

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF BUKOBA  
AT BUKOBA**

**CRIMINAL APPLICATION NO. 33 OF 2021**

*(Originating from criminal case No. 114 of 2019 of Muleba District Court)*

**MICHAEL JACKSON.....APPELLANT**  
**VERSUS**  
**THE REPUBLIC.....RESPONDENT**

**JUDGMENT**

*01<sup>st</sup> June & 11<sup>th</sup> June 2021*

***Kilekamajenga, J.***

The appellant was arraigned before the District Court of Muleba for the offence of obtaining money by false pretence. It was alleged that, the appellant obtained Tshs. 7,500,000/= from Adelius Apolinary. The allegation stated that appellant pretended to be a motor vehicle dealer and managed to solicit that amount of money from the victim promising to sell a car to the victim. In this case, the prosecution marshalled three witnesses for the evidence and the trial court was finally convinced that the case was proved to the required standard. The appellant was convicted and sentenced to serve five (5) years in prison. Aggrieved with the decision of the trial court, he appealed to this court with five (5) grounds of appeal thus:-

- 1. That, the Trial court grossly erred in law and facts by convicting the appellant basing on a doubtful prosecution witness PW1 as to how he contacted the Appellant by using phone number 0714403681 and*



*0755913861 in which was not registered Appellants' names and their registration names not mentioned in court at all. Furthermore, the pictures allegedly to have been sent via his mobile phone never tendered before the court.*

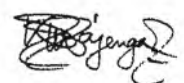
- 2. That, the Trial Court grossly erred both in law and fact by deciding the case against the weight of evidence; whereby the bank statement of one Naima Jamal Mohamed owner of NMB account number 23510031557 in which the amount of money was deposited never tendered in court to prove the same.*
- 3. That, the trial Court erred in law and fact by relying on evidence of Pw1; that bank account in which the money was sent that is NMB account number 23510031557 owned by Naima Jamal Mohamed had relation with the Appellant to warrant his conviction.*
- 4. That, the Trial court erred in both law and fact by convicting the appellant based on testimony of prosecution witnesses who are not credible and doubtful evidence as no any prove of existence of the allegedly obtaining money by false pretence.*
- 5. The Appellant prays to this Honourable Court for Judgment and orders as follows:-*
  - a) That, this Honourable Court be pleased to allow this appeal and entire judgment and orders of the District Court be quashed.*
  - b) That, this Honourable Court be pleased to find that the prosecution evidence failed to prove the case beyond reasonable doubt against the Appellant.*
  - c) This Honourable Court to quash conviction, sentence and proceedings hence acquit the appellant accordingly.*
  - d) Any other relief(s) or orders as this Honourable Court find fit and just to grant.*

When the appeal came for hearing, the appellant appeared in person while the learned State Attorney, Ms. Naila Chamba appeared for the republic, the respondent. Being a layperson, the appellant's submission was just brief. First, he denied the ownership of the phone number used to solicit money to the victim. He also denied the ownership of the NMB account number that received the money from the victim. He invited the court to evaluate whether the prosecution proved the case to the required standard.

In support of the appeal the learned State Attorney informed the court that the phone numbers 0714-403681 and 0755913861 used to communicate with the victim do not bear the name of the appellant. Also, all the exhibits which were tendered in court including the bank statement and the accused person's caution statement were not read in court. Furthermore, the bank account that received the money belonged to Naima Jamal Mohamed with account Number 23510031557 (NMB).

When rejoining, the appellant just urged the court to set him free.

The major issue in this case is whether the prosecution proved its case beyond reasonable doubt. As earlier hinted, the prosecution's case relied on the evidence of three witnesses. PW1 was Adelius Vedasto Apolinary who was the victim of the scam testified that he was given a phone number 0714-403681 for



communication. After the negotiation for the car deal, he was given NMB account No. 23510031557 to deposit the money. The account number bore the name of Jamal Mohamed. However, the prosecution did not go further proving the nexus between the phone number and NMB account number with the appellant. It is therefore doubtful how the appellant was associated in this transaction. If there is no evidence to show that the phone number and Bank account number belonged to the appellant, the prosecution evidence is loose to sustain a conviction.

Furthermore, when the appellant was arrested, he was interrogated. He admitted to have been involved in the scam. However, the appellant's caution statement was admitted but not read in court. In the light of the law, such an exhibit deserves to be expunged from the proceedings of the trial court. This stance was taken in the case of **Robert P. Mayunga and David Charles Ndaki V. R; Criminal Appeal No. 514 of 2016**, CAT at Tabora where the Court of Tanzania stated that:-

*"...documentary evidence which is admitted in court without it being read out to the accused is taken to have been irregularly admitted and suffers the natural consequences of being expunged from the record of proceedings."*

The court went further stating that:-

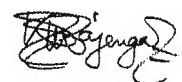


*"In essence the requirement to have the document read out to the appellant after it is cleared for admission is meant to let the appellant aware of what was written in the document so that he can properly exercise his right to cross-examine the witness effectively. Failure to read out to the appellant a document admitted as exhibit denies the appellant the right to know the information contained in the document and therefore puts him in the dark not only on what to cross-examine but also how to effectively align or arrange his defence. The denial therefore, abrogates the appellant's right to a fair trial..."*

In this case, if the appellant's caution statement is expunged, the court remains with evidence which do not link the appellant to the offence charged. I fairly find that the prosecution failed to prove the case to the level of beyond reasonable doubt. I hereby allow the appeal and set aside the decision of the trial court. The appellant should be set free unless held for other lawful reasons. It is so ordered.

**DATED at BUKOBA** this 11<sup>th</sup> day of June, 2021.

   
**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**11/06/2021**



**Court:**

Judgement delivered in the presence of the appellant and the learned State Attorney, Mr. Juma Mahona (SA).



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