

IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA
PC. CRIMINAL APPEAL NO. 22 OF 2021

(Arising from Criminal Appeal No. 08 of 2021 in the District Court of Magu at Magu original Criminal Case No. 338 of Kisesa Primary Court)

FIDELIA JONAS.....APPELLANT

Versus

HARUNA S/O MPEJIWA.....RESPONDENT

JUDGMENT

8th Nov & 10th Dec, 2021

RUMANYIKA, J:.

The appeal is against judgment of Magu District Court dated 02/04/2021 with respect to the charges of obtaining money by false pretenses c/s 304 of the Penal Code Cap. 16 RE 2019 the court having had quashed conviction, set aside sentence of 18 months conditional discharge and ordered refund of the alleged shs. 26,000,000/= pronounced by Kisesa primary court on 16/2/2021.

Aggrieved, Fidelia Jonas (the appellant) had four (4) grounds of appeal, which essentially revolved around only a point; **that the 1st appeal court improperly evaluated the evidence on record thereby holding that the complainant's case was not beyond reasonable doubts proved.**

Unlike the appellant who had legal services of Mr. Jackson Ryoba, advocate, when, by way of audio teleconference the appeal was called on 08/11/2021 for hearing, Haruna Mpejiwa (the respondent) appeared in person. I heard them through mobile numbers 0756 305 954 and 0756 677 001 respectively.

Mr. Jackson Ryoba learned counsel submitted that had the 1st appeal court learned magistrate properly evaluated the evidence on record, with respect to evidence of the appellant's two daughters the respondent having had pretended a traditional healer, and, as consideration therefore from the appellant the respondent obtained shs. 26,800,000/=, the former should not have reversed the trial court's decision much as on that one, unlike such other witnesses the appellant and daughters adduced direct evidence because also the respondent admitted as having had received but a lesser sum. That is all.

In reply the respondent submitted; **(1)** that with regard to the actual amount of money paid the appellant's evidence was full of contradiction. That he in fact didn't receive the alleged huge amount of money and, if anything without documentary evidence the appellant could not have withdrawn shs. 26.8million. No copy of Bank withdrawal form or something **(2)** That if anything the appellant's evidence that she waited for three **(3)**

good years to report the case of threatening to kill her had she not given him money it was not in any way contradicted. That is it.

A brief account of the evidence on record reads thus; -

Sm1 Fidelia Jonas a retired nurse stated that as she had a miserably missing son, the other one chronically sick and they agreed each other, in consideration of shs. 1.8 million, in June, 2018 she contracted the re known traditional healer but the boys did not resurface/recover. That as she claimed back the money the respondent threatened her and she felt scared such that end of the day she paid him a total of shs. 26,800,000/=.

In support of Sm1's evidence essentially, Sm2 Neema Jonas is on record having had stated that the respondent having had received the money, say one week later the latter summoned her and the mother home and took them into bushes where, on demand Sm1 paid him another shs. 6,000,000/=.

Sm3 Jonas Michael stated that only with respect to cases of the appellant's two sons he paid the respondent only shs. 1.8million.

Sm4 Badeliki Kagulube stated that with regard to the two brother's cases the family having had paid the respondent fair of shs. 90,000/= and shs 1.80 million for medication, say four (4) days later too it was said that

in order to make the mother's business good and lucrative Sm1 paid the respondent shs. 25.0 million, which money he never returned irrespective of promises and the appellant's several and repeated demands that as were now in bushes invited by the respondent, Sm4 felt it dangerous and deadly threatened then he just ran away. That as the respondent asked for some shs. 300,000/= more unsuccessfully the latter ran wild and kept on missing until such time he resurfaced, then was arrested and arraigned in court. That is all.

In defence Su1 (the respondent) just stated that in June, 2018 only there came a man with son who reported epilepsy case that accordingly he attended and traditionally healed one only for shs. 100,000/= leave alone shs. 100,000/= for further appreciation but in any case to him the appellant was a stranger.

In her evidence, in terms of the case and amount Su2 one Vumilia Faustine testified as material as Su1 but additionally, that it took one only a week to heal the boy. That is it.

With a summation of the evidence on record essentially, the issue is not whether in consideration of promise to traditionally heal the boy(s) the respondent received money from the appellant but how much it was it

was? Shs. 100,000/= as alleged by the respondent or shs. 1.80 million as it was alleged by Sm3 and paid by him (not by Sm1) or a total of shs. 26.80 million as alleged by Sm1, daughter and son much as, if anything, as argued by the respondent, with regard to anything additional to shs. 1.80 million shs. 6,000,000/= as said by sm2 the latter's evidence was but hearsay which one, correctly in my view as the 1st appeal court did it the evidence should have been discounted. Be it as it may, whatever the amount for that purposes paid by appellant to the respondent the offence of obtaining money by false pretenses it wasn't beyond reasonable doubts proved.

It is very unfortunate that the charges of obtaining money by false pretenses were preferred and laid at the respondent's door much as the respondent paused, the society believed him and, if at all the appellant footed the "bill", like it happened in modern hospitals whether government or nongovernment hospitals, and it is common knowledge whether or not the patient quickly recovered or not at all it was immaterial.

I think if, for the reason of patient's deaths or rampancy/persistence of diseases doctors, or in case of school's students failed final exams teachers were charged for obtaining money by false pretenses or sued for professional negligence and refund of the medical expenses/tuition fees

paid as the case may be leave alone orders for specific performance, prison cells would have flooded. I think it is customers' trust or, as the case may be faith that counted. There is no wonder that although the two sons had not resurfaced/recovered, yet for a new case the appellant the retired nurse dared and she dished out another one but a bigger amount of shs. 25.0million if at all suffices the point to dispose of the appeal in favor of the respondent.

Without prejudice to the foregoing discussion like it was argued by the layman respondent, from the bank the appellant may have had withdrawn such big amount of shs. 25.0 million, yes but not only the latter didn't disclose name of the bank but also at least no copy of the respective withdrawal form was tendered in court as exhibit.

In the upshot, with greatest respect the appeal falls short of merits. It is dismissed. It is so ordered.

Right of appeal explained.

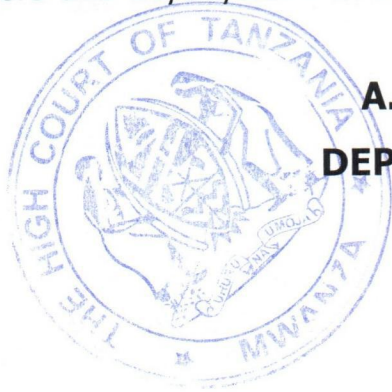


S.M. RUMANYIKA

JUDGE

26.11.2021

The judgment delivered under my hand and seal of the court in chambers this 10/12/2021 in the absence of both parties.



A.W. MMBANDO

**A.W. MMBANDO
DEPUTY REGISTRAR**

10/12/2021