 to arraign the appellant before the village executive officer for the purpose of seeking additional information that would shed more light on whether or not the appellant committed the offence.

Referring to the preliminary hearing, the appellant averred that while the prosecution stated that they would tender two (2) Exhibits, they however tendered more than five (5) Exhibits during the trial. The appellant submitted that he was further disgruntled with the fact that the prosecution alleged that the appellant made a confession. However, the prosecution failed to present him before a justice of the peace in order to ascertain the circumstances in which the alleged confession was made.

Lastly, the appellant submitted that he did not sign any certificate as proof of his consent before the cautioned statement was recorded. On the basis of the foregoing, the appellant stressed that the case was not proven beyond reasonable doubt and accordingly, he should be set free.

I have considered the records of the trial court and the rival submissions of the parties. The issue to be determined, is whether or not this appeal has merits. The provision of section 100 (b) of the Penal Code stipulates that: -

*"100. Any person who-*

*(b) Falsely represents himself to be a person employed in the public service, and assumes to do any act or to attend in any place for the purpose of doing any act by virtue of such employment, is guilty of an offence."*

Further, sections 301 and 302 of the Penal Code provide that: -

*"301. Any representation made by words, writing or conducts of a matter of fact or of intention, which representation is false act and the person making it knows it to be false or does not believe it to be true, is false pretence.*

*302. Any person who by any false pretense and with intent to defraud, obtains from any other person anything capable of being stolen or induces any other person to deliver to any person anything capable of being stolen, is guilty of an offence and is liable to imprisonment for seven years."*

Being guided by the aforementioned provisions, the weight of the evidence adduced by the prosecution in establishing the offences of personation and obtaining money by false pretense shall be considered in determining this appeal.

The appellant in his 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 8<sup>th</sup> grounds of appeal, challenges the evidence upon which his conviction was based. The appellant contends that the testimonies of the witnesses were inconsistent. Further, that the evidence adduced by the prosecution did not suffice to neither identify him, nor to link him to the alleged offence.

During the trial, the prosecution paraded a total of six (6) witnesses and tendered 5 Exhibits. The records of the trial court provide for the testimony of PW1, an investigation officer from PCCB. This witness testified that he received information from a student of the University of Dodoma (UDOM), on the commission of a crime. The student, one James Edward Mshina (PW3), reported to PW1 that there was a person

impersonating himself as a PCCB Officer who had promised to find him a job. The said person had further required payment in order to facilitate the process. PW1 further testified that the UDOM student (PW3) and his father (PW4) advanced to the appellant herein a total of TZS. 2,484,500/= in the prospects of securing the job.

The testimony of PW1, was corroborated with the testimonies of PW3 and PW4. In addition, the testimony of PW2, a stationery owner provided further evidence on the manner in which the transactions to the appellant herein were effected. PW2 testified that she first met the appellant when he appeared at her shop requesting for some services. However, the appellant then convinced her to register him a mobile number using her national identification card and not his own. The testimony of PW2 confirms the mobile number that was used for the money transactions that were effected by PW3 and PW4 to the appellant. The testimony of this witness further provides clarity as to why the mobile number, to wit 0745-934267, that was being used by the appellant was registered in the name of Mwazani Mussa, and not in the name of the appellant.

The testimony of PW5, a security manager from Vodacom is also on record. This witness provides proof on the mobile number, names of the

registered user, and the mobile money transactions that were effected to the appellant.

This court is of the view that there was strong evidence adduced by the prosecution during the trial, which undoubtedly sufficed to identify the appellant, and linked him directly to the crime for which he was convicted and sentenced thereof.

Notably, the evidence adduced during the trial further proves the elements of the offences to which the appellant was convicted. Evidently, the appellant personified himself as a public servant, therefore a PCCB Officer. Furthermore, the appellant through the said false pretense, defrauded the complainants.

Under the 2<sup>nd</sup>, 5<sup>th</sup> and 6<sup>th</sup> grounds of appeal, including the additional grounds of appeal, the appellant challenges the legality of the procedures prior and during the trial. These procedures include the recording of the cautioned statement whereby the appellant alleges that he did not consent to the recording of the cautioned statement in the absence of his relative or advocate. The manner in which the preliminary hearing was conducted was also challenged. The appellant contends that the memorandum of undisputed facts was not read out to him, contrary to the requirements of the law.

As correctly pointed out by counsel for the respondent, it is evident from the records that the appellant raised no objection during the preliminary hearing and he further attested his signature thereto, at page 4 of the typed trial proceedings. I have also perused the cautioned statement. The record indicates that the appellant was informed in advance of the criminal charges he was faced with. In addition, the appellant was granted the opportunity to either accept or decline as to the procuring of his cautioned statement. The appellant willingly opted for the former. Further, the appellant agreed to give his statement in the absence of his relatives or any other witness. Thereafter, the appellant willingly signed and dated the cautioned statement. Thus, the ground of appeal relating to the cautioned statement is unmeritorious and it collapses.

Regarding the 7<sup>th</sup> ground of appeal, it is alleged that the trial court did not consider the defence of the appellant by the trial court. This ground of appeal will not detain me. The record indicates that the appellant's defence was appropriately considered. For the purpose of transparency, on page 9 of the trial judgment, it is stated that: -

*"...the accused, in his defence did not amplify how the transactions landed in his sim card and if the same were for charity or any other occasion, in absence of an explanation the transactions are proof of the commission of the offence by the accused..."*

In summary, PW6 confirmed that according to the records of PCCB, the appellant was not employed by PCCB which was equally not disputed by the appellant. Again, PW2 knew the appellant fully and as a result, she accepted to use her Identity Card for registration of the mobile number 0745-934267 which was used by the appellant to commit the said offence. Furthermore, PW3 and PW4 knew the appellant who, in turn, unlawfully demanded from them some money for false promises. Above all, the appellant confessed to have committed the offence through the cautioned statement which was admitted as Exhibit PE5. In view of the foregoing reasons, this court finds that the prosecution proved the case against the appellant beyond reasonable doubt

Consequently, this appeal is devoid of merits and the same is dismissed in its entirety.

It is so ordered.

Right of appeal explained to the parties.

**DATED** at **DODOMA** this 07<sup>th</sup> day of June, 2024.



A handwritten signature in black ink, appearing to read "I.D. Musokwa".

**I.D. MUSOKWA**  
**JUDGE**

Judgment delivered in the presence of the appellant and in the presence of Ms. Magreth Tlegray, learned state attorney representing the respondent.



A handwritten signature in cursive script, appearing to read "I.D. Musokwa".

**I.D. MUSOKWA**  
**JUDGE**