

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA**

**DODOMA DISTRICT REGISTRY**

**AT DODOMA**

**DC. CRIMINAL APPEAL NO. 141 OF 2023**

(Arising from the Judgment of Singida Resident Magistrate's Court in Criminal Case No. 02 of 2022)

**H.184 PC HAMIS ABDALAH SELEMANI.....APPELLANT**

**VERSUS**

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

**JUDGMENT**

Last Order: 17<sup>th</sup> April, 2024

Date of Judgment: 14<sup>th</sup> June 2024

**MASABO, J:-**

The appellant, H. 184 PC Hamisi Abdalah Selemani was charged before the Resident Magistrate's Court of Singida with three counts of corrupt transactions contrary to section 15(1) (a) and 15(2) of the Prevention and Combating of Corruption Act, No. 11 of 2007. On the first count it was alleged that on 11<sup>th</sup> April 2020, the appellant, being an officer of the Tanzania Police Force corruptly solicited a sum of TZS Three Hundred Seventy Thousand only (TZS 370,000.00) from one James Thomas. The sum was to serve as an inducement to the appellant not to take legal action against the said James Thomas who was alleged to have been found with electric wires the property of the Government of Tanzania. On the second count, it was alleged that, on the same date the appellant corruptly obtained from the said James

Thomas a sum of TZS One hundred ninety thousand (TZS 190,000/=) as part payment of the three hundred seven thousand (TZS. 370,000/=). On the third and last count, it was alleged that on the same date, the appellant corruptly obtained the remaining sum of TZS One Hundred Eight Thousand (TZS 180,000/=). The same was sent to him via a mobile transaction from number 0689-995037 to number 0785-618875.

The brief facts of the case as deciphered from the trial court record are that, the complainant (PW5) was suspected of having stolen electricity wire, the property of the Government of Tanzania. Upon hearing the allegation, the appellant and his fellow policeman together with PW1, the hamlet leader, went to the complainant's house where they found the allegedly stolen electricity wire, and the same was seized. The appellant informed PW5 that if he wanted to escape liability he should give him a sum of TZS one million (TZS1,000,000/=). PW5 replied to have no such money and after negotiations, they settled at Three Hundred Seventy Thousands (TZS 370,000/=). A part payment of one hundred eighty thousand (TZS180,000/=) was in cash and the remaining sum of One Hundred Ninety Thousand (TZS 190,000/=) was sent to him via mobile phone money transfer in a transaction that originated from the complainant's mobile number 0689-9950037 to the appellant's mobile number 0785-618875. In proof of these transactions, PW1 who was the investigator of the case tendered the printout of the transactions, and the same were admitted as exhibit PW1 A.

On his part, the appellant offered a total denial of the allegations. He also testified that he was once prosecuted by a court martial with the same allegations of soliciting and obtaining bribe. The proceeding and judgment of the Court Martial were tendered and admitted as exhibit D1. After analysing the evidence from both sides, the trial court found the prosecution to have proved its case. The appellant was subsequently convicted on all the three counts receiving bribe. For the first and second counts, he was sentenced to a fine of Tshs 500,000/= or in default, a prison term for three years. For the third count, he was sentenced to serve three years in jail with no option of a fine.

The appellant was aggrieved. Having paid the fine for the two counts he filed this appeal on seven grounds which are summarised as follows; **one**, the prosecution case was not proved to the required standard of law. **Two**, the signature of the trial magistrate was not appended upon completion of recording the witnesses' evidence. **Three**, the appellant's defence was not considered. **Fourth**, the prosecution delayed to report the matter and to arraign the appellant before the court.

The appeal was heard by way of written submissions. The appellant submission was drawn and filed by Mr. Jackson Mayeka, learned Advocate whereas that of the respondents was drawn and filed by the National Prosecution Office of Dodoma.

Mr. Mayeka started submitting on the second ground. He submitted that the trial court's record is fatally defective. The trial magistrate did not append his signature after recording the evidence adduced by PW2, PW6 and DW1. He argued that this contravened the mandatory provisions of section 210(1) (a) of the Criminal Procedure Act. Based on this anomaly, it was submitted that the appeal be allowed as such omission is a fatal and incurable irregularity. The decision of the Court of Appeal in the case of **Yohana Mussa Makubi and Another vs. Republic**, Criminal Appeal No. 99 of 2019 [2023] TZCA 66 TanzLII was cited in fortification of the prayer that the appeal be allowed, the judgment and orders of the trial court be nullified on the reason that they originated from court proceeding which lacks authenticity.

On the third ground of appeal, it was submitted that the conviction and sentence are untenable for failure to consider the appellant's defence and in support thereof, he cited the case of **Abdallah Seif vs. The Republic**, Criminal Appeal No. 122 of 2020[2022] TZCA 196 TanzLII and **Hussein Iddi and Another vs. Republic** [1986] TLR 166.

