IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA

(CORAM: LILA, J.A., MWANDAMBO, J.A., And FIKIRINI, J.A.)

CRIMINAL APPEAL NO. 306 OF 2018

BASILID JOHN MLAY .....APPELLANT

VERSUS

REPUBLIC ..... RESPONDENT

(Appeal from the Judgment of the high Court of Tanzania at Arusha

(Maghimbi, J.)

dated on 2nd day of September, 2016

in

Criminal Appeal No. 306 of 2016

JUDGMENT OF THE COURT

28th September, & 21st October, 2022

LILA, JA:

Before the Resident Magistrates' Court of Manyara at Babati, Basilid John Mlay, the appellant herein, was charged with six counts of corruption transactions contrary to sections 15(1) (a) and 15 (1) (b) of the Prevention and Combating of Corruption Act, (the PCCA). He was found guilty in counts number 1, 3 and 4 which were on respectively, soliciting payment of TZS 9 Million from one Joseph Matiko Fredrick working with Jemason Investment Company Ltd (henceforth Jemason) as inducement for him to

prepare and sign a Certificate of completion No. 2 so as to enable payment of TZs 160,650,000.00 and receiving TZS 4 million and TZS 3 Million from Martin and Joseph Matiko Fredrick, respectively, both working with Jemason as inducement for him to prepare and sign a Certificate of completion No. 2 so as to enable payment of TZS 160,650,000.00. He was sentenced to pay a fine of TZS 500,000.00 on each count failing which to serve two years' imprisonment on each count which sentences were ordered to run concurrently. His appeal to the High Court was unsuccessful hence the present appeal.

It was alleged in the three counts respectively that the appellant being a servant of Mbulu District Council as Water Engineer and head of water department sometimes in the year 2012/2013 he solicited payment of TZS 9,000,000.00 from one Joseph Matiko Fredrick and corruptly received TZS 4,000,000.00 from one Martin and TZS from Joseph Matiko Fredrick both working with Jemason Investment as an inducement for him to prepare and sign a Certificate of Completion No. 2 to enable payment of TZS 160,00,00.00 be effected regarding contract No. LGA/061/2011/12/wsdp/nc/Lot2.

Relevant to this appeal, these facts were not disputed by the appellant during the preliminary hearing conducted by the trial court in terms of section 192 of the Criminal Procedure Act (the CPA):-

> *"1. That, in his capacity as a District Water Engineer at Mbulu District Council was advisor to the Council to all matters related to water supply Project in respective council.*
>
> *2. That, he contacted with one Joseph Matiko Fredrick (a Managing Director of Jemason Investment Co Ltd) a company which had a contract with Mbulu District Council in respect of water project at Dongobesh in Mbulu District Council.*
>
> *3. That, he had occasionally been communicating with one Joseph Matiko Fredrick regarding water projects under the mentioned contract carried out by his company at Dongobesh."*

Following the appellant's denial of the crucial and incriminating facts, the prosecution paraded seven witnesses and tendered nine exhibits in their quest to prove the appellant's guilt of the offences charged. The latter, in defence, called three witnesses including himself.

According to the prosecution case, it all started with a company operating in the name Jemason successfully tendering and entering into

the above mentioned contract for construction of water gravity project at Dongobesh village. In the course of executing the work, Martin Matiko Nyatika (PW3) was the project manager working with Jemason and the appellant was the project supervisor on behalf of the Mbulu District Council. The appellant called PW3 and asked as to how he was going to benefit from the project. PW3 reserved his response so as to communicate with the company director one Joseph Fredrick Matiku (PW4) and the latter went to Mbulu to meet the appellant where the appellant asked to be paid TZS 9 Million so that he could work with them without disturbances. PW4 promised to pay the money through PW3 and left to Dar es Salaam where he took time to think over the matter. Instead of keeping to his promise, PW4 reported the matter to the Deputy Permanent Secretary, Ministry of Local Government and Regional Administration (TAMISEMI) one Alfayo Japan Kidata (PW4) who required evidence so that he could deal with the matter. PW4 had no evidence and he told him that he will get it after giving the money to the appellant or after getting a message from him. Then the appellant send him a message asking for the money claiming that his colleques were disturbing him. He then sent TZS 4 Million to PW3 so as to give it to the appellant as an advance payment.

