

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**MBEYA SUB – REGISTRY**

**AT MBEYA**

**CRIMINAL APPEAL NO. 176 OF 2023**

*(Originating from Criminal Case No. 32 of 2021 in the district court of Mbozi at Vwawa)*

**HAMIS MATHIAS NDUVA .....APPELLANT**

**VERSUS**

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

**JUDGMENT**

*Date of hearing: 29/4/2024*

*Date of judgment: 18/6/2024*

**NONGWA, J.**

The appellant Hamisi Mathias Nduva was arraign before the district court of Mbozi with two counts one, personating as a public officer contrary to section 100(b) and 35 and two obtaining money by false pretences contrary to section 302 both of the Penal Code [Cap.16 R: E 2019 now R: E 2022].

In the first count it was alleged that on 03<sup>rd</sup> day of June 2021 at Senjele village within Mbozi District in Songwe region, the appellant did impersonate himself as person employed by Tanzania Electric Supply Company Limited (TANESCO) and assumed to do activities by virtue of

such purported employment. In the second count it was alleged that on the same date and place by false pretence and with intent to defraud the appellant obtained Tshs 280,000/= from Senjele villagers with pretence that he was a TANESCO employee who was going to install electricity. The accused denied, upon trial, he was convicted to three years in first count and five years in second count.

To prove the charges, the prosecution had a total of nine witnesses Elia Andembwisye Bukuku (PW1), Anyetile Robert Mwakyosi (PW2), James Godfrey Sabatele (PW3), Daudi Andembwisye Bukuku (PW4), H.2203 DC Siprian (PW5), Jasiri Julius Shipela (PW6), Samson Mwangomo Mwakomere (PW7), Cosmas Kajigiri Kabasa (PW8) and Musa Andembisye (PW9). Also, four documentary exhibits, fourteen voter cards (exhibit P1), exercise book (exhibit P2), certificate of seizure (exhibits P3) and caution statement of the accused (exhibit P4).

Substance of prosecution evidence by PW1 was that on 25/5/2021 went to TANESCO Songwe with purpose to be installed electricity in the church, there he communicated with Martin and seven other persons were present. He gave Martin his phone Number. On 2/6/2021 the appellant called through phone and introduced to be a TANESCO officer who was going to visit PW1 area for purpose of power connection. On 3/6/2021 the

appellant went at Senjele in the presence of PW2, PW4, PW6 PW7, PW8 and PW9 introduced to be Hamis, a TANESCO manager, told them that they needed passport size, copy of identity cards and fill application form at Tshs 20,000/= each for power connection. Further evidence was that 14 village volunteered and paid Tshs 20,000/= to the appellant, who had a black exercise book. Later PW1 called Martin to thank him for sending the officer, it is when beans were spoiled out. PW1 was told no person was sent by TANESCO and a person they were dealing with was a thief.

On 4/6/2021 PW1 and PW2 laid a trap and the appellant was arrested. At the police the appellant was received by PW5, he had in his hands a black exercise book and voter cards which was seized and tendered in evidence, fourteen voter cards (exhibit P1), exercise book (exhibit P2) and certificate of seizure (exhibits P3). PW5 also recorded statement of the appellant which was tendered as exhibit P4. Evidence of PW3 was that the appellant was not in the roll of TANESCO employee.

In defence, the appellant distanced himself from the offence. He said he was called by police of Mlowo went there holding exercise book, reaching at police was arrested and connected with offence. The appellant denied to know Senjele and to have ever gone there. Also, denied being

electrician. He travelled through prosecution evidence and finally protested his innocence.

That however, at full trial, the trial court was impressed by prosecution evidence and finally as stated earlier the appellant was convicted and sentenced to three years in the first count and five years in second count. The sentence was ordered to run concurrently.

