

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(CORRUPTION AND ECONOMIC-CRIMES DIVISION)**

AT DAR ES SALAAM

ECONOMIC CASE No. 16 of 2021

**(ORIGINATING FROM ECONOMIC CRIME CASE No 63 OF 2020 OF THE
COURT OF RESIDENT MAGISTRATE OF DAR ES SALAAM AT KISUTU.)**

THE REPUBLIC

VERSUS

HALFAN BWIRE HASSAN.....1ST ACCUSED

ADAM HASSAN KASEKWA @ ADAMO.....2ND ACCUSED

MOHAMED ABDILLAHI LING'WENYA3RD ACCUSED

FREEMAN AIKAEL MBOWE.....4TH ACCUSED

RULING

13th & 15th November, 2021

TIGANGA, J

In the midst of the proceedings when PW2 (TWT), a Police Officer with force number H.4323 DC Msemwa, was testifying, he told the court that, before January, 2020, he was working at Central Police Station as a general duty police officer. In that capacity, he was also working at charge room office commonly known by its acronym as CRO, where his duties together with other police officers, among others were to receive, detain in, and lock in the suspects who are accused of criminal cases.

In his evidence, he said on 07/08/2020, he was on duty and while there at 06:00 hours in the morning, he received two suspects, who are; Adam Hassan Kasekwa @ Adamo and Mohamed Abdillah Lingw'anya. According to him, he received them from two police officers, Afande Kingai and Afande Jumanne, who upon submitting the said detainees, left and came back later to ask for the said detainees for purposes of recording their statements.

While taking them out for the intended purposes, PW2 (TWT) recorded the said transaction in the detention register, and took the accused out of police lockup, who before handing them over to the said Afande Kingai and Jumanne, he gave the two receiving police officers the detention register to sign, signifying that they really took out the detainees for the above said purposes.

In his further evidence, PW2 (TWT) said, after the said police officers had finished recording statements, they returned the detainees to him for detaining them in again, something which he did.

According to him, when he took them out and later in, they were in good health conditions. He thereafter kept on visiting them in lockup where he saw them in good health conditions. He stayed there up to the

evening when, he was relieved from duty by other police officers who took over in the evening.

PW2 (TWT) said from that date he did not deal with the said accused again up to when he was summoned by this court in Economic Case No. 16 of 2021 when he was required to appear in court and tender the detention register he used on 07/08/2021 as exhibit.

Having been so summoned, he went back to the Central Police Station, requested and was given the detention register which he filled in on 07/08/2020 when he was detaining in, and detaining out the 2nd and 3rd accused in this case.

Having been so given the said detention register, he appeared in court and tendered the same in a case which involved the 2nd Accused. Thereafter according to him, he did not deal with that register again up to when he once again received the summons from this court where he was required to appear in the same case and retender the said exhibit (detention register).

Following the fact that the exhibit had already been tendered in court, he was directed to go to the Deputy Registrar of this court so that he can be given the said exhibit.

In compliance with those directives, he went to the office of the Deputy Registrar where, he was handed over the said detention register together with a letter, but before he received them he was to, and he actually signed in one of the book (which we assume to be dispatch).

While intending to tender for admission, a letter which was given to him together with the detention register, he said that, he could identify the said letter if the same is shown to him. He said could do so because, he remembers it had his names, force numbers and the signature of the Deputy Register. Thereafter he was shown the said document and identified it through those features, and asked the same to be admitted as exhibit.

The whole defence team objected the prayers to tender the said detention register on the ground that, the witness is not competent to tender the document as the said letter was not addressed to him but to the National Prosecution Services of Tanzania by using the postal address of Dodoma. Their submissions were that since the accused is not an employee National Prosecution Services of Tanzania, the letter did not relate to him.

According to them, though it is true that he has been mentioned in the letter, they argued that his mentioning in that letter was made in

another context. The second limb of the objection is that, in his evidence the witness did not build foundation for tendering exhibit and the little he did, did not meet the standard set in the authority of the case of **DPP vs Shariff Mohamed @ Athuman & 6 Others**, Criminal Appeal No. 74 of 2016 – CAT (unreported) and the case of **Republic vs Charles Abel Gasilabo @ Charles Gazilabo & 3 Others**, Criminal Appeal No. 358 of 2019, thus making the letter (exhibit) to fall short of authentication requirement especially on the knowledge of the witness over the letter.