PW3 who remained in Mbulu testified that he continued with the project and the company asked to be paid 160,000,000.00 from the District Council whereupon the appellant told him that he would not proceed with anything before he got his share from that amount. PW3 made a call to PW4. PW3 gave such money to the appellant at his office with a promise to pay the balance later as work was still going on. In March, 2013 the appellant reminded PW3 on the payment of the balance and upon communicating with PW4, TZS 3 Million was deposited into his (PW3) account by PW4. PW3 then asked the appellant to give him his account so that he could deposit money and the appellant gave him his NMB account No. 41202400265 on 19/3/2013 into which he deposited TZS 3 Million and obtained a pay-in slip (exhibit P 1) which had his name (Nyatika) as the one who deposited the money. According to PW3, the appellant kept complaining over the remaining amount by frequently sending messages using mobile phone No. 0784 976252 to the effect that he was final and if his demands are not complied with, it would be hard to pursue the work which messages he forwarded to PW4. Some of the messages stated that "*Nilishawaeleza kwamba mimi hapa ni final naona hamnielewi nitaendelea*

kukaza kamba" and "nyie akina Matiku mbona mnakuwa vigeugeu, tunapoongea baadae mnageuka?".

According to PW4, he went again to PW2 whom he had forwarded the messages received from the appellant as evidence but it took too long to act on his complaint and as the appellant was still pressing to be paid the balance, PW4 had it that the appellant made it clear that he won't inspect the work and the company will not be paid despite being responsible to do so. Afterwards, he asked PW3 to get from the appellant his bank account and upon getting the appellant's NMB account in which TZS 3 Million was deposited by PW3 and a copy of a pay-in slip send to him (PW4). PW4 went further to tell the court that the appellant then send him a message that "*hizo million mbili zilizobaki mtazitoa tu hata mkidai kukauka kama jiwe*" (literally meaning that "the remaining two million shall be paid even if you pretend to be solid as stones"). PW4 took the copy of bank pay-in slip to PW2 who told the trial court that he reported the matter to the PCCB where he also made his statement. PW4 said that after three days, the appellant called telling him that he was the niece of Agrey Mwanry who cannot be threatened by anybody and he would make sure that he pays the money. After a week, he was phoned by PCCB officers

who told him that they had received his complaints about corruption and they wanted him and PW3 to go their offices and they went as directed and met one Otieno Abel Resa (PW1) who caused them to make statements and handed over to him messages sent by the appellant and bank pay-in slip.

In his testimony, PW1 told the trial court that they received complaint that the appellant solicited for payment of TZS 9 million for him to approve for payment of TZS 160,650,000/= and he recorded the complainant's statement and that of the appellant. He tendered in evidence the bank pay-in slip and bank statement (exhibit P1) showing TZS 3 Million were deposited in the appellant's NMB account. He said he also obtained communication documents from Airtel Tanzania at DSM (exhibit P2) which proved appellant's ownership of the mobile number and his communication with the complainants. He said, according to the Jemason's bank statement (exhibit P3), on 13/12/2012 the owner of the company withdrew TZS 8,200,000/= and on the same date he deposited it into PW3's account who also on the same date, withdrew 6 Million. He also tendered payment certificate of TZS 160,650,000.00, receipt from Jemason of that amount, memo, tax invoice and the accused's statement (exhibit P4). He said that

the payment certificate was signed on 20/12/2012 after the payment of TZS 4 Million. The certificate was to be signed by others like Project Consultant who was the first to sign in order for the payment to be effected. He further stated that the bank transactions showed that the moment PW3 withdrew TZS 6 Million, he took TZS 4 Million to the appellant.

Betuel John (PW5) and Benedict Ferdinano (PW7), bankers at NMB Mbulu, told the trial court that the appellant was their customer following his filling account opening form indicating his particulars, passport number, photo, signature and full name. He said the appellant owned Account No. 41202400265 with contact No. 0787 125476 with Post Office Box No. 1 Mbulu. He explained that exhibit P1 which is a bank statement for Account No.41202400265 owned by the appellant showed that there was a credit transaction of TZS 3 Million credited by Nyatika (PW3).

