

**IN THE HIGH COURT OF TANZANIA
KIGOMA DISTRICT REGISTRY
AT KIGOMA**

DC CRIMINAL APPEAL NO. 20 OF 2020

(Arising from Judgment of the District Court of Kigoma in Criminal
Case No. 48 of 2020 – F. Y Mbelwa, RM)

JACKSON MREFU.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

Date of submissions: 9/11/2020

Date of Delivery: 11/11/2020

AMOUR S. KHAMIS, J:

This is an appeal against Judgment of the District Court of Kigoma in which the appellant, Jackson Mrefu, was convicted on four counts of corrupt transactions contrary to Section 15 (1) (a) and (2) of the Prevention and Combating of Corruption Act, No.11 of 2007.

He was sentenced to payment of Tshs. 500,000/= in each count and in default, serve three years jail term for each of the four counts.

Earlier on, the appellant was arraigned for five counts including the first four counts he was convicted of.

The fifth count was an alternative to the first four counts but also rested on corrupt transactions contrary to Section 15 (1) (a) and (2) of the Prevention and Combating of Corruption Act, No. 11 of 2007.

In the first count, it was alleged that on 19th day of September 2019, being the Principal Office Assistant employed by the Judiciary of Tanzania and stationed at Mwandiga Primary Court, the appellant while at Mwandiga Primary Court, corruptly obtained a sum of Tshs. Thirty Thousand (Tshs. 30,000/=) from one Imelda Dosha as an inducement to institute Civil Case No. 45 of 2019 in the Mwandiga Primary Court against one Christina, the matter which was in relation to his principal's affairs.

In the second count, the prosecution alleged that on or about 20th day of September 2019, at the same location and in the same capacity, the appellant corruptly obtained a sum of Tshs. Sixty Thousand (Tshs. 60,000/=) from Imelda Dosha as an inducement to institute Civil Case No. 45 of 2019 in the Mwandiga Primary Court.

In the third count, the particulars of offence were that on or about 25th day of September 2019, while at the same location, acting in the same capacity and for the same intention, the appellant corruptly obtained a sum of Tshs. Seventy Thousand (Tshs. 70,000/=) from Imelda Dosha.

In the fourth count, it was alleged that while at Mwandiga Primary Court, on or about 26th day of September 2019, Jackson Mrefu, acting in relation to affairs of his principal, corruptly obtained a sum of Tshs. Ten Thousand (Tshs. 10,000/=) from Imelda Dosha as an inducement to institute Civil Case No. 45 of 2019.

In the last count, the prosecution alleged that on or about 19th day of September 2019 while at Mwandiga Primary Court and acting as Principal Office Assistant in relation to the affairs of his principal, the appellant corruptly solicited the sum of Tshs. One Hundred Seventy Thousand (Tshs. 170,000/=) from Imelda Dosha as an inducement to institute Civil Case No. 45/2019 against one Christine in the said Primary Court.

The appellant pleaded not guilty against each of the five counts and the matter proceeded to trial.

In a nutshell, the facts of the prosecution case were that between 19/09/2019 and 26/09/2019, Jackson Mrefu was an employee of the Judiciary of Tanzania stationed at Mwandiga Primary Court.

That among others, he had a duty of attending customers and opening new case files.

That on 19/09/2019 the appellant attended a customer known as Imelda Dosha who was accompanied by an uncle (referred to as "elder father"!) one Petro Kohoye.

That on the same date, the appellant solicited a sum of Tshs. 170,000/= from Imelda Dosha as an inducement to institute Civil Case No. 45 of 2019 between Imelda Dosha and one Christine.

It was further alleged that on the same date, the appellant received a sum of Tshs. 30,000/= from Imelda Dosha and witnessed by Petro Kohoye.

That on 20/09/2019 and 25/09/2019, the appellant received a sum of Tshs. 60,000/= and Tshs. 70,000/= respectively from Imelda Dosha in presence of Petro Kohoye, being part payment of the solicited amount.

The prosecution further alleged that all such sums of money were received at Mwandiga Primary Court.

