

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CRIMINAL APPEAL NO.100/94

FRANCIS MISONGE..... APPELLANT

V/S

THE REPUBLIC..... RESPONDENT

J U D G M E N T

KYANDO, J:

In this case a contract was executed for purported renovations on the Sokoine University of Agriculture houses and payments by cheques were made purportedly for work done. The contract showed that it had been entered into between Kaza Building Contractors, owned by Aphonze Zachary Hashasi, the first accused at the trial and the University. It bore signatures of senior officials of the University who purportedly signed on its behalf.

Large amounts of money were paid for work done. The appellant was a clerk at the University and kept cheques for the University. When all the documents used in the payments for work done were examined by a hand writing expert, they were found to have been forged. The report of the handwriting expert was tendered without him appearing to testify and this was done apparently, because he could not be found without undue delay. The defence did not object to its being tendered without the witness appearing. It further turned out that no work in fact was done for the University or contracted for. So the payments were for nothing.

It also turned out that the cheques used to pay Kaza Contractors had been previously paid to other firms or people by the University. It appears that they were then reused to pay Kaza Building Contractors.

According to the report of the handwriting expert the cheques and all the documents which were found to be forged bore the handwriting of the appellant. He, in other words, forged the signatures of the Senior Officers of the University. This was confirmed by the Bursar, Mr. Rwoga (PW.10) who said the signature appearing to be his on the documents was not actually his.

The forged cheques were drawn on National Bank of Commerce (NBC) branch of Mwere, Morogoro. Both Hashasi and the appellant were then charged with conspiracy to defraud (counts 1 and 2) forgery (counts 3 and 4) uttering false documents (counts 5 and 6) and stealing the money with drawn from the NBC (counts 7 to 19) and they were convicted on all the counts. The appellant was aggrieved, hence this appeal. In the petition of appeal he has stated that he does not wish to appear for the hearing of the appeal or engage an advocate to represent him. His own contention in the appeal is that the handwriting expert should have appeared to give evidence and that his report alone should not have been acted on by the trial court to convict him. He was represented by an advocate, Mr. Eweyongeza, at the trial and Mr. Blandes learned State Attorney for the respondent Republic contends in his written submissions that the contention of the appellant should have been made in the trial court, at the time when it was being decided to dispense with the appearance of the handwriting expert and when the report of the expert was being introduced in evidence in his absence. He says neither his advocate nor the appellant objected to the introduction of the report then. He says the appellant cannot non be seriously heard complain about the admission of the report and the use of it by the trial court to convict him.

With respect, I agree with Mr. Blandes. The report of the handwriting expert was properly admitted and acted on by the trial court. This report shows that the appellant forged the documents used in the thefts charged in this case and he conspired with another person, of Kaza Building Contractors, to commit the forgeries and thefts. His convictions were therefore rightly entered and his appeal to this court against them is completely devoid of merits. The sentences imposed were well earned and I dismiss the appeal in its entirety.

The trial court made no order for the refund of the money stolen. I order them to refund NBC of the money.

DAR ES SALAAM.
21/7/1995.

Miss. Mkwizu, SA - for the Rep.
Appellant - does not wish to appear.
Judgment delivered.

L.A.A. KYANDO
JUDGE

CERTIFIED TRUE COPY OF THE
ORIGINAL.

F. S. MSNOTE
DISTRICT REGISTRAR