The above accusations by the prosecution were, in defence, stoutly denied by the appellant. Apart from admitting that he was a Water Engineer for Mbulu District and the contract for construction of water source at Dongobesh being awarded to Jemason being the contractor, he denied soliciting payment of money from anyone or sending messages to

anyone as the messages do not show that they emanated from him. He stated that the certificate was supposed to be signed by five persons before payment was affected him being one of the signatories and the consultant one POA Company. He claimed that there was no delay in the payment of certificate as it was sent to the consultant on 20th December, 2012 and payment was made on 21st December, 2012. He denied knowing PW4, his visit to his office and giving him money together with the fact there was no document was tendered to prove his employment with Jemason. He claimed that the pay-in slip showed that Nyatika (PW3) had deposited TZS 3 Million in his account and not by PW4 as alleged in the 5th count as there is no allegation on the charge indicating that he obtained money from Nyatika hence there was no connection between the charge and exhibit tendered. He also said that the amount in the charge totals to TZS 14 Million while the charge shows that he solicited payment of TZS 9 Million, something showing that the charges were a frame up.

In further defence, the appellant denied being the supervisor of the project although he was a Water Engineer and stated that his duty was to supervise the consultant representing the District Executive Director (DED) with no direct connection with the contractor.

In respect of mobile phone no. 0784 976252 used to send messages, he disowned it completely. He denied using it in his bank records as his number was 0987 125476. He, however later admitted writing that number in his statement but he could not remember if he was using it.

Regarding the bank account No. 41202400265/4122400265, he admitted it to be his and also was aware that TZS 3 Million was credited in it. He admitted knowing Martine Nyatika (PW3) but not Joseph Fredrick Matiku (PW4) who he came to know when he testified in court. He, however, admitted that he said he knew PW4 in his recorded statement but he had not met him before.

As for credited TZS 3 Million in his account, he claimed that he told the investigator that there was his relative one Martine Shayo residing at Mbeya claiming money from PW3 who wanted to use his account number for the money to be deposited in it. He said, he did not know if the money was deposited and the money deposited had no connection with the case.

To further strengthen the defence case, the appellant summoned two witnesses. The first was John Michael Ombay (DW2), a water technician at Mbulu District Council whose office was in the same building the appellant's

office was located. He simply told the trial court that visitors to the District Water Engineer (appellant) had to sign in the visitor's book otherwise he is not directed to the destination. His attempt to have the visitor's book admitted as exhibit bounced for the reason that he failed to establish his connection with. Next was Silvester Lusite Muhumpa (DW3), a Procurement Officer with Mbulu District Council. The substance of his evidence was that, on 1/6/2012, the District Executive Director (DED) Mbulu entered into a consultant agreement with POA engineering to supervise the water project at Dongobesh and Masleda Village (exhibit D1) and the contract stipulated the duties of the consultant at page 38. He also told the trial court that Jemason was contracted to build water project at Dongobesh. It was his evidence that payment could be effected to the contractor upon preparation of a certificate by the supervisor and the appellant as Water Engineer as among the people who were signatories to it. He knew one Martine who was the project manager of Jemason.

The learned trial Senior Resident magistrate raised six (6) issues to guide him in the determination of the case. He was, on the evidence, convinced that Jemason secured a contract to build a water source at Dongobesh at TZS 714,172,000.00, Martine Nyatika signed the contract on

behalf of Jemason whose Director was one Joseph Matiko Fredrick and at that time the appellant was an employee of Mbulu District Council as Water Engineer and was a signatory in authorizing payment for the water projects. On whether the appellant wanted to benefit from the project and solicited payment of 9 Million shillings, the trial magistrate was satisfied that the defence evidence was unable to raise doubt on the evidence by PW3 and PW4 that the appellant solicited payment of 9 Million from them despite the payment not being delayed which act it took as a result of the promise to paid the claimed amount. Such evidence was found to have been corroborated by that of PW2 to whom PW3 and PW4 had complained and reported the matter to PCCB after obtaining evidence of payment of the money to the appellant. In the absence of any grudges between the appellant and PW3 and PW4, the trial magistrate found no reason why the two could frame up the case against the appellant.