It was the prosecution case that on 25/09/2019, Imelda Dosha separately paid Tshs. 15,000/= in the Judiciary Revenue Collection Account No. 51610014851 with NMB Bank towards registration of Civil Case No. 45/2019.

That subsequent to that payment, the stated case was registered by the appellant under instructions of the Mwandiga Primary Court Magistrate in Charge.

The prosecution claimed further that as on date of filing the case, the appellant had received Tshs. 160,000/= and insisted on payment of Tshs. Ten Thousand (Tshs. 10,000/=) as a balance for the whole amount.

That on 26/09/2019 at 21.00 hours, the appellant received a sum of Tshs. Eleven Thousand (Tshs. 11,000/=) through his telephone no. 0767 491281 sent by Imelda Dosha from telephone no. 0768 314192.

It was alleged that out of the received figure, Tshs. 10,000/= was final instalment for the solicited amount while Tshs. 1,000/= covered transactional charges.

Aggrieved by the conviction and sentence of the trial Court, the appellant preferred this appeal raising three grounds, namely:

1. That the learned Resident Magistrate grossly erred in law and fact in holding that the offences of corrupt transactions contrary to Section 15 (1) (a) and (2) of the Prevention and Combating of Corruption Act No. 11/2007 were proved beyond reasonable doubts.
2. That the appellant's conviction and sentence and the order for refund of Tshs. 170,000/= to the complainant were not legally grounded.
3. That the learned Resident Magistrate grossly erred in failure to scrutinize and consider the appellant's defence evidence on record.

At the trial and before this Court, Jackson Mrefu was represented by Mr. Method R.G Kabuguzi, learned advocate.

When the appeal came up for hearing, Mr. Shaaban Juma Masanja, learned state attorney, was present for the Republic.

Mr. Kabuguzi, on the appellant's instructions, abandoned the second and third grounds of appeal and reasoned that the first ground sufficiently covered the intended purpose.

The learned counsel submitted that the prosecution evidence was so weak to justify any conviction and that the defence evidence was not properly scrutinized.

He contended that the prosecution case rested on testimonies of PW 1 and PW 2 who alleged to have paid bribes on 19/09/2019, 20/09/2019, 25/09/2019 and 26/09/2019 but there was no tangible evidence for transactions of 19/09/2019, 20/09/2019 and 25/09/2019.

He maintained that the trial magistrate failed to scrutinize testimonies of DW 1 and DW 2 who stated that PW 1 and PW 2 were not seen in Court on the disputed dates.

Counsel asserted that the evidence of DW 2 was corroborated by that of PW 3, a primary court magistrate.

Mr. Kabuguzi avowed that the evidence on record showed that PW 1 and PW 2 were present in Court on 25/09/2019 and 26/09/2019 and not before.

He argued that, the two prosecution witnesses could not have been in Court on stated dates without being seen by DW 2 who shared same office with the appellant.

The appellant's counsel referred this Court to **STEPHEN SILOMON MOLLEL V REPUBLIC, CRIMINAL APPEAL NO. 248 OF 2016** (unreported) wherein the Court of Appeal held that an omission to consider defence evidence amounts to breach of natural justice.

He submitted that the trial magistrate failed to scrutinize the evidence of PW 3 and DW 2 and thus arrived at an erroneous decision.

In a separate note, Mr. Kabuguzi contended that PW 1 and PW 2 were incredible witnesses but the trial magistrate omitted to properly weigh their testimonies.

He propounded that the MPESA transaction was made on 26/09/2019 but the two witnesses lodged a complaint at PCCB on 17/10/2019 raising a doubt on their real intentions.

He submitted that a true complainant against corrupt transactions could not wait for such long to report the incidents.

The learned counsel attested that PW 1 and PW 2 knew that the alleged sums were corruption but omitted to report until their case was dismissed for want of appearance.

Mr. Kabuguzi insisted that PW 1 and PW 2 were incredible for disputing that the summons was effected by the appellant contrary to testimonies of DW 1, DW 2 and DW 3.