Further to that, it was submitted by way of insistence that, the witness has not proved his competence to tender the said letter and the competence of the letter itself. They said he would have established his competence had he tendered dispatch where he signed when he was handed over a letter.

Further to that, regarding the competence of the exhibit, it is their opinion that, had he been lead to say in his evidence how he got a letter from National Prosecution Services (NPS), Dodoma, as the letter was supposed to have been first submitted to National Prosecution Services (NPS), Dodoma, and then by way of administrative or prosecutorial arrangement given to him by the NPS.

In their opinion tendering of the dispatch was important to prove that he was really given that letter. In their further opinion, the letter would have been competent had the same been preceded by the order of the court disposing the exhibit.

They further, submitted that, although the witness was mentioned in a letter, he was not led to mention that, he was mentioned in the letter, something which brings a question of the competence of both, an exhibit and the witness seeking to tender it. They therefore prayed for the said document to be rejected for the reasons given.

The prosecution was represented by two learned Senior State Attorneys who argued for and on behalf of the whole prosecution team. They, in essence, asked the court to disregard the objection raised by the defence. In their submissions, they asked the court to consider the principle that the document speaks for itself, which when relied upon, the document is clear that, the witness on the doc is one of the persons who was copied the letter. Therefore, having been so copied presupposed that, he is one of the persons to whom a letter was directed and his name was actually written in the letter itself.

They submitted further that, a witness is competent because he said in his evidence that he was given that letter by the Deputy Registrar.

He also recognised the letter that it has his names and force numbers together with the signature of the Deputy Registrar which he recognized. They submitted that it has never been alleged that the said letter is not of the Deputy Registrar; therefore in their opinion the objection lacks merit.

Furthermore, it is their submission that, the fact that a letter is copied to a person carries with it a rebuttable presumption that, the said person has a right to have the said copy of the letter.

Basing on the criteria for admitting evidence which are relevance, materiality and competence, they said the objector have not said in their submissions that, the document is not relevant and material for any reason. In their view the objector's insistence was put on the competence of the witness in tendering the exhibit and that is based on the allegations that the witness has failed to lay a foundation before tendering the exhibit.

On that point, they submitted further that, the witness is competent and has knowledge of the exhibit, as he managed in his evidence, to identify the exhibit that, it had his names and force number as well as the signature of the Deputy Registrar, whom he also said to have received the letter from.

That means, with the witness's evidence the document came to him straight from the Deputy Registrar, which fact in their opinion, lays a foundation to allow the witness to tender the exhibit.

In support of their arguments they cited the decision of the Court of Appeal Tanzania, in the case of **DPP vs Mirzai Pirbakhishi @ Hadji & 3 Others**, Criminal Appeal No. 493 of 2016 – CAT at page 7 and 8, where the knowledge of the witness on the exhibit was insisted. Therefore, it is not necessary that, a person must be a maker or an author, custodian or addresses of the document for him to be entitled to tender it in court. What is important is the knowledge and the fact that a person had possessed the thing at any point in time albeit shortly.

They submitted that in the ruling delivered by this court in this case on 10th November, 2021, the court told the prosecution that, they were supposed to follow the procedure and one of the procedure allegedly recommended was administrative procedure to get the document back to them before tendering it. Therefore there was no need of any court order, and they asked the court to make reference to its ruling.

They reminded the Court of the principle in the case of **Robinson Mwanjisi vs The Republic** [2003] T.L.R 218 where it was held that, the document must be cleared first before its content is referred, they

complained of the act by the defence counsel to refer to the contents of the letter before it is admitted.

They submitted further that, the witness at hand managed to authenticate the document before requesting for its admission. According to them, the name of the witness, his force numbers and the signature of the Deputy Registrar are unique features mentioned in authentication of the document. Therefore, they asked the court to find that the exhibit was authenticated before it was submitted for admission.