As for ownership and use of a mobile phone No. +255 874 976252 allegedly used in sending threatening messages to PW3 and PW4, through the bank details and personal particulars (exhibits P6 and P7) and his statement at the PCCB, the trial court was satisfied that it belonged to him and even PW2 proved so when he called him through that number. It was

however not convinced that the threatening messages came from that number on account of the same not being print outs from the said phone but it maintained that it showed that there were communication between the appellant on the one side and PW3 and PW4 on the other.

The trial court found that the allegation of corruptly receiving TZS 4 Million from Martin (PW3) which he solicited so as to sign Certificate of Completion No. 2 for payment of TZS 160,650,000/= established through the evidence by PW3 and supported by PW4 and PW2 whom the matter was reported. It sought reliance from the decision of the Supreme Court of South Africa in the case of **Johannes Mahlangu and Edward Rametsi vs The State No. (497/2010) [2011] ZASCA 64 (1 April 2011)** where the evidence of a single witness was given weight, and arrived at that finding after warning itself over the danger of relying on a single witness (PW3) who said he gave that money to the appellant after the same was sent to him by PW4.

In respect of the appellant corruptly receiving TZS 3 Million charged in count No. 4 of the charge to have been paid to the appellant by PW4 instead of PW3, the trial court was of the view that the evidence showed clearly that the money was deposited in the appellant's account by PW3 as

exhibited by the bank pay in slip but it came from PW3 and the appellant with his knowledge as he cross-checked his account but did not report anywhere about it and no acceptable explanation was given why that money was deposited in his account from people who were complaining against him.

In the end, the trial court was satisfied that the 1st, 3rd and 4th counts of the charge were proved beyond reasonable doubt by the prosecution; it convicted the appellant and sentenced him in the manner shown above.

Aggrieved, he preferred an appeal to the High Court but was not successful as it concurred with the trial court's decision. The appellant raised five (5) grounds in the petition of appeal before the High Court. Two of them have featured again in this appeal as shall be shown later. The grounds were:

> *"1. The learned magistrate did not advert her mind to the issue of credibility of witnesses*
>
> *2. The learned magistrate erred in law by acting on the uncorroborated evidence of witnesses who had interest of the own to serve; and ipso facto accomplices.*

3. *The learned magistrate misdirected herself in law in seeking corroboration of the evidence of a witness from the evidence of a witness who himself required corroboration.*

4. *The learned magistrate erred in law by shifting the burden of proof to the accused person.*

5. *The learned magistrate misdirected herself in law and in fact and arrived at the wrong finding that the offences charged were proved beyond reasonable doubt."*

The High Court considered the grounds of appeal generally guided by the issue whether or not the appellant solicited and obtained bribe from PW3 and PW4. It agreed with the trial court that the testimony by PW3 and PW4 on how the appellant solicited and received bribe from them could not be dented by that of the appellant. It applied the principle that the trial magistrate was better placed to assess the credibility of a witness than an appellate court which merely reads the transcript as was p opounded by the Court in the case of **Omari Ahmed vs Republic** [1983] TLR 52 and restated in witnesses **Alli Abdallah Rajab and Others vs Republic** (1994) T.L.R. 132 that since the trial court heard the witnesses testify before it and observed their respective demeanour and

was satisfied that the witnesses were credible, it equally found them credible and dismissed the appeal.

Still protesting his innocence, the appellant has now accessed this Court to challenge that decision. He is faulting the High court decision on a three (3) point memorandum of appeal couched thus:-

> *"1. That the learned judge erred in law by acting on uncorroborated evidence of witnesses who had an interest of their own to serve and ipso facto accomplices.*
>
> *2. That the learned judge misdirected herself in law in seeking corroboration of evidence from evidence which required corroboration.*
>
> *3. That the learned judge erred in law by acting on evidence unlawfully admitted in evidence."*

Mr. Fredrick Simon Kinabo, learned advocate, like it was before the High Court, appeared at the hearing of the appeal representing the appellant who was also in Court. Ms. Alice Mtenga and Ms. Neema Mbwana, both learned State Attorneys, represented the respondent Republic. They resisted the appeal.