The learned counsel ventured that such testimonies of DW 1, DW 2 and DW 3 were corroborated by Exhibit D 2, a return of service.

Finally, counsel faulted the trial magistrate for holding that the appellant acted on the summons without authority from the magistrate in charge.

According to him, such an omission attracted a disciplinary action but could not vitiate a fact that it was the appellant who effected the service.

He reasoned that had the trial magistrate scrutinized that evidence, he would have found that Tshs. 10,000/= received by the appellant was meant to cover transport costs in serving the summons.

The learned counsel further drew attention of the Court to the appellant's cautioned statement (Exhibit P 5) which allegedly showed that the appellant was only questioned on receiving Tshs. 10,000/= through MPESA and not otherwise.

He added that an omission by PW 1 and PW 2 to report the appellant's alleged acts of soliciting bribe to the magistrate in charge in a meeting of 25/09/2019 was a good reason to find them incredible.

Mr. Shaaban Juma Masanja for the Republic submitted that the prosecution case was proved beyond reasonable doubts.

In specific response to the appellant's contentions, the learned state attorney stated that the complainant's case was dismissed on 23/10/2019 while PW 1 and PW 2 lodged the grievance in PCCB on 17/10/2019.

He expounded that in such circumstances, it was wrong to claim that the complaint was lodged after dismissal of the case.

On failure to timely report the incident, Mr. Masanja averred that the trial court's proceedings at page 17 indicated that PW 1 and PW 2's attempts to meet the magistrate in charge were blocked by the appellant.

The state counsel advanced that the complainant did not know that the solicited sum was for corrupt purposes as reflected in page 17 of the proceedings.

On the summons in the civil suit, counsel asserted that PW 3 went on record disputing issuance of any order authorizing service of summons and that the one on record (Exhibit D 3) was not signed by the magistrate.

Dismissing an assertion that the trial magistrate failed to scrutinize the defence evidence, the counsel forcefully argued that in pages 9 and 11 of the typed judgment, the trial magistrate addressed himself on the same.

The state attorney propounded that failure by PW 3 and DW 2 to see PW 1 and PW 2 in Court, did not mean that the two never visited Court on the disputed dates.

In reply, learned counsel for the appellant reiterated his earlier submissions and added that a mere mention by the trial magistrate that had taken note of the defence evidence did not sufficiently meet legal requirements.

I have carefully considered the trial Court's record, the petition of appeal, submissions by rival counsel, the authorities cited and the law.

This being a first appeal, I am mindful of the duty of this Court to ensure that the trial Court properly discharged its mandate.

This duty was well articulated by the Court of Appeal in **MAKURU JUMANNE AND ANOTHER V REPUBLIC, CRIMINAL APPEAL NO. 117 OF 2005** (unreported), thus:

"It is a settled principle of law that a first appellate Court can make fresh assessment of factual issues raised during trial and or before the first appellate Court....."

In the same way, the Court of Appeal for East Africa restated the law in **PETER V SUNDAY POST (1958) EA 424**, thus:

"Whilst an appellate Court has jurisdiction to review the evidence to determine whether the conclusion of the trial Court should stand, this

jurisdiction is to be exercised with caution. Where there is no evidence to support a particular conclusion, or if it is shown that the trial judge has failed to appreciate the weight or bearing of circumstances admitted or proved, or has plainly gone wrong, the appellate Court will not hesitate to decide."

The main issue for determination is whether the trial Court properly convicted the appellant on four counts of corrupt transactions.

Section 15 (1) (a) and (2) of **THE PREVENTION AND COMBATING OF CORRUPTION ACT, CAP 329 R.E 2019**, provides that:

"15 (1) Any person who corruptly by himself or in conjunction with any other person:

(a) Solicits, accepts or obtains, or attempts to obtain, from any person for himself or any other person, any advantage as an inducement to, or reward for, or otherwise on account of, any agent, whether or not such agent is the same person as such first mentioned person and whether the agent has or has no authority to do, or forbearing to do, or having done or forborne to do, anything in relation to his principal's affairs or business, commits an offence of corruption.


