

IN THE HIGH COURT OF TANZANIA

AT TABORA

APPELLATE JURISDICTION

HIGH COURT CRIMINAL APPEAL NO. 134 OF 1975

(Original Criminal Case No.146 of 1974 of the District Court
of Kasulu District at Kasulu Before C. A. Lwelengela, D.M.)

Alberto Katabi Appellant
(Original Accused)

versus

THE REPUBLIC RESPONDENT
(Original Prosecutor)

CHARGE: 1st to 6th count: Conspiracy to defraud c/s. 306 of
the Penal Code.

7th count to 11th: Making a false document c/s. 333
and 337 of the Penal Code.

J U D G E M E N T

SISYA, AG. J:

The appellant and four others were jointly charged on six counts (i.e. counts 1 to 6) of Conspiracy to defraud contrary to section 306 of the Penal Code. On five subsequent counts (i.e. counts 7 to 11, inclusive) the appellant, alone, was charged with making a false document contrary to sections 333 and 337 of the Penal Code. He together with the others was acquitted on all the conspiracy counts. He was, however, found guilty and convicted on all the forgery counts and he was sentenced to one year imprisonment on each of the following counts, that is counts 8, 10 and 11 and to two years imprisonment in counts 7 and 9 with an order that the sentences should run concurrently. He is now appealing.

The established facts show that the appellant was at the material time a Road Supervisor employed by the COMWORKS and he was stationed at Kasulu. His duties included the recruitment of Casual Labour who worked on the roads in Kasulu District. For every casual labourer so recruited a job card would be written out showing his name, the section of the road where he worked and the number of days worked as well as the rate per diem. The said job cards would eventually be used in the preparation of a master roll and payment voucher on which payment of the wages to the casual labourers would be made or effected.

Evidence was given at the trial by one RASHID NGULADI (P.W.5), a road foreman, to the effect that on 6/5/74 he went to the Comworks offices at Kasulu. While he was there the appellant instructed him to recruit twenty-three casual labourers who would dig trenches for drainage along the road at Bugaga. Rashidi did as instructed. The 23 men whom he recruited started work on 7/5/74 and each one of them worked for twenty-two days at the rate of shs.11/20 per person per day. On 30/5/74 the appellant gave him job cards which he (PW.5) passed over to a clerk at the Comworks offices for the purpose of preparing a master roll and payment voucher. Later it was discovered that there were twenty eight job cards in respect of casual labourer who allegedly had worked for 22 days at the Bugaga section of the road. Rashidi who also had his own record in respect of the 23 men whom he recruited and whom he knew to have worked at Bugaga failed to identify five names shown on job cards prepared by the appellant showing that the said men also worked at Bugaga during the relevant period.

The names on the said job cards were Nafasi Betese, Moshi Kipele, Karadanga Balobanye, Jantonye Balainga and Nicolaus Kalimanzila. The said job cards were collectively tendered and admitted in evidence as Exh. 'E'.

Efforts were made by one Mandiro, (P.W.13) an Assistant Superintendent of Police who investigated the case to trace the persons whose names appear on Exh. 'E' but he failed to trace any one of them.

The appellant in his defence contended that the persons whose names appear on Exh. 'E' actually did work for the comworks. He, however, conceded that the said five persons did not work on the Bugaga section of the roads. According to the appellant since the funds provided for certain projects or pieces of work had been exhausted he was instructed by his senior to use the funds available for whatever piece of work had been done irrespective of the fact that the funds were not provided for that specific project or piece of work. The appellant told the trial court in his defence that these instructions were as a result of the directions issued by the officer of the Area Commissioner, Kasulu, to the effect that all the funds provided for that financial had to be used in full before the expiry of the financial year. The appellant insisted that the five persons did some work but he failed to say what work they did and where in particular. He went on to say that he showed them to have worked on the Bugaga section to avoid audit queries.

The learned trial magistrate in a reasoned judgement was satisfied that the five persons whose names appear on Exh. 'E' are fictitious and that in writing out the five job cards (Exh. E) the appellant made false documents in respect of each job card under query.

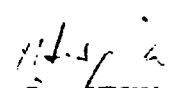
In his petition appeal the appellant persistently denies preparing payment vouchers in respect of the five job cards (Exh. "E"). This is actually besides the point. As a matter of fact it is in evidence that the payment vouchers which included the information on Exh. 'E' were prepared by the clerks in the Comworks offices at Kasulu. The issue in point is the preparation of the five job cards (Exh. 'E') which are the offending objects or the subject matter in counts seven to eleven, inclusive. The appellant does not even attempt to deny writing them. On the evidence of Rashidi (P.W.5) and ASP. Mandiro (P.W.13) it is clear that the five persons never worked at Bugaga as alleged on Exh. 'E' and that they are not existent. The appellant's bald statement that the five persons in question must have done work for the comworks somewhere did not raise any reasonable doubt in the mind of the trial magistrate nor does it do so now in my mind. In filling up the details in Exh. 'E' the appellant purported to show that the five persons whose names appear on these job cards had worked on the Bugaga Section of the road for 22 days and therefore each one of them was entitled to payment at the rate of shs.11/20 per day. This information was false and appellant must have known that it was so. In all the circumstances of the case the intent with which the appellant did so is not, to my mind, difficult to find. It is in evidence that the appellant too used to effect payment to the casual labourers. It seems obvious to me that the appellant, therefore, wanted to create room for extra wages which no one would have claimed and which he could have had an easy access to misappropriate. All in all, like the learned trial magistrate I am satisfied that in writing out the five job cards (Exh. 'E') the appellant made out five false documents with intent to defraud the Government. The convictions on counts seven to eleven, inclusive are therefore sound and I uphold them.

...../4 Turning

Turning to sentence the appellant was sentenced to a substantive period of two years. The maximum penalty for the offence charged is seven years imprisonment. The appellant was in a position of trust which he was deliberately abused. Further, such offences are usually very difficult to detect. In his submissions the learned state attorney, Mr. Teemba, urged this court to enhance the sentence. With respect, I do not feel compelled to do so. In the first place no notice of enhancement was ever served on the appellant who, indidentally, elected not to appear at the hearing of this appeal. Secondly, I feel a sentence of two years is sufficient to meet the justice of the case. More so when this was appellant's first offence. I, therefore, leave the sentences undisturbed. However, the sentences in counts 7 and 9 which need confirmation are hereby confirmed.

In the final result this appeal fails and it is dismissed in its entirety.

Delivered in Court at Tabora this 10th April, 1976.


H. E. D. SPSYA,

AG. J.