

**IN THE RESIDENT MAGISTRATE'S COURT OF MWANZA  
AT MWANZA**

**RM CRIMINAL CASE NO 67 OF 2017**

**THE REPUBLIC**

*Versus*

**ALLAN S/O FRED@ MUSHI**

**JUDGMENT**

***6/11/2017 & 29/11/2017***

***Before hon. W.M.Chuma - SRM***

The accused person namely Allan Fred@Mushi stands charged with forgery contrary to section 333, 335 (d) (i) of Penal Code cap 16 R.E 2002

Particulars of the offence are such that , the above named accused person on 25<sup>th</sup> day of August 2009 at Ex – TRA Building area within Nyamagana District in the city and Region of Mwanza with intent to defraud one Suleiman Issa@Wambura who is an administrator of the estate of the late Issa wambura forged a transfer of Right of Occupancy in respect of the Plot No 250 Block "A' Nyamhongoro Mwanza City by unlawful signing in the name of the said Issa wambura without his lawful authority.

The accused person pleaded not guilty to the charged offence. Following that plea the prosecution brought in court a total number of five witnesses to establish their case. On his side the accused represented by Mr. Gunda advocate had no other witness to call upon.

Having gone through the evidence of both parties in dispute, which I will not reproduce, I am duty bound to determine whether the accused person real forged the alleged document.

The accused person alleged to have contravened the provision of S. 333, 335 (d) & (i) of Penal Code which provides thus; S.333. Definition of forgery.

Forgery is the making of false document with intent to defraud or to deceive S. 335 (d) & (i)

A person makes a false document who.

- (d) Signs a document
- (i) In the name of any person without his authority whether such name is or is not the same as that of the person signing.

According to the charge sheet the accused alleged to have forged a Transfer of Right of occupancy by signing in the name of Issa Wambura without his authority.

From the evidence Pw1 Seleman Issa Wambura visited plot No 210 Block A and found a house being built therein by the accused person. And that his father never sold that plot. He however when cross examined stated that he can't tell which document was signed by his late father on 25/8/2009.

Pw2 had a similar evidence with that of Pw1. According to him his late father was still alive on 25/8/2009 but he can't tell what he did on that day.

On his side Pw3 an investigator of this case did interview the accused person who alleged to have bought the plot in issue to Issa Wambura. He as well took specimen signature of the accused person, that of Issa Wambura and the disputed signatures to a hand writing expert for analysis or examination.

In his report PE6, Pw4 stated that the signatures on both exhibits A<sub>1</sub> – A<sub>3</sub> marked P<sub>1</sub> – P<sub>4</sub> and specimen signature on exhibit B<sub>1</sub> – B<sub>7</sub> and B<sub>8</sub> – B<sub>9</sub>

Marked Q<sub>1</sub> – Q<sub>4</sub> are all similar and were signed by one and the same person. And offcourse in his evidence he named Allan Fred Mushi as the one who did sign in the very document examined.

He as well stated that, the disputed signature in Exhibits A<sub>1</sub> – A<sub>3</sub> marked F<sub>1</sub> – F<sub>5</sub> and specimen signature on Exhibit C<sub>1</sub> – C<sub>2</sub> marked K<sub>1</sub> – K<sub>2</sub> are all different and were signed by different persons. And in his testimony Pw4 stated that Issa Wambura didn't sign in the disputed signature because the disputed and specimen signature differs.

If the disputed signature wasn't signed by Issa Wambura as rightly testified by Pw4 who then signed the same?

According to Pw5 who did attest the very transfer, PE3 the same was signed by the parties in dispute in his presence on 25/8/2009. The very evidence seems to differ with that of Pw4 whose analysis creates some doubt before this court as follows. One in his report PE 6 he did involve the ID (PE5) purported to be owned by Issa Wambura. But the same bears no name of Issa Wambura. Thus being so it is not known who did sign into that ID (PE5). The very fact was confirmed by Pw3 and Pw4 in their testimony. One may wonder why did Pw4 make comparison on a document which its owner is unknown?

In absence of a tangible explanation his analysis remains doubtful. In such circumstance one may hardly say that Pw4 being an expert failed to assist this court. Expert evidence has to be free from biasness as it was held in the case of ***RV. Kelvin Cameron [ 2003] TLR*** where it was held that, since

*the evidence of an expert is likely to carry more weight than that of an ordinary witness, higher standard of objectivity are required of him and should provide independent assistance to the court by way of objective un biased opinion in matters within his expertise.*

On his side the accused person who testified as Dw1 stated that he bought the referred or disputed plot from Issa Wambura for Tshs 1,500,000/= And that the transfer was signed by then before Pw5 that who did attest the transfer in issue PE3. This very fact was confirmed by Pw5 that the document was signed by Issa Wambura and Allan Mushi in his presence and that he as well did attest PE3. In other words Pw5 did witness the parties signing the transfer documents before him.

In the case of Joseph Mapema V. The Republic [1986] TLR 148 it was held that,

*The evidence of a person who is conversant with.... signature is as good as more than of hand writing expert.*

so a similar position was discussed in the case of **DPP V. Shida Manyama@Seleman Mabula CR Appeal No. 285/2002** at Pg 23 where it was held that,

*Generally, hand writing or signature may be proved on admission by the writer or by the evidence of a witness or witnesses whose presence the document was written or signed.*

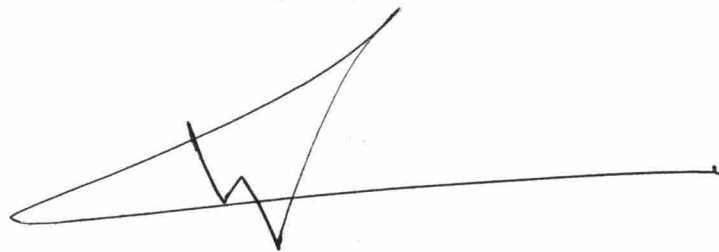
*This is what can be called direct evidence which offer the best means of proof.*

For the foregoing cited authorities no doubt the evidence of Pw5 is a better evidence to prove who signed the disputed document because the same was signed in his presence hence conversant with the very signature in issue.

And his evidence is direct evidence which offers the best means of proof as stated in the above cited case of DPP V. Shida Manyama. In the premises there is no cogent evidence whatsoever to associate the accused person in the purported forgery. The prosecution evidence here in adduced falls far short to establish or prove the offence on the required standard. I then find the accused person not guilty and I do acquit him under S. 235 of CPA Cap 20 R.E 2002.

**Sg. Hon. W.M. Chuma – SRM**

**17/11/2017**

A handwritten signature in black ink, consisting of a long horizontal line with a stylized, jagged flourish above it.

19.12.2017.

**Date** : 17/11/2017  
**Coram** : Hon. W.M. Chuma – SRM  
**Pros** : Chanagle S/A  
**Accused** : Present  
**B/C** : Fikiri Suluba

**Court:** Judgment delivered in chamber before Changale S/A for the Republic and Mr. Gunda advocate for accused person this 17/11/2017.

**Sg. Hon. W.M. Chuma – SRM**  
**17/11/2017**

**Court:** Right of appeal explained.

**Sg. Hon. W.M. Chuma – SRM**  
**17/11/2017**

I HEREBY CERTIFY THAT THIS IS A  
TRUE COPY OF THE ORIGINAL  
RESIDENT MAGISTRATE  
MWANZA

19.12.2017