Submitting on further authentication principle, they argued that, PW2 (TWT) established the chain of custody after saying that the letter was handed over to him by the Deputy Registrar. They submitted therefore that, with all these facts, it was not necessary to tender the dispatch where PW2 (TWT) signed when he was being handed over the document unless it is proved that the witness is not trustworthy.

They cited the case of **Yusuph Masalu @ Giduvi & 3 Others**, Criminal Appeal No. 163/2017, the Court of Appeal of Tanzania in which it was held *inter alia* that, what is important is that, the document or an exhibit should be what it is claimed to be. Therefore basing on what the witness has said and basing on undisputed fact that the letter has not changed more than two hands, then it cannot be subjected to a paper

trail test of establishing the chain of custody. On that basis, the argument by the defence that there was to be a prosecutorial arrangement showing how the NPS gave a letter to him has no weight, because the witness categorically stated that, he received the letter from the Deputy Registrar.

In sum, they submitted that, since the document was proved to be material, relevant and competent and since the said witness who is tendering it has proved to have been handed over the document by the Deputy Registrar, therefore he is also competent. That argument based on the fact that after being handed over the document by Deputy Registrar, the witness possessed it, therefore he has the knowledge of the said exhibit therefore it be admitted as such.

In rejoinder, the defence counsel reiterated what they submitted in chief. They however, insisted that, the document cannot speak for itself when it has not been admitted. They submitted that their complaint is that, the witness was supposed to lay a foundation, to establish his competence and that of the document, something which the witness at hand did not do to the standard set in the case authorities cited earlier on.

On that foundation, they said the witness was supposed to mention unique features of the intended exhibit which in their opinion, PW2 (TWT)

did not mention. In their view, the names, the force number of the said PW2 (TWT) and the signature of the Deputy Registrar in the letter are not unique features. They gave example of what may be termed as unique features in the letter, which are the dates and reference numbers.

They insisted that, the nexus between the witness and the letter can be proved by the dispatch he signed when he was being handed over the letter. And that according to them based on the fact that the Deputy Registrar has not been called to prove to have given him such a document, the dispatch was important as a proof of handing over. They further more insisted the reasons for demanding the dispatch is rooted in the prosecution evidence that when the witness was being handed over the letter he signed in a dispatch.

While continuing to submit on the point, they alerted the court that learned Senior State Attorney's submissions were self contradictory and defeating. While one said contents of document should not be referred before the letter is admitted, the other referred to the content as he said that, the letter is self explanatory. On that, they asked the court to give guidance but in their opinion, you cannot test the knowledge of the witness without referring to the content of the document.

They further submitted that, from the exhibit in question, it is the NPS who initiated the request to be supplied with the exhibit, and the answer was directed to that institution, the witness has just been mentioned in the letter something which does not entitle him to tender the document.

It was insistingly submitted that, it must be established by the witness in his evidence how he got the letter, which in their opinion the witness has not done. This is because; the dispatch showing where the witness signed was made part of the process by the prosecution themselves in their evidence.

In their view, the competence of the letter stems from the proof that the witness was handed over the said letter, and that can be proved by the dispatch showing where he signed when he was receiving the letter. They said, the witness cannot prove the signature of the Deputy Registrar.

They submitted further that the ruling of the court which was delivered on 11/11/2021 was not permissive of what the prosecution have done, but it was a criticism against the prosecution for having failed to follow the procedure in obtaining the exhibit. It was their submissions that, a copy of letter to someone does not pre suppose that it must have

reached him, there must be proof that the said letter was received by him.

They submitted by way of conclusion that failure to prove that the letter was received affects the competence of both the witness and the exhibit itself. They reminded the court of its ruling, in which it held that the competence of the exhibit is important and the competence of the witness as well. They prayed their objection to be upheld as such, and the document to be rejected.

That marked the argument by both parties, consequence of which, this ruling. From the objection and the arguments by counsel for both parties, it is clear that objection is based on complaint that the witness has not built a foundation that he is competent to tender the exhibit. From that complaint two issues can be framed, that is, **one**, whether the witness has laid a foundation over his competence to tender the exhibit? And two, whether the letter itself is competent to be admitted as exhibit?