(2)A person who is convicted of an offence under this section, shall be liable to a fine not less than five hundred thousand shillings but not more than one million shillings or to imprisonment for a term of not less than three years but not more than five years or to both.”

The law reproduced above clearly show that in order to prove the offence charged, the prosecution should prove three elements constituting the offence of corruption or to be precise, corrupt transaction, to wit: soliciting, accepting or obtaining any advantage in relation to the accused's principal's affair or business.

An attempt to do any of the above is also an offence.

An advantage is defined in Section 3 of CAP. 329 R.E 2019 to mean a gift or any property movable or immovable, loan, fee, reward or favour and includes valuable consideration of any kind, discount, commission, rebate, bonus, deduction or percentage and employment or services or an agreement to give employment or render services in that capacity.

The same section defines the principal to include an employer, a beneficiary under a trust, a trust estate as though it were a person, any person beneficially interested in the estate of a deceased person as though it were a



person, and in relation to a public official, the authority or body of persons in which the public office is held.

I will endeavour to demonstrate how the evidence on record relates to the stated legal requirements.

There is no dispute that on 26/09/2019 the appellant received Tshs. 11,000/= by M - PESA from PW 1, IMELDA JOHNSTON DOSHA. The issue is what that money was meant for.

PW 1 and PW 2 testified that the sum covered a final instalment out of Tshs. 170,000/= demanded by the appellant as facilitation in filing a civil case against one Christine in Mwandiga Primary Court.

When placed on his defence, DW 1 JACKSON HANISA MREFU, gave a sworn testimony and stated that he was an employee of the Judiciary as a Principal Office Assistant, and automatically a Court Process Server.

On examination by Mr. Kabuguzi, he said that the money counterbalanced transport fare spent in serving the summons to Christina on behalf of PW 1.

On further examination, DW 1 denied soliciting or receiving for any benefit, and insisted that the money given was reimbursement of transport fare incurred in serving the summons.

He did not deny receiving Tshs. 11,000/= by M-PESA from PW 1 but to him, the money had a totally different purpose.

Explaining why he was entitled to reimbursement, DW 1 testified that his attempts to serve the summons upon Christine was complicated and service was prolonged because the respondent was known by one name only.

In pages 45, 46 and 47 of the typed proceedings, the appellant recalled his efforts in identifying Christine while in the company of PW 1 and PW 2, thus:

"Me, PW 1 and PW 2 we went through Bajaji towards Kibirizi. We went to Kibirizi stand. She informed me to ask the church of EAGT since her husband Rev. Jeremiah is pastor of the church. We tried to ask for Jeremiah but in vain. The purpose of looking him was to get Christina through him.

But previously, she told me Rev. Jeremiah is a pastor but also public servant employed by DED at Kigoma Municipal. So I asked her to go to Municipal looking for Rev. Jeremiah.

We turn to Kigoma Municipal at Ujiji. At Municipal we managed to get Rev. Jeremiah but as I met him, PW 1 and PW 2 were standing far. I went alone to him, introduce myself and reason that is looking for Christina. But I failed to know Christina whom? I told his wife.

But Jeremiah Rev. (Husband of Christina) deny to receive it. But he directed me (to) his home at Masanga

near Halotel Tower. I went back to PW 1 and PW 2 told them Jeremiah denied the reception of the summons.

.....

The evidence of PW 1 and PW 2 that they were the one serving for summons is totally untrue. I was one serve the summons.

The evidence to that is the sworn document of process server. The original document is in the Court file Civil (Case) No. 45/2019 but I have certified copy of the same....."

On cross examination by the public prosecutor, DW 1 stated that arrangements to serve summons between a litigant and a court process server was a normal practice.

However, on further cross examination (see page 50 of the typed proceedings), the appellant stated that:

"Going to serve summons, I went during working hours. I did not go for personal work but Judiciary work. Since is the judicial work, the one supposed to pay me is the judiciary not individual."

