

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF ARUSHA)**

AT ARUSHA

CRIMINAL APPEAL NO. 80 OF 2019

(Originating from Criminal Case No. 99 of 2018 in Karatu District Court at Karatu)

DANIEL MUSA SIIMA..... APPELLANT

REPUBLICRESPONDENT

JUDGMENT OF THE COURT

19/09/2020 & 12/11/2020

GWAE, J

In the District Court of Karatu at Karatu (trial court), the appellant, **Daniel s/o Musa Siima** was charged with an offence of corrupt transactions contrary to section 15 (1) (a) and (2) of the Prevention and Combating of Corruption Act, No. 11 of 2007.

Particulars of the case read that, at diverse dates between April 2018 and August 2018 at Mnadani area within Karatu District in Arusha Region, the accused now appellant being a Village Executive Officer ("VEO") of Matala Village did corruptly solicit two hundred shillings (**Tshs.200, 000/=**) from one



Kidamilango Gwagwala Qamahina as an inducement to assist him in recovering his thirty (30) herds of cattle which were unlawfully captured, a matter which relates to his Principal's affair.

The brief substance of the prosecution evidence which led the trial court to the satisfaction that the charge against the accused now appellant was proved beyond reasonable doubt was as follows; that, the complainant or principal witness (PW5) found his 34 herds of cattle and of others missing or unjustifiably captured by unknown people however in the course of searching them, DW5 managed to recover only 4 cows out of his 34 herds of cattle.

DW5 then wanted to be assisted by the village authority in which the appellant was to have 30 cows recovered. He thus approached the appellant who demanded Tshs. 200, 000/=or else he would not be assisted. Having been demanded such amount of money by the appellant, PW5 reported the matter to the Prevention and Combating of Corruption Bureau (PCCB). The trap was made and eventually the appellant was arrested while in possession of the trap money in the tune of Tshs. 100,000/=in the domination of a note of Tshs. 10,000/=each, such possession was witnessed by independent witnesses (PW1, PW2 and PW3).

The appellant patently pleaded not guilty to the offence against him. He contended that he received that amount of money which was found in his

possession from the PW5 (complainant to the Bureau) due to the fact that he had a transaction with him (PW5). The appellant added that PW5 had planted case against merely him because he happened to lead the execution process of a decree against him (PW5). The appellant's contention was strengthened by his witness, village chairperson who appeared as DW2.

Aggrieved by the trial court's decision, the appellant has knocked the doors of this court as his endeavors to have it reversed. In his petition of appeal, the appellant advanced four grounds of appeal namely; **firstly**, that, the trial magistrate erred in law and fact for convicting the appellant while the case was not proved beyond reasonable doubts, **secondly**, that, the trial magistrate erred in law in convicting the appellant on the basis of insufficient evidence, **thirdly**, that, the trial court erred in law and fact for convicting the appellant on basis of inconsistency evidence and **fourthly**, that, the trial magistrate erred in law and fact for convicting the appellant while the decision lacks reasoning and logics.

This appeal was argued on the 16th day of September 2020, the appellant appeared in person, unrepresented whilst the Republic was represented by **Mr. Hatibu**, the learned state attorney. The appellant merely argued that he was wrongly convicted and sentenced by the trial court since the charge against him was nothing but fabricated one.

Supporting the appellant's appeal, Mr. Hatibu had these to say, that, the accused was wrongly convicted since the record reveals that, exhibits namely; Tsh **100,000/=** together with its form (**PE1 & PE2**) were tendered by the prosecutor and not prosecution witnesses adding that the cautioned statement of the accused (**PE7**) was not read over by the witness (**PW7**) He then prayed for an order expunging them from record. Having argued so, the learned counsel for the Republic urged this court to allow this appeal since after the order expunging the documents admitted and received by the trial court the prosecution will remain with very scanty evidence to enable this court to sustain conviction and sentence against the appellant.

I have gone through the trial court record and observed that, the learned trial magistrate did not cause the documents so tendered in court (PE1-PE7) to be read over as correctly argued by the respondent's representative. That was wrong as a document has to be read over so that an accused person can be able to know his case. Failure to read the same invalidates such document admitted without its contents being read over. I subscribe my finding in the **Ntobangi Kelya and another v. the Republic**, Criminal Appeal No. 234 of 2015 found at <https://tanzlii.org/judgments/criminal-appeal-no-234-of-2015>. Judgment PDF, where the Court of Appeal observed that and I quote;



"It was wrong for the trial court to receive the cautioned statement as evidence without ordering the same be read over.

See also **Sprian Justine Tarimo versus the Republic**, Criminal Appeal No. 226 of 2007 (unreported-CAT) and **Kashana Buyoka v. Republic**, Criminal Appeal No. 176 of 2004.

In our case, throughout the trial, the prosecutor had been praying for being supplied with document so admitted and the trial court had been recording that a certain exhibit is "dully supplied". A document being supplied to a witness or a prosecutor does not necessarily mean that its contents have been read over. It follows therefore, the evidence relating to admitted documents whose contents were not read over ought not to be relied upon by the trial court to safely secure a conviction and or on appeal to leave such documents to stand as exhibits for evidential value except to accordingly expunge the same. I say so simply because reading of contents of documents for example the appellant's cautioned statement entails a fair hearing.

As rightly observed by the learned state attorney that, the learned trial Resident magistrate received the documents which were sought to be tendered by prosecutor and not by witnesses. This is another fatal flaw on the part of the proceedings conducted before the trial court particularly as far as tendering of



documents is concern. The duty of a prosecutor is to prosecute cases and not to tender documents since he cannot there afterwards be examined as a witness in a witness box sworn or affirmed immediately before his or her testimony being recorded (See **Thomas Ernest Musungwi v. Republic**, Criminal Appeal No. 78 of 2012-CAT at Arusha)

This court being aware of the principle of the law that the standard of proof in criminal cases is no less than that of beyond reasonable doubt and that the burden of proof is always on the shoulders of the prosecution side. This legal position has been judicially demonstrated in a chain of judicial decisions, for instance the Court of Appeal of Tanzania when dealing with an appeal before it, in the case of **Nkanga Daudi v. Republic**, Criminal appeal No.316 of 2013 (unreported) had this to say:

“It is the principle of law that the burden of proof in criminal cases rest squarely on the shoulders of the prosecution side unless the law otherwise directs and that the accused has no duty of proving his innocence “.


In our case, as correctly argued by the state attorney, after the documents tendered and admitted by the trial court being expunged the court remains with very scanty evidence in record. It follows therefore the prosecution evidence now



available in the record is insufficient to justify this court to uphold the trial court's conviction.

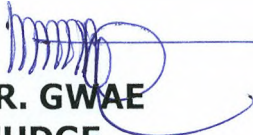
In the upshot, the appellant's appeal is hereby allowed. The trial court decision and its ancillary orders are quashed and set aside.

Order accordingly.



M. R. GWAE
JUDGE
12/11/2020

Right of appeal to the Court of Appeal of Tanzania fully explained.



M. R. GWAE
JUDGE
12/11/2020

