

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**AT SUMBAWANGA**

**DC CRIMINAL APPEAL NO. 72 OF 2018**

*(Originating from Criminal Case No. 214 of 2016 from Sumbawanga District Court)*

**THE REPUBLIC ..... APPELLANT**

**VERSUS**

**ZAKAYO OWENYA .....1<sup>ST</sup> RESPONDENT**

**TORIO KAVATO @ MAFIE .....2<sup>ND</sup> RESPONDENT**

**JOHANES MBUSILA @ SANGA @ GADAU ..... 3<sup>RD</sup> RESPONDENT**

*Date of last Order: 18/11/2020*

*Date of Judgment: 31/12/2020*

**JUDGMENT**

**C.P. MKEHA, J**

The first and second respondents were prosecuted before the District Court of Sumbawanga for distinct offences as follows. In the first count, the first respondent, Zakayo s/o Owenya was charged with an offence of Importing, Distributing and Selling seeds not conforming to the standard of germination and purity contrary to section 14 (4) (b), 5(b), 6 and 14 A (1) and (2) of the Seeds Act No. 18 of 2003 as amended by the Written Laws (Miscellaneous Amendments) Act No. 4 of 2014. The specific allegation was that in the year 2015 by virtue of being the General Manager of PANNAR SEED (T) LTD, the first respondent did import, distribute in Sumbawanga Municipality and sale

half tons of maize PANNAR 691 type to Msipazi Farm Ltd valued TZS. 2,760,000/= which does not conform to the standard of germination and purity and other requirements prescribed.

In the second count, the second respondent, TORIO s/o KAVAITO @ MAFIE was charged with an offence of distributing and selling seeds not conforming to the standard of germination and purity contrary to section 14 (4) (b), 5 (b), 6 and 14 A (1) and (2) of the Seeds Act No. 18 of 2003 as amended by Act No. 4 of 2014. It was alleged that the 2<sup>nd</sup> respondent, in the year 2015, by virtue of being the southern Highlands Zonal Manager of PANNAR SEED (T) LTD did distribute in Sumbawanga Municipality and sale, half tons of maize PANNAR 691 type to Msipazi Farm Ltd valued at TZS. 2, 750,000/= which does not conform to the standard of germination and purity and other requirements prescribed.

The person appearing as the third respondent in this appeal, passed on when this appeal was pending for hearing. As such, his case was marked to have abated under section 371 A of the Criminal Procedure Act, on 10/11/2020. Before the District Court, the deceased was charged in the 3<sup>rd</sup> count of an offence of selling seed not conforming to the standard of germination and purity contrary to section 14 (4) (b), 5 (b) 6 and 14A (1) and (2) of the Seeds Act No. 18 of 2003 as amended by Act No. 4 of 2014. The allegation against the deceased was that on the 28<sup>th</sup> November, 2015, trading as GDAU

AGROVET, for and on behalf of PANNAR SEED (T) LTD, the deceased did sale half tons of maize PANNAR 691 type to Msipazi Farm ltd valued at TZS. 2, 750,000/= which does not conform to standard of germination and purity and other requirements prescribed.

At the end of the respondents' trial before the District Court of Sumbawanga, each was acquitted of the offence charged. The Director of Public Prosecutions was not satisfied. An appeal comprising of seven grounds of Appeal was preferred. The grounds are as follows:

1. That, the Trial District Court erred in law and facts to find that the accused are not guilty while the prosecution evidence on the record was tangible and sufficient to convict the respondents as the said evidence proved the offences beyond all reasonable doubt.
2. That, the Trial Magistrate erred in law and facts in holding that the jurisdiction where the offence was committed was not specified while the charge sheet and the evidence was specific as to where the offence occurred.
3. That, the Trial Magistrate erred in law and facts by failing to analyse prosecution evidence as a whole to the extent of reaching to a conclusion that there was no document which prove that 1<sup>st</sup> and 2<sup>nd</sup> accused persons did sell (distribute) the said seeds while they were

prosecuted by virtue of being the General Manager and Zonal Manager of PANNAR SEED (TANZANIA) LTD.

