

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA**

AT SHINYANGA

CRIMINAL APPEAL NO 112 OF 2018

**(Arising from Criminal Case No. 62 of 2016 of the District Court of Meatu
at Meatu)**

MADUHU S/O KANUDA.....APPELLANT

VERSUS

THE REPUBLICRESPONDENT

JUDGMENT

Date of the last Order: 15/1/2020

Date of the Judgment: 23/1/2020

E.Y.MKWIZU, J.

In the District Court of Meatu at Meatu, the appellant, MADUHU S/O KANUDA was arraigned for the offence of stealing by agent contrary to section 273(b) of the Penal Code, (Cap. 16 R.E. 2002). The facts as alleged by the prosecution at the trial court were that, on a diverse dates between May, 2014 and November, 2015 at Mwakasumbi village within Meatu District in Simiyu Region, the appellant did steal 526 bags of maize valued at Tshs. 31,560,000/- entrusted to him by KASINJE S/ONYAMVEMVE @ SANANE for selling instead the appellant used them for his own benefit.

The appellant refuted the accusation following which the prosecution featured four witnesses. On his part, Appellant testified as the only witness for the defence.

The facts giving rise to the appeal can be briefly stated as follows: PW1 and the appellant were friends. Between 2014 and 2015, they had engaged on maize business where by PW1 provided money to the appellant while appellant collected maize from farmers. It was testified by PW1 that he sent appellant money for collection of maize through M-PESA and TIGO PESA. On a further clarification, PW1 stated that, a total of 726 sacks of maize which were collected and stocked at Mwakasumbi store. On December ,2015, 190 bags were sold at 11,400.000 /=. The remaining 526 bags remained in the store. PW1 contended that, to his dismay, appellant sold the remaining 526 bags of maize without his permission and used the money for his own benefit. These facts were confirmed by PW2 and PW3. F 2600 D/S was an investigator. He told the court that he interrogated the appellant who admitted to have sold the alleged bags maize.

On his part appellant associated himself with the facts that he was doing business of collecting maize for PW1 and that he did received money to that effect. However, while denying of committing the alleged offence

,appellant said he collected only 600 bags of maize, 190 bags were sold and 200 bags were destroyed. He in total handed to PW1 a sum of 24,000,000/=, appellant concluded his defence.

After a full trial, the appellant was found guilty of the charges and was consequently convicted and sentenced to seven years imprisonment.

Aggrieved by the outcome of the trial, the appellant has come to this court with a petition of appeal containing four grounds which essentially boil down to the complaints of **variance between the charge sheet and the prosecution evidence, witness credibility and conviction resting on an uncorroborated prosecution evidence.**

At the hearing of the appeal, appellant appeared in person, unrepresented while, Ms. Immaculate Mapunda learned State Attorney, appeared to represent the Republic, respondent. The appellant opted to let the learned State Attorney respond to his grounds of appeal first while reserving his right of rejoinder if need could arise.

On the outset, the learned State Attorney supported the appeal. Submitted to the grounds of appeal generally, the learned State Attorney said, the prosecution failed to discharge their duty to prove the case beyond

reasonable doubt. Under section 273 on which the appellant stand charged, prosecution is mandated to established principal -agent relationship in that there should be a proof that PW's properties were entrusted on the appellant for a certain purpose and that appellant mishandled the said properties contrary to the instruction by the complainant.

Making reference to pages 3 and 4 of the trial Court's record, the learned State Attorney submitted that, PW1 being a key prosecution witness gave a very shallow evidence .He alleged to have given appellant money for collection of maize and that 726 bags of maize were collected.PW1 did not prove to the court on how he handled the alleged amount to the appellant instead he just mentioned in court the means used to send money.

In a more elaborative stance, Ms. Mapunda stated that, PW1 failed to prove the fact that the alleged 726 bags of maize did exist. It was a mere allegation by PW1 that he was not able to get back a total of 526 bags of maize or it equivalent in cash after he had ,himself sold the 190 bags of maize stressed the learned state Attorney.

The evidence by PW2 and PW3 said nothing legally incriminating the appellant said Ms. Mapunda. Clarifying on the evidence by the investigator, PW3, Ms. Mapunda submitted that, she narrated on how she interrogated the appellant who admitted to have sold the said bags of maize. However, PW3 failed to tender in court the appellant's cautioned statement to prove if really that is what transpired. It is on the above grounds that Ms. Mapunda supported the appeal and prayed to have the appeal allowed.

After subjecting the grounds of the appeal presented and the submission by the parties, I opt to analyze the grounds of appeal generally. The issue before me is whether the evidence by the prosecution proved the case beyond reasonable doubt.

The appellant, as stated earlier, was charged and convicted of the offence of stealing by agent. As correctly stated by the learned State Attorney, the only material witness for the prosecution in this matter is PW1. His evidence so to speak leaves a lot to be desired. I say so because, **firstly**, he alleged that he gave the appellant money for collection of maize. There is no single sentence in his evidence indicating the amount PW1 gave the appellant for that purpose, **secondly**, PW1's evidence is short of clarification as to whether the alleged 726 bags of maize existed. In his

evidence, PW1 mentioned the 726 bags of maize but do not say how they were bought and to whose store the maize were stored so as to prove that the bags really existed. **Thirdly**, there is no evidence on record that show how PW1 came into knowledge that his remaining 526 bags have been sold by the appellant.

To say the least, in a criminal case like this, the burden of proof is always on the prosecution. The prosecution evidence in this case is short of proof as to whether the alleged offence was committed by the appellant.

Given the shortfalls explained above, I find the appeal by the appellant having merit. I allow the appeal, quash the conviction and set aside sentence and order that the appellant **MADUHU S/O KANUDA** be released from prison forthwith unless he is held there for other lawful purpose.

It is ordered.

DATED at **SHINYANGA** this 23rd February, 2020


E.Y. MKWIZU
JUDGE
23/1/2020