The appellant is aggrieved by the whole decision, filed Petition of appeal on 25/10/2023 after obtaining extensions of time. Grounds of appeal are **one**, that the trial court Magistrate erred in law and fact by convicting and sentencing the appellant while the case was not proved beyond all reasonable doubts hence failed to do justice on part of the appellant; **two**, that the trial court magistrate erred in law and fact by convicting and sentencing the appellant who was not arrested at the scene of crime; **three**, that the trial court magistrate erred in law and fact to convict and sentence the appellant relying on the evidence of PW1 which was not corroborated by evidence from officers of TANESCO who purported the appellant to be a thief 'Kishoka'; **four**, that the trial court magistrate erred in law and fact by wrongly relying on exhibit P2 which does not show the name of the victims; **five**, that the trial court magistrate erred in law and fact by convicting evidence of the prosecution who failed

to prove that the victims gave money to the appellant and **six**, that the trial court magistrate erred in law and fact to convict and sentence the appellant by relying on the evidence of the prosecution who failed to call important witness to prove the case against the appellant (accused).

When the appeal came on for hearing, the appellant appeared in person, without legal representation, whereas the respondent was represented by Prosista Paul, State Attorney.

When the appellant was called to amplify his grounds of appeal to form part to his submission.

Resisting the appeal, Ms. Prosista started with ground two that the appellant was not arrested at the crime scene, she stated the offence the appellant was charged do not require to be found at one place, it is not element of the offence.

In ground three that PW1 evidence was not corroborated it was submitted that the same was supported by PW3 and it was the appellant who introduced himself as TANESCO employee.

On complainant that exhibit P2 did not show names of victim in ground four, state attorney submitted that after being admitted it was not

read in court as required prayed the same to be expunged. However, was confident that the remaining evidence supported the charge.

With respect to ground five that prosecution evidence was weak it was argued that the prosecution proved the case through evidence of PW1, PW2, PW3 and PW4 to whom the appellant introduced to be the TANESCO employee, promised to connect them with power and each gave Tshs 20,000/=.

Regarding failure to call important witness in ground six, the state attorney said the appellant did not say which important witness was not called. That aside, she submitted in terms of section 143 of TEA what is important is credence of witnesses and weight of evidence, not number of witnesses.

Concluding with ground one the state attorney submitted that the prosecution case was proved beyond reasonable doubt. That the defence did not manage to raise any doubt.

In rejoinder the appellant said that four witnesses denied to give him money, the rest they said gave him money but they did not tender exhibit. That there was no proof of his visit at Senjele and some witness who were listed were not brought to testify.

Having considered record, grounds of appeal and argument of the parties, the issue for my determination is whether the prosecution proved the case beyond reasonable doubts. The appellant was charged with personating as public officer under section 100(b) of the Penal Code which provides;

*'Any person who-*

*(a) N/A*

*(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.'*

The above provision lays two elements of the offence of one, represents to be a person employed in public service and two, assumes to do any act or to attend in any place for the purpose of doing any act by virtue of such employment. In this case it was evidence of PW1 that on 2/6/2021 the appellant called himself to be the officer from TANESCO and on 3/6/2021 visited them with purpose of connecting them with electricity. The information was communicated to PW2, PW4, PW6, PW7, PW8 and PW9 who also needed the service.

Further evidence from PW2, PW4, PW6, PW7, PW8 and PW9 was that the appellant was in TANESCO uniform and introduced himself to be a TANESCO manager. In defence the accused denied to know or to have gone at Senjele and that he was not electrician. I have taken both evidence to proper scrutiny, prosecution evidence of PW1, PW2, PW4, PW6, PW7, PW8 and PW9, were so specific that the appellant introduced himself as an employee of TANESCO, went to Senjele and received voter cards and Tsh. 20,000/= as requirement for processing application of electricity connection, the acts which is done by the TANESCO employee. It is clear in prosecution evidence that the appellant introduced himself as TANESCO officer and advised them what to do to process power connection, this was by having copy of voter card or NIDA number, passport size filling the application form and effecting payment of Tsh. 20,000/= being fee for application. Prosecution evidence from PW2, PW6, PW7, PW8 and PW9 was that they paid him application fee of Tsh. 20,000/=. Having considered the defence evidence, it did not shake the prosecution evidence that it was the appellant who went at Senjele introduced to be the TANESCO officer and received copies voter cards and application fee of Tsh. 20,000/= from PW2, PW4, PW6, PW7, PW8 and PW9. The complaint that some of witnesses who were listed did not testify has no merits because although



