

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM SUB-REGISTRY)
AT DAR ES SALAAM**

CRIMINAL APPEAL NO. 91 OF 2022

(Originating from the District Court of Kinondoni in Criminal Case No. 68 of 2020 which
was decided on 16th June 2021 by Honourable Jacob, RM)

**JUDITH JOSEPH NG'OMA APPELLANT
VERSUS**

REPUBLIC RESPONDENT

JUDGMENT

25th Oct & 7th Nov, 2023

KIREKIANO, J.:

The appellant herein was tried in the District Court of Kinondoni with two counts of corrupt transaction c/s 15 (1) (a) and (2) of the Prevention and Combating of Prevention Act No. 11/2007. It was alleged that on diverse dates in December 2019, the appellant being an Executive officer at Maputo Street in Dar Es Salaam solicited Tshs. 500,000/= from Priscus John Orotu.

It was further alleged that on 13th January 2020, it was alleged that the appellant ultimately received Tshs. 280,000/= as an inducement to help him to obtain a building permit.

After a full trial, the trial court was convinced that the charge was proved to the required standard, and the appellant was accordingly convicted and sentenced to a fine of Tshs. 500,000/= or twelve months imprisonment was inflicted in each count.

Dissatisfied the appellant preferred this appeal on the following seven grounds: -

- 1. That the Honorable Trial Magistrate erred in law and fact in failing to establish the evidence availed to the Trial Court which has indicated that the appellant has not committed the offense charges or farced thereto.*
- 2. That the honorable Trial Magistrate erred in law and fact in failing to establish the modality in which the money of the complainant was solicited and obtained and there is no evidence indicating that the money was public money from the office of Prevention Combating Corruption Bureau thereto.*
- 3. That the Honorable Trial Magistrate erred in law and fact in failing to establish that the appellant has committed the offense contrary to section 15(1) (a) section 2 and section 3 of the Prevention and Combating of Corruption Act No. 11 of 2007.*
- 4. That the Honorable Trial Magistrate erred in law and fact in establishing that the appellant did solicit an advantage of Tshs. 500,000/= and received Tshs. 280,000/= from Priscus Oroti thereto.*

5. *That the Honorable Trial Magistrate erred in law and fact in failing to appreciate that the evidence adduced by the respondent has not established the commission of the offense of corruption transactions beyond reasonable doubt thereto.*
6. *That the Honorable Trial Magistrate erred in law and fact in convicting the appellant on the mere opinion of the court regarding the relationship between the appellant and PW4 thereto while the same does show exactly how the appellant was involved in the commission of the afore stated offense of corrupt transaction*
7. *That the Honorable Trial Magistrate erred in law and fact by convicting the appellant on the mere opinion of the Trial Magistrate without considering the evidence adduced by both parties during the hearing of the matter thereto.*

Before addressing the grounds of appeal, I find it opposite to recap on brief facts of the case which led to the appellant's conviction.

The appellant was an employee of Kinondoni District Council and worked as Executive Secretary Maputo Street. Among duties incumbent to her was to facilitate residents of her street to process building permits. In this, the appellant's role involved signing and stamping the requisite forms before the same may be processed by planning authorities.

It was the prosecution case that a resident of Maputo Street; Priscus John Orola (PW1) having purchased a plot of land at Mbweni wanted to

develop the same. Before he could accomplish his building, he was ordered by the Kinondoni Municipal Council to stop construction until he obtained a building permit. When he approached the Executive Secretary (the appellant) as part of the process, the appellant declined to sign the requisite forms on instruction that there was contention on ownership of the land. After the dispute on ownership was resolved by the land court, the said John Orotu working on an ultimatum issued by Kinondoni Municipal Council to obtain a building permit, approached the appellant in the process of obtaining endorsement of a building permit. This time the appellant solicited Tshs. 500,000/= from PW1 as an inducement to assist in procuring a building permit.

As such a part of Tsh 500,000 was solicited, Tshs. 280,000/= was sent to the appellant through mobile phone 0715-494939 on the instruction of the appellant. This mobile phone and statement from this number together with that of appellant 0767-495600 was retrieved and a forensic examination of the conversation between the appellant and PW1 and the other person was prepared.

The defence case was a complete denial the appellant (DW1) Judith Joseph Ngoma denied having solicited the amount alleged nor receiving the alleged Tshs. 280,000/= Her line of defense was that the issue of a

building permit was outside her scope of duties. As such she was not in a position to help the complainant to obtain a building permit.

During the hearing of the appeal, the appellant had the service of Mr. Augustine Kusalika learned advocate while the respondent was represented by Miss Dorothy Massawe learned Principal State attorney.

Mr. Augustine Kusalika for the appellant intimated that the seven grounds of appeal are centrally on insufficiency of evidence to prove the charge beyond reasonable doubt. He thus condensed and addressed the same altogether focusing on three;

Firstly, there was a contradiction in the evidence of (PW1) Priscus Bosco, (PW6) Immaculate, and (PW7) George Barige. It was not clear how the money was taken from (PW7) and given to PW6 since (PW7) George did not admit to having given the trap money to (PW6).