As already alluded herein above, the objection raised is based on the principle of admissibility of evidence. From the authorities cited, that is **DPP vs Shariff Mohamed @ Athuman & 6 others** (Supra) and **Republic vs Charles Abel Gasilabo @ Charles Gazilabo & 3 Others**, (supra) the criteria to be considered in admitting the evidence are

relevance, materiality and competence, the competence being of both, the exhibit or evidence itself and that of the witness who wants to tender the evidence.

However, in this case and in respect of this exhibit, the arguments advanced in support and against the objection have been confined on the competence of the exhibit and that of the witness who wants to tender it, that is PW2 (TWT). It is the law as enunciated in the two cases that is **DPP vs Shariff Mohamed @ Athuman & 6 Others** (Supra) and **Republic vs Charles Abel Gasilabo @ Charles Gazilabo & 3 Others** (supra), that the competence especially of the exhibit, is tested by the process called authentication. Under authentication process, the competence of the exhibit can be determined in three ways, **first**, by identification of a unique object on the exhibit, **second**, by identifying an object which was made unique or **third**, by establishing a chain of custody. In the word of the Court of Appeal of Tanzania in the case of **Republic vs Shariff Mohamed @ Athuman & 6 Others** (Supra) the chain of custody intends to explain the whereabouts of the evidence at all times since the evidence was made or seized or dealt with up to when it is tendered in court.

Therefore, under the first two, the witness was supposed to identify the exhibit by a unique object on the exhibit, or an object which was made unique on the said exhibit. Since the type of evidence under scrutiny is documentary evidence, I would rather refer to what was supposed to be a unique object had the evidence been real evidence, as *unique features*. In this case the counsel for the defence have strongly submitted that the witness has not managed to show any unique feature on the letter. In their view, the witness would have been taken to have identified unique feature, had he mentioned the date or reference number of the letter.

The prosecution on their side argued that, the witness managed to mention unique features in the letter therefore should be taken to have authenticated the document before admission. They argued that the witness identified his name and force numbers as well as the signature of the Deputy Registrar who issued the letter before he asked the same to be admitted in evidence. Now there is no dispute that the witness mentioned these features as the identifying criteria of the document. The issues is whether, what was mentioned by the witness in the letter are really a unique feature? The term unique feature is not defined by any statute, that being the state of affairs, since the words unique feature are

normal English words, their meaning can be found in English Dictionary and due to limited time I have consulted only one source, that is an online English Dictionary in <https://mobile-dictionary.reverse.net>. which defines unique feature to mean:

"The only one of the particular type, single, sole or in the other meaning is without equal or like; unparalleled."

From this definition, unique feature means any feature which is of its kind on the exhibit, which is not easy to find resembling with any other on other exhibit of that particular type. The issue is whether the features said are unique, I entirely agree with the defence that the signature of the Deputy Registrar on a document is not unique at all as the same signature may be found on other letter requesting the exhibit.

However, regarding the other feature which is a name and a force number of the witness in the letter, I believe them to be unique in the letter, as I do not believe that there is another letter written in that particular aspect with the name and the force number of the PW2 (TWT). Therefore I take these features to be unique in that exhibit which differentiates the same with other documents.

Regarding the issue of proving chain of custody as part of authentication of the exhibit, the defence counsel have submitted that, there is no nexus between the witness PW2 (TWT) and the exhibit. This argument is based on the ground that, the said letter was not addressed to him, but to the National Prosecution Services of Tanzania by using the postal address of Dodoma.

Their submissions were that, since PW2 (TWT) is not an employee National Prosecution Services of Tanzania, the letter did not relate to him. His nexus would have been proved by either showing the administrative or prosecutorial arrangement in handing over the letter to him, or by tendering the dispatch proving him to have been handed over the letter by the Deputy Registrar, which the prosecution have not done. According to them, in the absence of these two, it can not be said to have been proved that, the letter procedurally landed in the hands of the witness PW2 (TWT).