4. THAT, the Trial Magistrate erred in law and facts in his assessment of the evidence tendered to the extent of stating that there was no physical seeds alleged to be below germination tendered as exhibit while there was no dispute that PANNAR SEED was sown (sic) at the said land and the TOSCIU Report revealed the said seeds to be below standard of germination.
5. That, the Trial Magistrate erred in law and fact in holding that the accused persons were not aware with the inspection conducted by PW2 while there was Sale Representative of PANNAR SEED (TANZANIA) who represented 1<sup>st</sup> and 2<sup>nd</sup> accused persons. Also 3<sup>rd</sup> accused person was there when the inspection was done.
6. That, the Trial Magistrate erred in law and facts in holding that no proof that the accused had evil mind to commit the alleged offence while the evil mind was displayed through their conduct of selling and distributing seeds which were below standard of germination and purity by taking into account their duty imposed under the law as dealers and sellers.
7. That, the Trial Magistrate erred in law and facts in his assessment of the evidence tendered and as a consequence thereof his judgment and orders which are contrary to law and against the weight of evidence.

In this appeal, the appellant was represented by Mr. Mwashubila learned Senior State Attorney. On the other hand, the respondents were represented by Mr. Budodi learned advocate.

Despite the fact that the learned counsel for the parties addressed all the grounds of appeal in their respective written submission, I intend not to deal with all the grounds of appeal. In the case of **SIMON EDSON @ MAKUNDI Vs. THE REPUBLIC, CRIMINAL APPEAL NO. 5 OF 2017**, the Court of Appeal stated that, the appellate court is bound to consider the grounds of appeal presented before it and in so doing, need not discuss all of them where only a few will be sufficient to dispose of the appeal. The situation in the present appeal permits that course.

The first ground of appeal suffices to dispose of the present appeal. In the said ground, the learned Senior State Attorney attempted to fault the Trial Magistrate in his finding that the accused/respondents were not guilty. In view of the learned Senior State Attorney the prosecution evidence on record was tangible and sufficient to convict the respondents as the said evidence proved the offences beyond reasonable doubt.

The learned advocate for the respondents replied partly that, the charge sheet laid against the respondents was fatally defective because of duplicity, hence, the same could not rightly lead to the respondents' conviction. According to the learned advocate, in the first count, the first respondent was charged with

three distinct counts namely, **importing, distributing** and **selling** seeds not conforming to the standard of germination and purity. Equally, in the second count, the second respondent was charged with two distinct offences namely, **distributing** and **selling** seeds not conforming to the standard of germination and purity. The issue is **whether the charges against the respondents were properly drafted.**

There is no denial that, under the relevant law, **importation, distribution** and **sale** are treated as distinct offences. Therefore for charging the said offences in the first count, and two of them in the second count, the charge was indeed bad for duplicity. In the case of **Adam Angelius Mpondi Vs. Republic, Criminal Appeal No. 180 of 2018** whose decision was delivered on 19<sup>th</sup> October, 2020, the Court of Appeal held that, when a charge is contained with two separate offences in one count is said to be duplex. And the said ailment is not curable. In the said case, the Court proceeded to order release of the appellant as the ailment on the charge was not curable and that, no order for remission of the file could have been given because the charge was fatally defective.

It was for the reasons herein above I considered the first ground of appeal to be determinative. And, for the foregoing reasons, I uphold the trial court's finding that the two respondents are not guilty. The appeal stands dismissed for want of merit.

Dated at **SUMBAWANGA** this 31<sup>st</sup> day of DECEMBER, 2020.



  
**C.P. MKEHA**

**JUDGE**

**31/12/2020**

**Court:** Judgment is delivered in the presence of Mr. Mwashubila Senior State Attorney for the appellant, and Mr. Budodi advocate for the respondents.



  
**C.P. MKEHA**

**JUDGE**

**31/12/2020**

**Court:** Right of further appeal to the Court of Appeal of Tanzania is explained.



  
**C.P. MKEHA**

**JUDGE**

**31/12/2020**