IN THE RESIDENT MAGISTRATE COURT OF DODOMA

AT DODOMA

(APPELLALTE JURISDICTION)

PRM. CRIMINAL APPEAL NO. 27 OF 2012

(DC) CR. APPEAL NO. 5 OF 2012

ORIGINAL CRIMINAL CASE NO. 141 OF 2011

OF THE DISTRICT COURT OF KONDOA DISTRICT AT KONDOA

VERSUS

MOLLA RAMADHAN .....APPELLATE

THE REPUBLIC.....RESPONDENT

JUDGMENT

10//9/2012 & 23/10/2012

R.I. RUTTINISIBWA- PRM. EXT. J.

MOLLA RAMADHAN , call him the appellant was once an accused person in criminal case No. 14 of 2011 of Kondoa District Court and appeared face to face with the charge of obtaining money by false pretences c/s 302 of the Penal Code Cap. 16 Vol. 1 of the laws, R.E. 2002.

The particulars of THE offence were as follows:

That MOLLA s/o RAMADHAN CHARGED ON 29TH March, 2011 at or about 17.00 hrs around Kondoa District court area in Dodoma Region by false pretences and with

intent to defraud did obtain cash money Tshs 397,000/= from one MUSTAFA S/O MAUL ID for arranging bail bound for his sons to be released from prison, the fact that he does not have such a power and knew to be impossible.

The matter proceeded on full trial, at the end the appellant was convicted and sent to jail to serve a term of seven years and ORDERED refund of Tshs 397,000/=. Aggrieved by the decision the instant appeal was preferred.

The memorandum of appeal lodged contained a number of six grounds. After a careful perusal and from the nature of the submissions I shall deal with them in seriatim. The Respondent/Republic was represented by Ms. Magessa, learned state attorney. She supported the conviction and challenged the contents of the appeal.

The short story on what transpired before the trial court can be narrated as follows:

PW1 Hussein Mustafa, and PW3, Hamidu Mustafa Maulid were the sons of PW2, Mustafa Maulid. The sons and the appellant were once in remand facing different charges on bailable offences. While in remand prison the appellant told the two that when he will go out he will assist them to get bail. It was said that the appellant traced PW2 and talked about how to get sureties who were employed. That he convicted PW2 to give him money which he could use to corrupt the magistrate and the prosecutor and costs for sureties. The money was received but the sons were not bailed out as arranged. Then PW2 traced the appellant to demand his money. In the defence the appellant admitted to have received a loan of Tshs 350,000/= but denied the corrupt transactions.

Now back to the grounds of appeal. It was said by the state attorney and I side with her that the first ground was obvious. The appellant wrote that he did not plead guilty.

On the second ground the appellant said that the ingredient with intent to defraud was not proved beyond reasonable doubt.

When the matter came for hearing the appellant did not submit on this ground. The learned state attorney argued that the appellant demanded Tshs 397,000/= from PW2 and he was given. That the arrangement started when he was in remand together with PW1 and PW3. The state attorney did not have much to say on the ingredient of intent to defraud.

The elements for obtaining goods by false pretences are (1) that the accused did make a false pretence; (2) that it was with intent to defraud: (3) that the accused thereby obtained from that other person something capable of being stolen or induced him to deliver to another person something capable of being stolen. **(see. B.D. Chipeta, A hand Book for public Prosecutors. 3rd edn. 2009 at page. 137) .**

The word "to defraud" was described by Hon. Chipeta J, (as he then was) to mean to induce a course of action by deceit. (see. B.D. Chipeta. A hand book for Public Prosecutor (supra) Page 138.

When adducing evidence PW2 said that the appellant called him and introduced himself. He told PW2 about the bail for his sons PW1 and PW3. That the

appellant told PW2 that he will find civil servants who could meet bail conditions. That those sureties needed 50,000/= each. He gave him 100,000/=. That the appellant also asked for 250,000/= that that was the money which had to be given to the Magistrate. There was also 47,000/= which the appellant asked to be given so that can pay beer for the magistrate and the prosecutor. That he gave that money. At the end the sons PW1 and PW3 were not brought before the court for bail and the appellant took on heels. He was arrested later on and escorted to police station.

The appellant in his defence admitted to have received the money from PW2. He said that it was a loan which he failed to pay.

When analyzing the evidence on both side the trial court said that it was not disputed that PW1 and PW3 and the appellant met in prison. That it was true the appellant called PW2 and introduced the issue. The trial court assessed PW2 as a reliable witness worth of saying the truth.

In the case of **Jumanne Bugingo &Another V.R. Cr. App. No. 137 of 2002 (C.A) unreported** it was said that where the decision of court is wholly based on the credibility of the witnesses, then it is the trial court which is better placed to assess, their credibility than an appellate court which merely reads the transcripts of the record. It was also said that the trial court's finding as to credibility of witness is usually binding on an appeal court unless there are circumstances on the record which call for re reassessment of their credibility. (**see Omar Ahmed V.R. (1983) TLR. 52).**

In the instant case the assessment of the trial court that PW2 was a reliable witness is binding to this first appellate court . The transaction initiated by the appellant was made with intent to defraud.

That said the 2nd ground is dismissed.

On the 3rd ground the appellant said that the place where the incident took place was not clear. That while the charge sheet said that the incident took place within the court premises, the evidence stated that it was done partly at the bar and at the court.

The appellant again did not offer explanation on this ground. The state attorney submitted how the appellant was given the money. She said that while at the bar the appellant was given the money . That he was given 47,000/= for beer, then 250,000/= to be handed to the magistrate and 100,000/= were said to be charges for the intended sureties. That all those were tricks.

I have carefully perused the proceedings. I agree that the transaction took place at various premises. There are some amount which were paid at the bar and some money was paid at the court area.

The question is whether that difference goes to the root of the matter. In my view that difference does not go to the root of the matter because the transaction was still the same.