Upon our scrutiny of the record of appeal it became evident to us that the matter had suffered an adjournment last time it was scheduled for hearing due to missing exhibits. To be exact and clear, all the documentary exhibits tendered and admitted by the trial court were found missing by the Court. In consequence, the hearing of the appeal was adjourned to pave way for the documents to be traced for reconstruction of the record. The mission did not succeed since by the time the record was placed before us for hearing nothing had already been recovered. The Deputy Registrar of the High Court (Arusha Registry) had sworn an affidavit to that effect. To avoid any further delays, we engaged the learned counsel of the parties on the way forward in the circumstances, regard being to the glaring fact that even assuming that they were available their admission into evidence were legally problematic. They were not read out to the appellant after they were cleared and admitted as exhibits. Mindful of the legal stance as propounded by the Court in **Robinson Mwanjisi and Others v Republic** [2003] TLR 218 and **Bulugu Nzungu vs Republic**, Criminal Appeal No. 39 of 2018 (unreported) that any document tendered in violation of that settled law stands to be expunged from the record, counsel of the parties were agreeable that there was no good reason that

would impede progress of the case. Accordingly, we expunged all the documentary exhibits from the record of appeal and proceeded with the hearing of the appeal. The effect of this was to render ground three (3) of appeal nugatory which, according to Mr. Kinabo, was grounded on that complaint. In that regard, therefore, two grounds of complaints remained calling for hearing and our determination.

Apparently, grounds one (1) and two (2) of appeal are not new. They were, as indicated above, raised before the High Court and Mr. Kinabo's arguments were by and large the same as those made before the High Court. He contended that PW3 and PW4 could not be taken to be reliable because they were accomplices. He reasoned that the duo did not report to any authority after the appellant had solicited for corruption and that they took too long a time to report to PW2. He added that since there is evidence that the appellant had refused to sign the certificate of completion when the project was yet to be completed, then PW3 and PW4 had reason to concoct such accusations against the appellant. He argued further that PW1 and PW2 were informed by PW3 and PW4 about the solicitation of corruption and it was only PW3 who claimed to have met the appellant in his office and given him TZS 4 Million hence it was improper

for the trial court to hold that PW3's evidence was corroborated by evidence by PW2 and PW4. Instead, he argued, the evidence by PW2 and PW4 only proved consistence and PW3 remained to be an accomplice.

Regarding bank documents, mobile phone numbers, bank statements and pay-in slips which were taken to have established that TZS 3 Million was credited in the appellant's bank account have been expunged hence the evidence remaining on that accusation is the oral evidence by PW3 and PW4 only. Since PW3 is an accomplice then the evidence by PW4 required corroboration. It could not corroborate PW3's evidence.

A further attack by Mr. Kinabo on the bank documents which were tendered by PW5 and PW7 was grounded on section 78(1) of the Evidence Act, (the EA) not being complied with in admitting them as evidence. As a consequence, Mr. Kinabo submitted, the remaining oral evidence is weakened which could not found a conviction.

Mr. Kinabo conceded that TZS 3 Million was credited into the appellant's account but claimed that it was corruptly. He explained that according to the evidence, such money was credited without his knowledge and also that the money belonged to one Martine Shayo who had asked

him to allow his payment by Nyatika with whom he had business transactions be deposited into his account. In sum, Mr. Kinabo attributed the accusations with the two witnesses' ill motive against the appellant for not signing the certificate of completion as the project was not completed.

In response, Ms. Mtenga had it that the expungement of all the documentary exhibits notwithstanding, there still remains sufficient evidence on which conviction may be justifiably grounded. She made reference to page 26 of the Court's decision in the case of **Simon Shauri Awaki @ Dawi vs Republic**, Criminal Appeal No. 62 of 2020 (unreported). She argued that, in the present case, PW3 and PW4 lead sufficient oral evidence proving the charge with PW3 giving a detailed explanation on how the appellant solicited payment of TZS 9 Million as bribe from him and such evidence was supported by PW4 who reported the matter to PW2 for action. She argued further that the appellant admitted TZS 3 Million being deposited into his account by PW3 and the alleged Martine Shayo who allegedly used his account was not called as a witness to prove so. She discounted the appellant's contention that the money was deposited without his consent for a reason that he did not take steps to report the matter to any organ. In the circumstances, she argued, the case

cannot be a concoction against the appellant and the witnesses had no personal interests to serve as alleged. She beseeched the Court to dismiss the appeal for want of merit.

