IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF BUKOBA

AT BUKOBA

HC CRIMINAL APPEAL NO. 11 OF 2018

(Arising from the Ruling of the Resident magistrate Court of Bukoba at Bukoba Acquitting the second Respondents on a no case to answer in (RM) Criminal Case No. 23 of 2016)

THE DIRECTOR OF PUBLIC PROSECUDTIONS----APPELLANT

VERSUS

GEORGE ALOYCE @SHILINGI

MARTINE ALOYCE@SHILING | **---------RESPONDENTS**

JUDGMENT

12/9/2018 & 12/9/2018

MLACHA, J.

At the Resident Magistrate's Court of Kagera Region, the Respondents, George s/o Aloyce@ Shilingi and Martine s/o Aloyce @Shilingi were charged as under-

"1st COUNT FOR ALL ACCUSED PERSONS

STATEMENT OF OFFENCE

CONSPIRANCY TO COMMIT AN OFFENCE, *Contrary to section 384 of the Penal Code [Cap. 16 R.E. 2002].*

PARTICULARS OF OFFENCE.

GEORGE S/O ALOYCE@SHILINGI, and MARTINE s/o ALOYCE@SHILING *on diverse date on or before October, 2015 between Kagera, Kigoma, Mara and Mwanza Region did conspire together to commit an offence namely;* ***Stealing****.*

2ND COUNT FOR ALL ACCUSED PERSONS

STATEMENT OF OFFENCE

STELING BY AGENT, *Contrary to section 273 (b) read together with section 22 (1) (a),(b) and (c) both of the Penal Code [Cap. 16 R.E. 2002].*

PARTICULARS OF OFFENCE.

GEORGE S/O ALOYCE@SHILINGI, *and MARTINE s/o ALOYCE@SHILING, on the 05th day of October, 2015 at Kasulu District in Kigoma Region did steal 63 tones and 300 Kilograms of peas (Njegere) valued at Tshs. 56,000,000/= The property of one Maboya s/o Issa @Said.*

3RD COUNT FOR ALL ACCUSED PERSONS

STATEMENT OF OFFENCE

MONEY LAUNDERING, *Contrary to section 3 (k), 12(b) and 13(a) of the Ant-Money Laundering Act, No. 12 of 2006.*

PARTICULARS OF OFFENCE.

GEORGE S/O ALOYCE@SHILINGI, and MARTINE s/o ALOYCE@SHILING *on diverse dates between 07th day of October, 2015 and February, 2016 between Mwanza Region, Tarime District in Mara Region and Kagera Region jointly and together transmitted the sum of Tshs. 56,000,000/= into various accounts through account No. 31710003128 registered in the name of the second accused MARTINE S/O ALOYCE @SHILINGI at NMB, while they knew or ought to have known that the same money was a proceeds of a predicate offence namely;* ***Stealing by agent,*** *for purpose of disguising the illicit origin of that money and evading legal consequences for their actions.*

4TH COUNT FOR 1ST ACCUSED PERSON

STATEMENT OF OFFENCE

FORGERY, *Contrary to section 340(1) and (2)(a) of the Penal Code, Cap. 16 R.E. 2002.*

PARTICULARS OF OFFENCE.

GEORGE S/O ALOYCE @ SHILINGI, *on 20th day of February, 2016 at Biharamulo stand street within Biharamulo District in Kagera Region did forge the*

stamp of District Executive officer of Chato District namely; ***Kny. MKURUGENZI MTENDAJI (W) CHATO*** *the fact which he knew that it was false and intended for commission of crimes.*

5TH COUNT FOR 1ST ACCUSED PERSON

STATEMENT OF OFFENCE

STEALING, *Contrary to section 265 of the Penal Code, Cap. 16 R.E. 2002.*

PARTICULARS OF OFFENCE.

GEORGE S/O ALOYCE@SHILINGI, *on 20th day of February, 2016 at Mwekako Village within Chato District in Kagera Region did steal two stamps one of the village council and the other of the village committee both being the properties of Mwekako Village.*

6TH COUNT FOR ALL ACCUSED PERSONS

STATEMENT OF OFFENCE

CONSPIRACY TO COMMIT AN OFFENCE, *Contrary to section 348 of the Penal Code, Cap. 16 R.E. 2002.*

PARTICULARS OF OFFENCE.

GEORGE S/O ALOYCE@SHILINGI and MARTINE S/O ALOYCE@SHILING, *on 13th day of October, 2015*

between Kagera and Kigoma Region, did conspire together to commit an offence namely: Giving false information to a person employed in the Public Service.

7TH COUNT FOR ALL ACCUSED PERSONS

STATEMENT OF OFFENCE

GIVING FALSE INFORMATION TO A PERSON EMPLOYED IN THE PUBLIC SERVICE, *Contrary to section 122 (a) Read together with Section 22(a)(b)&(c) both of the Penal Code, Cap. 16 R.E. 2002.*

PARTICULARS OF OFFENCE.

GEORGE S/O ALOYCE@SHILINGI and MARTINE S/O ALOYCE@SHILING, *on 13th day of October, 2015 at Kyaka Police Station within Misenyi District in Kagera Region having conspired together and by using George s/o Aloyce@Shilingi did give false information by making false introduction and furnishing false particulars in respect of the said George s/o Aloyce@Shilingi to one F. 3038 D/PCL RASHID a person employed in the Public Service with intent to stand as a surety of one Maboya s/o Issa @ said who was sin remand custody of the Police for Criminal allegations against him".*

The Republic lead was by Mr. Matuma Senior State Attorney. It called a total of 19 witnesses. They also tendered several exhibits. They then closed their case. Both Mr. Matuma Senior State Attorney for the Republic and Mr. Rwechungura, Advocate for accused made submissions to assist the court in making its ruling. Detailed submissions were made. The court made a very short ruling which is the subject of this appeal. The ruling read thus;

> *"At the close of the prosecution case, I found that the prosecution has made sufficient to required the 1st accused persons (sic) to enter his sworn defence in relation to the offence they stand charged and the prosecution failed to establish prima facie case against the 2nd accused persons. I hereby acquit the 2nd accused person in relation to all courts he stand charged. It is so ordered."*

Mr. Matuma did not see justice in the ruling and has come to this court by way of appeal. The ground upon which this appeal was lodged read thus;

> *"1. THAT the Hon. Resident Magistrate erred in law and facts by acquitting the second Respondent MARTINE S/O*

ALOYCE@SHING on a no case to answer without making analysis of the evidence on record against him."