On the fourth ground, it was submitted that the matter was belatedly reported to the police station and filed in court on 06<sup>th</sup> April 2022, nearly two years following the commission of the alleged offence on 11<sup>th</sup> April 2020 and no explanation was offered on this delay. It was argued further that, the trial court erred in convicting and sentencing the appellant while he was acquitted on the same allegation by the Court Martial.

Further to the above and in support of the ground that the prosecution did not sufficiently prove its case, it was submitted that there was a contradiction on the date of the offence. The date mentioned by PW4 varied from that of the complainant (PW5). Another variance, he argued, was in the amount given to the appellant as a bribe. PW4 testified that the first instalment of the bribe was One Hundred Seventy Thousand (TZS 170,000/=) and the second was One Hundred Eighty Thousand (TZS 180,000/=). PW5 testified that the bribe consisted of One Hundred Seventy Thousands (TZS 170,000/=), One Hundred Eighty Thousand (TZS 180,000/=) and Twenty Thousand (TZS 20,000/=). Thus, the actual amount remained uncertain and had the court properly evaluated the evidence, it could not have convicted the appellant. Drawing reference from the case of **Leornard Mwanashoka vs. Republic**, Criminal Appeal No. 226 of 2014 [2015] TZCA 294 TanzLII, **Woodmington vs. DPP**[1935] AC 462, **Salum Seif Mkandambuli vs. Republic**, Criminal Appeal No. 128 of 2019 [2021] TZCA 263 TanzLII and section 3(2) of the Evidence Act, Cap 6 R.E 2022, Mr. Mayeka argued that, the prosecution did not discharge its duty of proving the case beyond reasonable doubt. Hence, the appeal should be allowed. The conviction and sentence be quashed and set aside.

In reply, the respondent Republic while submitting on the second ground of appeal, argued that section 210(1) of the Criminal Procedure Act was complied with as shown in the original record. Alternatively, it was argued that even if such omission exists, it is inconsequential as it is curable under

section 388 of the Criminal Procedure Act, Cap 20 R.E 2022. On the third ground of appeal, it was submitted that the defence evidence was considered as shown on pages 12 to 16 and 19 to 21 of the trial court judgment. On the issue of delay in arraigning the appellant before the court, it was submitted that it is devoid of merit and should be disregarded as there is no time limitation for filing a criminal case. The investigation was still pending. As such, the case could not been filed timely.

Replying on the first ground, the respondent vehemently repudiated the allegations that the prosecution's case was not proved. The prosecution ably discharged its duty in proving the case. The offence of soliciting bribe against which the appellant was charged with was proved through oral testimonies of six witnesses and two exhibits. Through these, it was proved that the appellant solicited and obtained Three Hundred Seventy Thousand (TZS 370,000/=) in two instalments the first being by cash and the second via Airtel Money. As for the contradictions, it was submitted that they are minor and did not go to the root of the case, hence excusable. Re-joining, Mr. Mayeka reiterated his submission in chief.

I have dispassionately considered the submissions by both parties and I am now ready to determine the appeal. As intimated earlier, the present appeal is based on seven grounds which I have consolidated into four. I prefer to start with the second ground in which the appellant has challenged his conviction and sentence for being predicated on fatally defective proceedings. The anomaly complained of is the omission by the trial

magistrate to append his signature at the end of the record of the testimonies of the witnesses and it is predicated under section 210 (1) (a) of the Criminal Procedure Act, Cap 20 R.E. 2022. This section provides that:

“210.-(l) In trials, other than trials under section 213, by or before a magistrate, the evidence of the witnesses shall be recorded in the following manner-

(a) the evidence of each witness shall be taken down in writing in the language of the court by the magistrate or in his presence and hearing and under his personal direction and superintendence and shall be signed by him and shall form part of the record.

Precedents have revealed a consensus on the import of this provision. The phrase "shall be signed by him" has been consistently interpreted to mean a mandatory duty cast on the trial magistrate or judge to append his signature to the testimonies of the witnesses. The decision of the Court of Appeal in the case of **Amir Rashid v. Republic**, Criminal Appeal No. 187 of 2018 [2020] TZCA 1806 TanzLII illustrates. Interpreting the import of section 210 (1) (a), the Court instructively stated thus:-

“The quoted provision [section 210 (1) (a)] is couched in mandatory terms implying that it is imperative that a presiding magistrate has to ensure that he appends his signature after the end of each witness' testimony. The rationale is not hard to find. It lends assurance that such evidence was recorded by an authorized person.”