In his brief rejoinder, Mr. Kinabo drew the Court's attention to page 50 of the record of appeal showing that the project was to be completed by January 2013 but PW3 and PW4 wanted him to sign the certificate of completion against the proper working procedure. Because of this, the two witnesses reported the appellant as being problematic hence they are not reliable.

With respect, we have carefully studied the entire evidence on record. We equally respectively agree with Mr. Kinabo that evidence by PW3 and PW4 was central to the appellant's conviction. Both courts below substantially relied on such evidence and were convinced that the appellant solicited and received bribe. Before us, as it was before the High Court, Mr. Kinabo was adamant that the two witnesses were accomplices whose evidence required corroboration which was lacking hence could not be relied on to ground a proper conviction. That was, as is shown above, the essence of grounds 1, 2 and 3 of appeal before the High Court and

grounds 1 and 2 of appeal before us. As a matter of recap, both courts below did not agree with Mr. Kinabo.

In our considered view, we have three crucial issues to determine in these two grounds of appeal and the appeal generally which are:-

1. *Whether PW3 and PW3 were witnesses with personal interests to serve or accomplices.*
2. *Whether their evidence required corroboration, and*
3. *Whether they were reliable*

We have deliberately given the full and detailed factual account of what transpired before the Court below for the purpose of providing an answer to the first issue. As our starting point and for the purposes of this appeal, section 142 of the EA is the most relevant. That section provides:-

> *"142. An accomplice shall be a competent witness against an accused person; and conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice."*

Corollary to the above, the High of Tanzania in the case of **Rozer v. R,** [1971] HCD no. 42 at page 26, in interpreting the above provision, stated that:-

> " *there is no rule of law that the evidence of an accomplice requires corroboration, but rather the contrary as expressly laid down in section 142 of the evidence Act, 1967...It is however a salutary rule of practice to require corroboration of the evidence of an accomplice".*

Unfortunately, what would lead one to be an accomplice is not defined in the EA. However, faced with such cases, the Court has expounded in sufficient details what factors renders one an accomplice. In **Adventina Alexander vs Republic**, Criminal Appeal No. 134 of 2002 (unreported), PW1 was ordered through threat by the appellant, her mother, to assist her to undress the deceased and to throw the body in a nearby path. The Court was satisfied that under the circumstances PW1 was not an accomplice. The Court took that stance upon being persuaded by the case of **Davies v DPP** [1954] 1 All E. R. 507 where the House of Lords defined the term "accomplice" to mean:-

> "... the term accomplice covers participle *criminis* in respect of the actual crime charged whether as principals or as accessories before or after the fact."

The above view was adopted by the Court of Appeal for Eastern Africa in the case of **JETHWA & ANOTHER V R** (1969) EA 459.

In yet our recent decision in the case of **The Direct Of Public Prosecutions vs Justice Lumina Katiti and 3 Others**, Criminal Appeal No. 15 of 2018 (unreported), the Court was asked by the appellants to hold PW5 and PW6 who admitted being signatories and actually signed a document which later on turned out be not genuine. The duo testified in court against the appellants to establish who presented the document to them. On appeal to the Court, PW5 and PW6 were attacked by the appellants' counsel as being witnesses with personal interests to serve and thus were accomplices hence unreliable. Looking at the evidence before it, the Court was satisfied that PW5 and PW6 signed the document innocently believing it to be genuine and declined to hold them accomplices or witnesses with interests to serve. In arriving at that decision the Court reiterated its position in **Adventina Alexandar vs.Republic** (supra) and went further to state that:-

> *"Going by the above definition, for one to be an accomplice, there must exist in him the mental element in committing or assisting the commission of the offence."*

As to who are witnesses with interests to serve, the Court observed that:-

"The concept of a witness with an interest to serve is meant to discredit a witness by establishing that he told a lie in order to serve his skin... for the Court to doubt PW5 and PW6 as witnesses with interest to serve the respondents must demonstrate that they have lied..."

