

IN THE HIGH COURT OF TANZANIA

AT SONGEA

DC CRIMINAL APPEAL NO. 20 OF 2013

(Originating from MBINGA DISTRICT COURT CRIMINAL CASE NO. 102 OF 2012)

MANFRED HYERA.....APPELLANT

Versus

THE REPUBLIC.....RESPONDENT

Last Order: 16th August, 2013

Date of Judgment: 23rd October, 2013

JUDGMENT

FIKIRINI, J:

Manfred Hyera was charged and convicted of stealing by agent contrary to section 273 (b) of the Penal Code, Cap 16 R.E 2002 and sentenced to

seven (7) years imprisonment by the Mbinga District court's decision dated 28th March, 2012. Dissatisfied by the said decision, the appellant appealed to this court, having a total of five (5) grounds.

The prosecution called a total of sixteen (16) witnesses and tendered into evidence a number of documents to prove that the appellant between the 07th June and 14th September, 2010 during the coffee season, he was entrusted with Tzs 162,200,000/= by the DAE Company for the purposes of buying coffee from farmers on their behalf. The appellant managed and delivered 324,485 kgs of coffee valued at Tzs. 143,759,363.90/=. But failed to deliver coffee for the remaining balance of Tzs. 18, 440, 636.10/=. The company considered this as theft and preferred charges against the appellant. On 24th September, 2010 the appellant was arrested and charged. While this was going on the appellant account was searched and Tzs.5, 439, 090/= was found.

At the hearing the appellant requested the court to adopt all the five grounds of appeal as stated in his memorandum of appeal and added three more grounds. Close scrutiny of the grounds stated in the memorandum of appeal and those raised during the hearing examined as a whole were all

focused on one point of determination that of whether the prosecution has proved its case beyond all reasonable doubt.

In responding to the appeal Mr. Mwamwenda - Senior State Attorney challenged the three additional grounds as baseless and an afterthought. Likewise, he opposed the fourth and fifth grounds arguing that the trial magistrate had no obligation of stating the elements of the offence. As for the auditor's aspect it was his submission that the auditor was called as a witness. He testified on what transpired and tendered a report which was admitted into evidence. The appellant had therefore no valid ground in this regard.

Otherwise, according to Mr. Mwamwenda only the second and the third grounds of appeal were worth for consideration. And based on those two grounds the respondent supported the appeal that the prosecution side failed to prove its case beyond doubt. First, the charge preferred was not sufficient to prove the offence alleged as the main ingredients of theft pursuant to sections 257 – 258 (5) of the Penal Code, Cap 16 R.E 2002 were missing. As a result the prosecution could not prove its case beyond all reasonable doubt.

Second, the trial court convicted the appellant for failing to pay farmers. These farmers came to claim for their payments and were paid while the appellant was no longer at work. The payment was as well done without consulting the appellant as to its genuineness. The action taken by DAE of paying these claimants raised a doubt that it is possible even what is alleged against the appellant was not true, based on the way they handle things.

Third, the appellant's account was frozen even before he was heard. Mr. Mwamwenda questioned the police authority in this regard in the absence of a proper court order. The above highlighted points and the case as a whole was in Mr. Mwamwenda's view not proved beyond reasonable doubt and that is why the respondent supports the appeal.

I have carefully read the proceedings, judgment, grounds of appeal as stated in the memorandum of appeal and submissions made during the hearing. I join hands with the respondent that the prosecution side has indeed failed to prove its case beyond all reasonable doubt the standard required in law. Looking at the charge sheet, the appellant was charged

with one count of stealing by agent contrary to section 273 (b) of the Penal Code. This is what is stated in section 273 (b):

" property which has been entrusted to the offender either alone or jointly with any other person for him to retain in safe custody or to apply, pay or deliver for any purpose or to any person the same or any thereof or any proceeds thereof;"

In order for the prosecution to prove its case they were supposed to prove existence of guilty acts which would have specifically reflected asportain the main ingredient in theft charge as well as guilty mind. With the above preferred provision of the law alone the prosecution could in essence not prove its case beyond reasonable doubt.

The fact that he was an agent and was entrusted with money to buy coffee from farmers on behalf of DAE company, but failed to deliver coffee worth the balance of Tzs. 18,440,636.10/= was not sufficient to establish and prove theft as alleged in the charge sheet. The appellant in his defence told the court that he was arrested before he had completed his assignment of collecting coffee as the season was still on. The trial magistrate did not consider this piece of evidence. Had the court considered this evidence, it definitely would have arrived at a different

decision. I thus do agree with the respondent that the trial court erred in convicting the appellant without sufficient evidence.

The trial magistrate was as well not correct in convicting the appellant for failing to pay the farmers who came to claim while he was not at work. It was strange for the court to expect the appellant who was no longer at work to effect such payment. Nevertheless, the trial court proceeded to convict the appellant based on evidence produced by DAE Company that they effected payment to those farmers who went to them claiming they were not paid without verifying with the appellant. First, there was no proof if those farmers had genuine claim. Second, the company had an obligation of verifying before making any payment. Third, this in my view showed laxity in the way the company conducted its business. If they could easily pay people without much needed proof what would then stop them from alleging anything without proof? Considering these doubtful activities by the complainant, I do not in any way fathom how did the trial magistrate arrive at its decision without any proof. Moreover, the appellant was not charged with that. It was therefore incorrect for the trial magistrate to conclude so and convict the appellant.

Turning to the first ground of appeal that the trial court judgment did not comply to the requirement of section 312 (1) of the Criminal Procedure Act, Cap 20 R.E 2002 which requires every judgment to have the point or points for determination, the decision and the reasons for the decision, I am in agreement with the appellant. Narrating of the evidence adduced in court in my view is not sufficient. Objective evaluation of the entire evidence is not only necessary but paramount task of the trial magistrate. In the case of **Mkulima Mbagala V. R, Criminal Appeal No. 267 of 2006, CAT (unreported)**, the court had this to say:

"For a judgment of any court of justice to be held to be a reasoned one, in our respectful opinion, it ought to contain an objective evaluation of the entire evidence before it. This involves a proper consideration of the evidence for the defence which is balanced against that of the prosecution in order to find out which case among the two is more cogent. In short, such evaluation should be a conscious process of analyzing the entire evidence dispassionately in order to form an informed opinion as to its quality before a formal conclusion is arrived at."

This summarizes all that I wanted to say regarding the trial court judgment in this appeal.

After saying so, I thus join hands with the republic and conclude that this appeal is meritorious and hence proceed to allow it by quashing the

conviction and set aside the sentence and any other orders related to the case. The accused person to be released from prison forthwith unless held for other lawful reasons. It is so ordered.

Judgment Delivered this 23rd of October, 2013 in the presence of Manfred Hyera the appellant and Ms. Jacqueline Nyantori – State Attorney for the respondent/republic.



P.S.FIKIRINI

JUDGE

Right of Appeal Explained.



P.S.FIKIRINI

JUDGE

23rd OCTOBER, 2013