On their side, the prosecuting Senior State Attorneys were of the view that, the document was not supposed to be subjected to a paper trail procedure of proving the chain of custody because the evidence is clear that it was straight away handed over to the witness by the Deputy Registrar. In support of that, they cited me a principle in the case of

Yusuph Masalu @ Giduvi & 3 Others, (supra) which I subscribe to, that, the importance of the chain of custody is that an exhibit should be what it is claimed to be. In their view, since in this case basing on the evidence of the witness that the letter has not changed more than two hands, the same cannot be subjected to a paper trail test of establishing the chain of custody.

In my considered view, as stressed by the counsel for the defence, the contest here is not on the chain of custody, but really the nexus of how the letter landed in the hands of PW2 (TWT). Their contention is that the same would have been proved had the prosecution tendered the dispatch, I agree with them that the dispatch was important to more clearly indicate that the document was really served to him.

However, that omission does not water down the oral account given by PW2 (TWT) that, he was given the letter by the Deputy Registrar which fact, at this stage has not been disestablished and there is no any reason for disbelieving the witness on that account. This is based on the principle that, every witness who is competent to testify in terms of section 127 of the Evidence Act [Cap.6 RE 2019] is entitled to be believed unless the contrary is proved. See the case of **Goodluck Kyando vs Republic**, Criminal Appeal No. 118 of 2003 (CAT - Unreported) which

was cited with approval by the same Court in the case of **Patrick s/o Sanga vs Republic**, Criminal Appeal No. 13 of 2008 CAT, Iringa also (unreported) where it was held that;

"Every witness is entitled to credence and must be believed and his testimony accepted unless there are good and cogent reasons for not believing the witness."

It is trite that, the credence of the witness can be disproved in many ways including during cross examination, which has not been done at this stage.

I was asked to give directives regarding the issue whether the contents of the document can be referred to during admission process before the same is admitted, in other words the directive should resolve the question at what time can the content of the document be referred? While the Republic is of the view that the content of the document can only be referred after the document is cleared and admitted, citing the authority in the case of case of **Robinson Mwanjisi vs The Republic** (supra), the defence counsel are of the opinion that in testing the competence of the document and witness the contents must be referred.

On that point, I entirely agree with the prosecution on the principle in the case of **Robinson Mwanjisi vs The Republic** (supra) that the

contents of the documents can be read after it has been cleared and admitted as exhibit. However referring to its contents during the process of clearing it for admission is not reading it. It should also be noted that, while in the process of admitting the document, one of the criteria is to test the knowledge of the witness on the document. In that process referring to the contents of the document is unavoidable. It should also be noted that referring to the contents cannot be equated with the reading it which is barred in the case of **Robinson Mwanjisi's case**.

It is a presumption that copying a person with the letter means two things, **one**, that the maker of the document intends the same be communicated to the person who was given a copy. **Two**, the person so copied is almost in equal status with the person to whom the letter is addressed. Unless there is evidence rebutting that presumption that the same did not reach him, the fact that the same was copied to him and an acknowledgment that he received it, raises a presumption that, the document was communicated to him notwithstanding lack of proof from other source that the document was served to him.

As earlier on alluded, the philosophy behind the principle of chain of custody is to make sure that the exhibit is what it is claimed to be. Trusting a person and copying him or her the document, means the

author permitted the person copied to use the document. Therefore a person copied with a letter does not need a permission of the addressee to use the document; he is in equal status with the person to whom the document was directed.

Now as there is a proof from the witness himself that he was personally served a letter from the author, we have no reasons to disbelieve him. If the defence believes the witness to be unworthy of trust, then they should show that in cross examination, as admitting the evidence is one thing according it weight is another.

It suffices to find that, according the weight to the evidence depends on a number of factors, including but not limited to the veracity of the evidence which is assessed along with other evidence, the exercise which is normally done at the end of the proceedings after considering the evidence given by the same witness in cross examination.

That said, I find the document to be competent and the witness is also competent to tender it. The objection is thus overruled for the reasons given; the letter written to the National Prosecution Services and copied to the Hon. Judge in charge of this court and PW2 (TWT) is hereby admitted and marked as exhibit P1 (TWT).

It is accordingly ordered.

DATED at DAR ES SALAAM this 15th day of November, 2021



A handwritten signature in blue ink, appearing to read "J.C. Tiganga".

J.C. TIGANGA

JUDGE