In the light of the foregoing authorities and legal foundation in mind, we now revert to determine the issue before us which is whether PW3 and PW4 as well as PW2 are witnesses with interests to serve and or accomplices? On the authorities, in both cases what is crucial is their mental element.

This being a second appeal, trite principle of law is that interference with the concurrent findings of fact of lower courts is restricted to instances where there is a misdirection or non-direction only. (see **Salum Mhando vs Republic** [1983] TLR 170 and **DPP vs Jaffari Mfaume Kawawa** [1981] TLR 149). Both courts below did not doubt the trio's credibility and on their evidence grounded the appellant's conviction. We are also alive, as was rightly argued by the learned State Attorney that oral evidence of the witnesses is retained and remain valid regardless of the expungement of documentary exhibits from the record (see **Huang Qin and Another v**

Republic, Criminal Appeal No. 173 of 2018 and **Saimon Shauri Awaki @ Dawi vs Republic** (supra). That said and for the reason that all documentary exhibits have been expunged from the record, we shall consider the oral evidence of the prosecution witnesses only in gauging the appellant's guilt.

In the instant case and considering matters which were recorded as being undisputed hence requiring no further proof by calling witnesses as well as the evidence by both sides, it is evident and undisputable that, **one**; in his capacity as A District Water Engineer at Mbulu District Council was advisor to the Council on all matters related to water supply Project in the respective council; **two**, that he contacted one Joseph Matiko Fredrick (PW4), a Managing Director to the Jemason, a company which had a contract with Mbulu District Council in respect of water project at Dongobesh in Mbulu District Council; **three**, that he had occasionally been communicating with PW4 regarding water projects under the mentioned contract carried by his company at Dongobesh, and, **four**, although initially the appellant denied using a mobile phone number and operating the bank account in which TZS 3 Million was deposited, he later admitted that the account was his and such amount having been deposited into it by PW3.

We accordingly hold as being undisputed facts that the mobile phone number and the bank account belonged to the appellant and that TZS 3 Million was deposited into that account.

Reflecting on the undisputed facts, the evidence on record and applying the laws as expounded above, we are inclined to agree with the learned State Attorney and both courts below that PW2, PW3 and PW4 were neither witnesses with personal interests to serve nor were they accomplices. PW3 and PW4 explained in sufficient details how the appellant solicited bribe from them. PW3 was clear that the appellant called him asking how he was going to benefit from the project being executed by Jemason in which PW3 was a project manager. Unable to decide he asked PW4 the Director of the company. PW4 travelled to Mbulu to meet the appellant for discussion over the matter and promised to give him TZS 9 Million. The delay in paying him culminated in calls and messages from the appellant threatening that he would not sign the certificate of completion. PW4 sent money to PW3 for him to give TZS 3 Million to the appellant as part payment of TZS 9 Million solicited. PW3 gave the money to the appellant in his office. Mr. Kinabo suggested that since PW3 gave TZS 3 Million to the appellant in his office but denied by the recipient (the

appellant), PW3's evidence required corroboration. With respect, we do not agree with him. We wish to remind him that a fact may be proved by a single witness if the court believes that the witness is telling nothing but the truth as provided for under section 143 of the EA. (see **Yohanis Msigwa vs Republic** [1990] TLR 148). PW3's evidence is fully supported by PW4 who, disturbed by the appellant's conduct, reported the matter to PW2, the appellant's leader. The latter sought proof from PW4 which was not hard to get, for upon further pressing by the appellant to be paid the balance, PW4 gave PW3 TZS 3 Million which he deposited into the appellant's bank account in the NMB bank which fact was not disputed. PW4 took the bank pay-in slip together with the messages from the appellant to PW2 who, satisfied that the complaints by PW4 were genuine, reported the matter to PCCB which resulted into the charges against the appellant as per PW1's testimony.