Mr. Matuma argued the appeal forcibly. His main concern was that the ruling of the trial magistrate was just too short to carry an acquittal. Counsel submitted that the ruling carried no details to show why the second accused was found as having no case to answer and acquitted. He had the view that the trial magistrate had a duty to discuss the evidence and show the basis of the acquittal. He added that there was a lot of evidence to show that the second accused had a case to answer.

Giving details, the senior state attorney said that there was evidence showing that all the money stolen by the first accused was deposited in the account of the second accused. This he submitted, was reflected in the bank statements which were tendered during the trial. Further to that, there was a cautioned statement of the second accused which was received without objection carry a confession of the second accused. He proceeded to say that acquitting the second accused can weaken the case against the first accused making the ruling bad in law. He requested the court to be guided by **R.V. JAGIWAN M. Patel**

and 4 others [1948] TLR 45 quoted in **R.V. Morgan Maliki and another, Criminal Appeal No. 133 of 2013**. He argued the court to find that the second accused has a case to answer.

Mr. Pauline Michal who represented the respondent objected the appeal strongly. He submitted that there was no evidence showing that the second accused committed the crimes with which he was charged. He submitted that out of 19 witnesses who gave evidence, only one witness (PW18) mentioned the second accused. His evidence was also weak. He discredited him as a mere investigator who did not witness the commission of the crime. He proceeded to say that non of the witnesses said that the money was credited to the account of the second accused. His evidence was also weak He said that PW9 is the one who said that he credited the money in a bank account but did not say that it belonged to the second accused.

Mr. Matuma made a short rejoinder and joined issues with Mr. Pauline. He stressed that there was need to discuss the evidence before acquitting the second accused.

I had time to go through the bulky record of the lower court. I have considered the rival submissions of the counsels in the light of the record. I have also read the case of **DPP V. Morgan Maliki and Nyaisa Makori CAT Criminal Appeal No. 133 of 2013** (Tanga), supplied to me during the hearing. I will start with the law. The relevant provision of the Law is Section 130 of the Criminal Procedure Act, Cap. 20 R.E. 2002 which reads;

> *"230. If at the close of the evidence in support 9of the charge, it appears to the court that a case is not made out against the accused person sufficiently to require him to make a defence either in relation to the offence with which he is charged or in relation to any offence of which under the provisions of sections 312-321 inclusively of this Act, he is liable to be convicted, the court shall dismiss the charge and acquit the accused person."*

The Court of Appeal had a chance to discuss it in **Morgan Maliki** (Supra) at page 13 as under:-

> *"We think that a prima facie case is made out if, unless shaken, it is sufficient to convict an accused person with the offence with which he is charged or kindred cognate minor one. Which means that this stage, the*

prosecution is expected to have proved all the ingredients of the offence or minor, cognate one thereto beyond reasonable doubt. If there is any gap, it is wrong to call upon the accused to give his defence so as to fill it in, as this would amount to shifting the burden of proof" (Emphasis added).

That is to say, the court must be satisfied that the prosecution has established all the ingredients of the offence beyond all reasonable doubts before calling upon the accused to enter his defence. Their lordships had the view that if there is any gap in the evidence, it is wrong to call the accused to give his defence as this will amount to calling the accused to fill the gaps or shifting the burden of proof to him.

The nature of the ruling of a case to answer is usually very short where the court has the view that the accused has a case to answer. This short ruling must however contain clear sentences showing that the magistrate has honestly gone through the evidence on record and is satisfied that the prosecution has established all the key ingredients of the offence beyond doubt demanding the accused to bring his defence. The Magistrate is not expected to discuss the evidence at this stage because doing

that will prejudice the coming proceedings and the judgment. But things are different where he has the view that the accused persons or any of them has no case to answer so as to entitle him to an acquittal at that stage. If that is the case, the interest of justice require that he should discuss the evidence on record and establish the basis for an acquittal. The rationale behind this is that both the prosecution and the accused are entitled to be given reasons for the decision.

Having examined the ruling of the trial court, I have noted that it fell short of the above requirements. There is no clear sentences showing the basis for the decision. Both the prosecution and the accused were denied reasons for the decision which is their right. But further to that, and more importantly, my perusal to the evidence on record show that the evidence on record connected the two accused persons in a way that one could not be dropped at that stage. There was evidence showing that the first accused was involved in commission of the offences and that the second accused was his accomplice. It was therefore wrong to find him as having no case to answer and acquit him.

With that in mind, I vacate and set aside the ruling of the trial court showing that the second accused had no case to answer. I substitute to it a finding and ruling that both accused persons had a case to answer. I direct the record to be remitted to the lower court immediately with a direction that the rights of defence of the second accused be explained to him according to the law who should then be given a chance to give his evidence and call witnesses, if any. It is ordered so.

L.M. Mlacha

Judge

12/9/2018

Court: Judgment delivered in the present of Mr. Juma Mahona for the Appellant/Republic and the Respondents in person.

L.M. Mlacha

Judge

12/9/2018