On re – examination by Mr. Method Kabuguzi, DW 1 stated that:

"The money I received from Imelda (PW 1) is for service of summons on 27/9/2019. The payment was not for doing Government work but just a fare. I believe, I am process server for experience...."

Records show that until this case cropped up, the appellant among others, served as a court clerk at Mwandiga Primary Court.

Functions of a court clerk are well stated in a **HANDBOOK FOR MAGISTRATES IN PRIMARY COURTS, REVISED AND UPDATED VERSION**, the Judiciary of Tanzania, January 2019, which reads at page 5-6 that:

- “i) to assist the magistrate to arrange the work of the court*
- ii) to record the work of the court in registers, forms, etc, accurately, intelligently, manually and electronically*
- iii) to see that the court’s judgments are executed, especially in criminal cases.*
- iv) to impose the correct fees and to cause to be issued receipts for fees and fines, divorce and other certificates*
- v) to assist claimants in setting out their claims properly*
- vi) to ensure that the financial procedure on fees as laid down for primary courts is strictly followed.*

He must also be thoroughly conversant with the powers of a justice of the peace. It is a magistrate’s responsibility to supervise the work of his court clerk.”

The dispute rests on circumstances surrounding institution of Civil Case No. 45 of 2019 at Mwandiga Primary Court and service of summons by the appellant on Christina, the respondent in that case.

A summons is a legal document that is issued by a Court on a person involved in a legal proceeding.

When a legal action is taken against a person or when any person is required to appear in the Court as a witness in a Court proceedings, to call upon such person and ensure his presence on the given date of the proceedings, summons is served.

If the summons is not duly served then no action can be taken against the defendant/respondent. If defendant/respondent fails to appear after receiving summons, the case will be heard exparte against him/her.

It is needless to say that non service of summons and notices in a civil suit is a great hurdle for speedy disposal of the case.

Rules 18 and 19 of ***THE MAGISTRATES' COURTS (CIVIL PROCEDURE IN PRIMARY COURTS) RULES, G. N NO. 310 OF 1964*** as amended by ***G.N NO. 119 OF 1983*** provides for summons and service of summons in the primary courts.

According to Rule 18 (1) when a proceeding has been instituted, the primary court shall issue a summons requiring the defendant to appear and answer the claim at

the time and place mentioned in such summons, and shall cause the same to be served on the defendant.

Rule 18 (2) provides that every summons shall state briefly the nature of the claim.

Rule 19 on service of summons reads:

"19 (1) Subject to the provisions of subrule (2), a summons or any other document required to be served under these Rules shall be served on the defendant personally or, if he has an agent authorized to accept service, on such agent.

(2) Where the Court is satisfied that personal service cannot be effected or cannot be effected without undue delay and expense, it may direct that the summons or document be served either by post or by leaving it with an adult male member of the family of the defendant or with some adult male servant with him, or with his employer, or by affixing a copy of the summons or document on some conspicuous part of the last known residence of the defendant and another copy thereof on the Court notice board.

(3) Service under subrule (2) may be proved:

a) *in the case of service by post, by evidence that a postal packet was received by the defendant, supported by a certificate of an officer of the court that the postal packet contained the summons*

b) ***in any other case, by the affidavit or evidence on affirmation of the person who effected the service” (emphasis supplied).***

These provisions, among others, empowers a primary court magistrate to give directions on service of a summons. However the Rules do not clearly state who is to effect such service of the summons.

From the wording of Rule 19 (3) (b) which permits an affidavit by a person who served summons in proof of service without defining him, it is clear that such service can be made by a litigant or any other person on his or her behalf.

In legal practice, it has always been a duty of the claimant to serve summons upon the defendant or respondent (See **4MB MINING LIMITED V MINSAK INTERNATIONAL (UK) LIMITED AND 4 OTHERS, CIVIL CASE NO. 30 OF 2018, HIGH COURT OF KENYA AT MOMBASA, COMMERCIAL AND ADMIRALTY DIVISION** (unreported)).

One of the duty of a court clerk is to assist claimants in setting out their claims properly.