We are not, with respect, in agreement with Mr. Kinabo that the above evidence proved consistence and not corroboration. In our decided view, this evidence proved that PW3 and PW4 gave the appellant TZS 3 and later TZS 4 Million not out of their own willingness. The giving preceded solicitation by the appellant followed by threats that he would not

sign certificate No 2 for payment to Jemason to which he was among the indispensable signatories. It was therefore not a matter of consistence only but coherence of the evidence establishing the chain of events leading to the payments of the money to the appellant by PW3 and PW4. It is a non-issue that count 4 of the charge was not proved because there was no evidence that he received TZS 3 Million from PW4. Clear as it is, PW3 was an employee of Jemason to which PW4 was the Director. He explained how he obtained money from PW4 which he paid TZS 4 Million in cash to the appellant in his office at Mbulu and later deposited TZS 3 Million into the account relayed to him by the appellant which fact was established by the bank officials (PW5 and PW6) who testified that it was being operated by the appellant and the appellant did not dispute it.

Going by the above evidence, it is obvious that PW3 and PW4 were put in a corner such that they could not avoid giving the money (bribe) to the appellant. They lacked the requisite mental element of committing or assisting in corruptly giving money to the appellant for otherwise they would not have taken steps to report the matter. As proof of his clean conscience, PW4 who acknowledged that in corruption cases both the giver and receiver commits an offence, is recorded at page 58 of the record of

appeal to have told the trial court when he was cross-examined by Mr. Shirima, the appellant's advocate, that:-

> *"I was asked to give bribe of 9 Million. To solicit and give bribe is an offence. I have not done any offence because I had reported to the authorities."*

As for their credibility, neither of the two courts below doubted them and, in view of the consistent and coherent nature in their testimonies, we have no reason to doubt them and therefore we lack valid reasons to interfere with that factual finding. The appellant in his testimony and Mr. Kinabo, before us, had it that the appellant refused to sign a certificate of completion No. 2 because the project was yet to be completed contrary to the procedure as a result of which PW3 and PW4 were unhappy with him hence engineering the present case and also that the signing of the certificate was not delayed. The record is clear and as rightly observed by the trial court that occurred after part of the solicited money had been paid. He also claimed that they delayed in reporting the incident in respect of solicitation which occurred in the year 2012 but it was reported in the year 2013. We think the delay was justified. Truly, According to PW3, he registered his complaint with PW2 in 2013 after he had paid TZS 4 Million

in cash through PW3 to the appellant and was still pressing for the balance but, taking action, needed evidence which could not be available until TZS 3 Million was deposited into the appellant's account and a receipt thereof obtained which he (PW4) took to PW2 as evidence and he reported the matter to the PCCB for action. Besides, the appellant's account in which TZS 3 Million was deposited left a lot to be desired. At first, he disowned the account used to deposit the money and denied knowledge of the money being deposited into his account but later admitted that the account belonged to him and upon the money being deposited, he crosschecked the same and came up with a statement that it was his relative's money one Martine Shayo who had done business with PW3 but was not called to testify on it. Although it was not his duty to prove his innocence, in the least, an account by Mr. Martine Shayo would help cast doubt on the prosecution case. Otherwise, looked as a whole, such an allegation, in our considered view, depicts nothing but a sheer lie by the appellant.

It is for the above reasons that we are not prepared to agree with Mr. Kinabo and we hold that neither PW2, PW3 nor PW4 was an accomplice or had interest to serve. Like the courts below, we are convinced that what the prosecution witnesses told the trial court was the

truth of the matter and were reliable. As witnesses they were entitled to credence (see **Goodluck Kyando v. R** [2006] T.L.R 363. We are in full agreement that the appellant deserved conviction on the three counts.

In the event, and for the reasons we have endeavoured to state above, save for the third ground, we dismiss the appeal.

DATED at **DAR ES SALAAM** this 20th day of October, 2022.

S. A. LILA
JUSTICE OF APPEAL

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

P. S. FIKIRINI
JUSTICE OF APPEAL

The Judgment delivered this 21st day of October, 2022 in the presence of Mr. Felix Kinabo holding brief for Mr. Frederick Simon Kinano, learned counsel for the Appellant and Mr. Charles Kagirwa, State Attorney for the Respondent both appeared through Video Link is hereby certified as a true copy of the original.

A. L. KALEGEYA
DEPUTY REGISTRAR
COURT OF APPEAL