the prosecution evidence was that the appellant received voters' card and Tsh 20,000/= from fourteen villagers but only seven that is PW1, PW2, PW4, PW6, PW7, PW8 and PW9 testified it cannot be said the offence of personating as public officer was not proved. Suffice to say the act of the appellant being in TANESCO uniform, introducing as TANESCO officer, receiving voters' card and payment of Tsh. 20,000/= as application fee for connecting with electricity while he was not a TANESCO officer amounts to impersonating as public officer. This was proved by PW3 and admitted by the appellant that was not TANESCO employee. In circumstances of this case the offence of personating as public officer was established against the appellant by the prosecution and the appellant was rightly convicted with that offence.

Coming to the offence of obtaining money by force pretence, section 302 of the penal code provides;

*'Any person who by any false pretence 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.'*

The above offence is committed when two ingredients exist that is to say; false representation and intent to defraud. In this appeal it was the prosecution evidence that the appellant introduced to be TANESCO employee and in turn PW2, PW6, PW7, PW8 and PW9 paid to him Tsh 20,000/= as application fee for connection of electricity. It was further evidence of PW1 and PW4 that total of fourteen villager paid application fee to him after they had given him copy of voter cards. In defence the appellant did not offer any plausible defence on the amount he was paid, his defence was just a denial.

Having considered evidence of both sides I am satisfied that the appellant did obtain Tsh. 280,000/= on pretence that he will connect the villagers with electricity. Prosecution evidence of PW1, PW2, PW4, PW6, PW7, PW8 and PW9 that he received money from fourteen villagers was supported by fourteen voters', exhibit P1. I am aware that the appellant raised objection to its admissibility on ground that he did not recognize it, however, he did not dispute that it was seized from him. PW5 testified that he seized fourteen voters' card from the appellant and signed certificate of seizure which was tended in evidence as exhibit P3 without objection from the appellant. It is a settled law that the contents of an exhibit which was admitted without any objection from the appellant, were effectually proved

on account of absence of any objection. Exhibit P3 is signed by the appellant to signify that he was arrested in possession of the said exhibit of exhibit P1. See **Furaha Alick Edwin vs Republic**, Criminal Appeal No. 410 of 2020 [2023] TZCA 46 (23 February 2023; TanzLII).

There is complaint that some of witnesses who were listed did not testify and that some important witnesses were not called. I agree with the prosecution that the appellant did not refer to any person who was important witness but not called.

From my own evaluation of evidence, the offences the appellant was charged was established to the hilt, one, he introduced himself to be TANESCO officer as per evidence of PW1, PW2, PW4, PW6, PW7, PW8 and PW9, two went at Senjele took voter cards of those in need of connection of electricity and three, was given Tsh. 20,000/ by fourteen villagers as application fee for connecting them with electricity. Even after expungement of exhibit P2 for not being read in court after admission as rightly submitted by the state attorney, the remaining evidence as discussed above establishes offence of personating as public officer and obtaining money by false pretence.

From the above, I am satisfied that, the prosecution proved the case against the appellant beyond reasonable doubt and the trial court rightly convicted him.

At the end, I find the appeal devoid of merit and is hereby dismissed.



A handwritten signature in blue ink, appearing to read "V.M. Nongwa".

**V.M. NONGWA**  
**JUDGE**  
**18/6/2024**

Right of appeal explained

DATED and DELIVERED at MBEYA this 18<sup>th</sup> day of June 2024 in presence of Ms. Imelda Aliko State Attorney for the Respondent and the appellant in person.

A handwritten signature in blue ink, appearing to read "V.M. Nongwa".

**V.M. NONGWA**  
**JUDGE**