According to **MACMILLAN DICTIONARY** the phrase "set out" means to explain, describe, or arrange something in a clear and detailed way, especially in writing.

It further denotes to describe or define something or to start doing or working on something in order to achieve an aim.

In **FREE LEGAL DICTIONARY** setting out is defined to mean the action of a Court, clerk or commissioner (judicial officer) in scheduling a trial or hearing.

That means in helping claimants to set out their claims properly, a court clerk may explain to them on how to fill in the relevant court forms, assist in actual filling in of the forms, serve summons on adverse party or witnesses and do any other lawful act geared to facilitate smooth institution of claims in Court.

If a Court clerk goes an extra mile to assist a litigant in service of summons or document on the adverse party or witness, he or she does so as an employee of the Judiciary and on behalf of the Judiciary.

In so doing, the court clerk cannot be considered or thought of acting as an agent of a litigant.

In such circumstances, and as rightly admitted by the appellant himself during cross examination, in attempting

to serve a summons upon Christina, he was acting as an employee of the Judiciary and not as an agent of PW 1.

Records further indicate that the appellant could only serve summons upon an express permission from the magistrate in charge which was not sought for in the present case.


Against this background, the appellant was not authorized to receive any sum of money from PW 1 as transport fare or other incidental costs for the purpose of serving a summons.

In the stated context, purpose of the money paid by M-PESA was to accomplish PW 1's promise to sweeten the appellant in order to institute proceedings against Christina and not reimbursement of transport fare.

In this stance, I am in all four with the trial magistrate who wondered on how the appellant, a low salaried employee of the Judiciary could spend own money to finance activities of a fresh litigant known to him for only a day in absence of further consideration.

The trial magistrate found that the evidence related to payments made by PW 1 to the appellant on 19th, 20th and 25th September 2019 was circumstantial and treated it as such.

In my view, two witnesses were instrumental to prove the prosecution case on this facet, namely PW 1 and PW 2.



In page 14 of the typed proceedings, PW 1 IMELDA JOHNSTONE DOSHA recalled her first encounter with the appellant at Mwandiga Primary Court on 19/09/2019, thus:

"The clerk told me, if I want to file/institute a case, I must pay the fees. He asked me as how much did I have that day?"

I replied, I has no much money. He told me, for instituting a case I must pay 20,000/= the clerk money, and 180,000/= for magistrate.

He also told me the filing fees itself is Tshs. 15,000/=. I find the magistrate's money much more. I plead him to reduce to 150,000/=

He replied, he had no authority to lower it, unless magistrate herself agree. So he took his phone and call a number and spoke to someone on phone.

Then he left the place we were and go some distance that we could not hear. Then he came and told us, we are lucky our prayer is granted.

So since I had no money than 30,000/= I pray to him to pay that sum as advance. Therefore after deduction of magistrate's money from Tshs. 200,000/= to 150,000/=. it become total of 170,000/= but excluding 15,000/=.

I paid them in presence of my elder father (sic)....."

On examination in chief, PW 2 PETRO KOHOYE, testified that:

“On 19/09/2019, Imelda came home complaining she was taken her husband by one woman. She asked me to accompany her at Mwandiga Primary Court.

We went to Primary Court Mwandiga. At Primary Court, we met the clerk one sitting at dock. She explained to him all her complaints. The clerk asked Imelda if she want to file a case, is she with money? She said, she had no much, if she can know? The clerk told her, the money for magistrate is 180,000/= and for clerk is 20,000/=

Then Imelda asked him to reduce the amount. The clerk, said unless the magistrate agreed to reduce. So he took his phone and call. He told us he went to ask the magistrate. He left us, went to one of the Court room. He stayed for about 20 minutes and he came back. He told us, we are lucky the magistrate has reduced the sum to 150,000/=. So she will pay total of 170,000/= to include those of clerk.

Because she had no money other than 30,000/= she paid them. It was 3 notes of 10,000/= @. We left that day, and we came back on next day with 60,000/=.....”