Secondly, the witness (PW4) Said Abdurahman who allegedly received the money in favor of the appellant, the phone number used 0755-946963 its registration number was in the name of Said A. Said. According to the appellant counsel, there was doubt whether the money was sent to (PW4) Said Abdurahman and in favor of the appellant. Mr. Kusalika invited this court to consider the decision in **Nestory Mbuki Michael vs. Republic**,

DC Criminal Appeal No. 25/2020, and find that the charge was not proved in the required standard.

Miss Dorothy Massawe for the respondent resisted the appeal and took a stance that the charge was proved beyond a reasonable doubt. Responding to the grounds of appeal, she submitted that the evidence by (PW1) was clear on how the appellant solicited Tshs. 500,000/= from (PW1).

There was evidence of a conversation between the two and instruction on how the money should be sent to her through (PW4) through another number 0715-494739 owned by (PW4) Said Abdurahman. This witness told the court that he eventually gave the money to the appellant. She argued that the evidence by (PW6) Immaculate and (PW7) George all proved that the money though not sent directly to the appellant was trap money.

In his brief rejoinder, Mr. Kusarika maintained that in offenses of the kind involving trap money evidence showing that the money was directly sent to the appellant ought to be tendered. He thus asked this court to find that there was an inconsistency in the transaction of the trap money and resolve the inconsistency in favour of the appellant.

The appellant counsel passionately argued the prosecution case was flawed by inconsistencies to prove the charge beyond a reasonable doubt. The decisive issue here tasked to this court is to decide whether there were inconsistencies in the prosecution case and whether the same went to the root of the trial court findings. This is the duty fortified in ***Mohamed Said Matula V Republic; 1995 TLR 3*** where the Court of Appeal stated thus:

"Where the testimonies by witnesses contain inconsistencies and contradictions, the Court must address the inconsistencies and try to resolve them where possible, else the Court has to decide whether the inconsistencies and contradictions are only minor, or whether they go to the root of the matter"

I have revisited the whole prosecution evidence particularly evidence by PW1, PW4 PW6, and PW7 which is the core of the appellant's submission. PW1 who was the victim, this witness explained how his pursuit of a building permit and indulgence of the appellant ended in the appellant soliciting money i.e Tshs 500,000 from him. These conversations were proved by Exhibit P10 which is a printout of the appellant's communication with PW1.

As such PW1 told the trial court that the appellant issued a number 0715494939 to channel the money. Admittedly, the same was not sent by PW1 directly to the appellant. The prosecution witness PW4 Said Abdulrahman testified how he came to the mix as a conduit in the transaction. The complaint that PW4's names did not tally with evidence on the registration of his SIM card is noted to be immaterial. This is because **firstly**, in his oral testimony he said on page 31:

'Street executive officer called and asked if I received the money, she said I should withdraw the money she was coming to take it, I went to an agent called Lupalu and 3 minutes later the SOE came and I gave her the money and she left'

This transaction was, according to print acknowledged by the appellant. I am unable to subscribe to the view by the counsel for the appellant that, in offences of this kind there must be evidence proving directly that the trap money was directly received by the suspect. While I take note that "receiving" is an essential element to be proved, this should be broadly construed apart from conventional transactions of money where for obvious reasons, identity will always be concealed.

I say so because from the record there is evidence from PW1 that the appellant gave instruction on which number to be used to transact the

money. As such the appellant admitted on page 5 of the caution statement (Exhibit P12) to have received the amount of 280,000 sent through number 0715494739.

It is based on the above I find that there was no inconsistency going to the root of the matter. I find that there was no material inconsistency in the prosecution case.

I have as such considered the decision by ***Nestor Mbuki Michael vs Republic (DC Criminal Appeal 25 of 2020) [2021] TZHC 2628 Bahati J. <https://tanzlii.org>*** cited by Mr Kusalika.

In this case, while dealing with an appeal on a similar offense of corrupt transactions, the appellate Judge found that the charges were not proved in the required standard. Part of an excerpt from this judgment on page 8 reads;

Documents were not brought in court to prove the start of a corrupt transaction by the appellant, it was alleged that the appellant received some of the money through Mobile money service (MPESA) but the prosecution never bothered to fully inform the court on how the transaction was completed through MPESA and whose number was used to complete such transaction.

In this appeal, the record shows that there was evidence from PW1 of his indulgence with the appellant. It was shown how it all started with an application for building permits needing appellant endorsement. As such there was evidence on the transactions as shown above. The decision in Nestor **Mbuki(supra)** is for the reasons stated, distinguishable in this appeal.

Having reconsidered the evidence on record and the parties' submission in this appeal, I am of the settled view that the charge against the appellant was proved beyond reasonable doubt. The appellant's conviction and sentence and the trial court's ancillary order thereto are sustained. All said, this appeal is entirely dismissed.



A. J. Kirekiano

JUDGE

7/11/2023

COURT: Judgment delivered in chamber in the presence of the appellant and Mr. Augustine Kusaliika for appellant and in presence of Miss Doroth Massawe, Principal State Attorney for respondent.

Sdg: A. J. Kirekiano

JUDGE

7/11/2023