The importance of appending signature was also underscored by this in the

case of **Richard Mebolokini v. Republic** [2000] TLR 90 to which I fully subscribe. Discussing the provision of section 210 (1) (a) of the Criminal Procedure Act and the consequences of its noncompliance, this court stated as follows:-

“The signing is not a mere formality which can be dispensed with impunity. It signifies not only that the said evidence was written by the magistrate himself or herself or in his presence, hearing and under his personal impeccable assurance to its authenticity.”

Such evidence, in my considered opinion, can form part of the record of proceedings if so recorded and signed. It is therefore highly dangerous to act on unsigned evidence (at least on appeal) because there is no guarantee that it was the very evidence which was recorded by the trial magistrate in the presence of the parties concerned. When the authenticity of the record is in issue, noncompliance with section 210 may prove fatal.

The consequence for noncompliance was underscored further in the case of **Yotham Yona vs Republic** (Criminal Appeal No. 13 of 2021) [2023] TZCA 17693 TANZLII where, the Court of Appeal at page 16 stated that:

“It is therefore obvious that the said omission amounted to an incurable irregularity which cannot be cured by section 388 of the CPA as suggested by the learned Principal State Attorney. In the result, we find that the said omission had vitiated the entire trial court's proceedings and thus, they are a nullity. Consequently, we nullify the trial court's proceedings, quash the judgment and conviction and set aside the sentence meted out against the appellant.”



As I wind up this ground and for the avoidance of distorting what was stated by the Court of Appeal in the case **Yohana Mussa Makubi** (supra) relied upon by Mr. Mayeka in his submission, I will cite at length the most relevant part of that decision in which the provision of section 210(1)(a) was extensively considered. At pages 12 to 13, the Court held that:-

“In the light of what the Court said in **WALII ABDALLAH KIBITWA's** and the meaning of what is authentic, can it be safely vouched that the evidence recorded by the trial judge without appending her signature made the proceedings legally valid? The answer is in the negative. We are fortified in that account because, in the absence of the signature of the trial at the end of the testimony of every witness: **Firstly**, it is impossible to authenticate who took down such evidence. **Secondly**, if the maker is unknown then, the authenticity of such evidence is put to question as raised by the appellants' counsel. **Thirdly**, if the authenticity is questionable, the genuineness of such proceedings is not established and thus; **fourthly**, such evidence does not constitute part of the record of trial and the record before us.

We emphasise that, the rationale of the stated long established rule of practice as part of the procedure in the proper administration of criminal justice in this country is quite apparent geared at ensuring that at any given time, the court proceedings are authentic which is pertinent in the prompt delivery of justice.

We are thus, satisfied that, failure by the Judge to append his/her signature after taking down the evidence of every

witness is an incurable irregularity in the proper administration of criminal justice in this country. The rationale for the rule is fairly apparent as it is geared to ensure that the trial proceedings are authentic and not tainted. Besides, this emulates the spirit contained in section 210 (1) (a) of the CPA and we find no doubt in taking inspiration therefrom."

From these and many more authorities, the import of section 210(1)(a) and the consequences for its omission cannot be mistaken. The respondent's argument that the omission is minor and curable is, in the light of these authorities, lucidly misconceived.

Guided by the authorities above, I have thoroughly examined the record to ascertain whether the anomaly exists. From the handwritten proceedings, I have observed partial compliance with the provision of section 210(1)(a). The testimonies of the PW1 (who is also erroneously recorded as PW2), bears the signature of the presiding magistrate and so is the record of the testimonies of PW3, PW4 and PW5. These records bear the signature of Hon. Kisoka, RM who was then the trial magistrate for the case. The record of the testimony of PW6 is, on the other hand, without the signature of the presiding magistrate and so is the testimonies of DW1: the appellant herein, DW2: J1021 DC MUSA (erroneously recorded as DW1) and DW3: ASP Robert Marwa (wrongly recorded as DW2). All these were recorded by Hon. R. Oguda, RM who took over the case from Hon. Kisoka, RM.

On the strength of the above authorities, I am fortified that, the partial compliance above rendered the trial court's proceedings incurably defective

as the authenticity of the testimonies of these 4 witnesses, that is PW6, DW1, DW2 and DW3 cannot be ascertained. The second ground of appeal is, therefore, with merit and is allowed.

Having found merit in the ground above, I see no need to proceed to the remain grounds as the finding above sufficiently disposes of the appeal. In consequence, thereto, the appeal is allowed, the conviction entered against the appellant is quashed and the sentences imposed on him are set aside for being predicated on nullity proceedings. It is further ordered that the fine already paid by the appellant be refunded to him. It is so ordered.

**DATED** and **DELIVERED** at **DODOMA** this 14<sup>th</sup> day of June 2024



A handwritten signature in blue ink, appearing to be "J. L. MASABO".

**J. L. MASABO**  
**JUDGE**