These testimonies of PW 1 and PW 2 were partly authenticated by the appellant himself (DW 1) and DW 2

JALALA SHABANI who admitted that at a time of visiting Mwandiga Primary Court, PW 1 was accompanied by PW 2 (See pages 41 and 55 of the typed proceedings).

As stated earlier, the appellant completely disassociated himself from the bribery allegations.

His witness, JALALA SHABANI testified as DW 2. She told the trial Court that working as an office attendant at Mwandiga Primary Court, she shared an office with the appellant since 2018.

She said that PW 1 visited their office on 25/09/2019 and 26/09/2019.

On 25/09/2019 PW 1 requested to see the magistrate in charge and spoke to the appellant before she was let in.

Thereafter, PW 1 entered chambers of the magistrate in charge where she was given a written note authorizing the appellant to open a case file.

Acting on that note, PW 1 went to the bank and paid the prescribed Court fees as reflected in the deposit slip that was handed over to her.

The next day, she was informed by the appellant of his going out to serve summons in respect of PW 1's case.

It was her testimony that she did not see PW 1 giving money to the appellant in the office.

On cross examination by the public prosecutor, DW 2 stated that she did not stay in office for the whole day.

On further cross examination, she admitted that during intervals of her absence from the office, there was a possibility for things to be done behind her back.

On re - examination, JALALA SHABANI said that she needed permission of the boss (magistrate) to get out of the Court premises.

DW 3 JEREMIAH KALEBO IMMANUEL, was the husband to both the complainant and Christina but had petitioned for divorce against PW 1 in the Kasulu Primary Court.

According to him, the appellant visited him in September 2019 and attempted to serve a summons addressed to his second wife, Christina.

He refused to receive the summons as it showed only one name, Christina.

Thereafter he directed the appellant to take a summons to his residence at Masanga area where Christina could be found.

PW 3 FLORENCE PETER IKORONGO was the Resident Magistrate in Charge at Mwandiga Primary Court since September 2019.

She testified that apart from being the head office assistant, the appellant was also a court clerk attending clerical works and other duties assigned to him by the magistrate.

She admitted attending to PW 1 on 25/09/2019 who sought assistance to file adultery case against one Christina.

She wrote a note to the appellant authorizing him to open a case file upon payment of Tshs. 15,000/= as filing fees.

The said civil case was filed on 26/09/2019 but dismissed on 23/10/2019 for non-appearance of the complainant.


On further examination, she stated that her Court did not accept cash payments as filing fees and that demands for money by Court officers in order to file a case was an abnormality.

On cross examination by Mr. Kabuguzi, the magistrate stated that the appellant acted as a court process server subject to express permission from the magistrate in charge.

PW 3 further testified that in Civil Case No. 45/2019 her permission to serve summons upon the respondent was neither sought nor obtained.

She expressed ignorance on the appellant's attempts to serve summons upon Christina.

On further cross examination, the magistrate denied to have seen PW 1 in Court on 19/09/2019 and stated that the complaint was only made after she had dismissed the case.



PW 4 BAVO RWEGOSHORA, an investigation officer with Prevention and Combating of Corruption Bureau (PCCB), said that PW 1 lodged a complaint in his office on 17/10/2019.

Upon investigation, he was satisfied that PW 1 and PW 2 met the appellant at Mwandiga Primary Court on 19/09/2019, 20/09/2019, 25/09/2019 and 26/09/2019 in order to file adultery case against Christina.

He was also satisfied that during such meetings, the appellant solicited and received bribes totaling Tshs. 170,000/=.

He also satisfied himself that the appellant served a summons on Christina without authority from the magistrate in charge.

The investigator recorded the appellant's cautioned statement that was undisputedly admitted as Exhibit P 5.

I have also examined the exhibits on record including Exhibit P 5, in which the appellant disputed receiving any money from PW 1 other than Tshs. 11,000/= sent through M-PESA.

He also stated that the complainant did not meet him prior to 25/09/2019.

Exhibit D 2 is a summons dated 26/09/2019 in Civil Case No. 45 of 2019 between Imelda D/o Johnstone Dosha and Cristina D/o.....

The summons directed the respondent to attend proceedings on 2/10/2019. It was signed by the Magistrate of Mwandiga Primary Court and duly stamped with a Court stamp.

Exhibit D 3 was an affidavit of a court process server signed by the appellant on 27/09/2019 stating that the summons could not be served on Christina.

The affidavit was not attested by the magistrate as a commissioner for oaths in accordance to the applicable law and procedure.

In so far as to circumstances leading to connecting the appellant with the charges of corrupt transactions, these pieces of evidence reveals that apart from signing the summons on 26/09/2019, the magistrate in charge (PW 3) was not aware that the appellant was engaged by PW 1 to effect service on Christina.

Further it is evident that the appellant did not present his affidavit in proof of service to PW 3 for the clear reason that she had not permitted him to effect such service.

It is also abundantly clear that at the instance of PW 1 and PW 2, the appellant employed steps to serve a summons on Christina without permission from the magistrate in charge.

I am further perturbed by the unstable arithmetic given by the appellant towards use of Tshs. 10,000/=

received through M-PESA which failed to match with the allegedly spent figure.

On examination by Mr. Kabuguzi, the appellant (DW 1) stated that:

".....the cost of Bajaji from Mwandiga to Kibirizi Tshs. 5000/=, Kibirizi to Municipal 4000/= and from Municipal to Mwanga @ we paid 500/= hence 1,500/= total 10,500/=. These I paid in my pocket, and she promised to refund me since I paid out of my pocket.

On 27/9/2019, we also have to try to serve the summons to place where I was directed that is Masanga. I told her she has to consider all the costs I incurred.....

I went on 27/9/2019 through bodaboda I paid Tshs. 3000/=..... I went direct near the EAGT in pastor's premises.

Assuming that the appellant was entitled to reimbursement, a sum of Tshs. 11,000/= did not sufficiently recompense the amount spent.

From own testimony as shown above, the appellant spent a total of Tshs. 13,500/= against Tshs. 10,000/= received from PW 1 bearing in mind that Tshs. 1,000/= covered M-PESA transaction charges.

This monetary difference was neither explained nor demanded by the appellant from the complainant

throughout proceedings in the trial Court rendering his story mind boggling.

If the aforestated aspects are treated to have been duly proved, in my opinion, they form a complete chain of circumstantial evidence unequivocally pointing out accusing finger at the appellant.

Those pieces of evidence further corroborate the direct evidence of PW 1 and PW 2 on payments made to the appellant on 19th, 20th and 25th September 2019.

The next question is whether the evidence of the prosecution on the aforesaid aspects is trustworthy and reliable.

Testimonies by the four prosecution witnesses, to wit: PW 1, PW 2, PW 3 and PW 4 and of the three defence witnesses have been discussed in detail by the trial Court.

After detailed discussions and analysis of the evidence on record, the trial Court accepted the versions of PW 1, PW 2, PW 3 and PW 4.

Mr. Kabuguzi had argued that PW 1 and PW 2 were not credible for failure to timely report the incidents to the magistrate and PCCB.

However, records show that the complainant's initial efforts to meet the magistrate were unjustifiably blocked by the appellant who maintained that the magistrate could only be seen after a demand for Tshs. 170,000/= was fully met.

Records further show that when given audience with the magistrate in charge on 25/09/2019, PW 1 and PW 2 were made to believe that the magistrate (PW 3) was also involved in the deal.

In such circumstances, it could not be possible for PW 1 and PW 2 to complain to the same magistrate against the appellant as she was believed to be an accomplice.

This explains as to why a dismissal of the suit was treated personal by the complainant who resorted to lodge a grievance at PCCB.

At this juncture, I may say that great pain was employed by the learned counsel for the appellant to show the lacuna and loopholes in the prosecution case, but regrettably, the record does not substantiate it.

In the light of the above, I find the appeal bereft of any merits and is accordingly dismissed.

It is so ordered.




AMOUR S. KHAMIS

JUDGE

11/11/2020