IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: LILA, J.A., KITUSI, J.A. And MASHAKA, J.A.)

CRIMINAL APPEAL NO. 15 OF 2018

THE DIRECTOR OF PUBLIC PROSECUTIONS ..... APPELLANT
VERSUS

JUSTICE LUMIMA KATITI ..... 1ST RESPONDENT
ROBERT PHARES MBETWA ..... 2ND RESPONDENT
GIDION WASONGA OTULLO ..... 3RD RESPONDENT
GODWIN MGONDA PAULA ..... 4TH RESPONDENT

(Appeal from the Judgment of the High Court of Tanzania at Dar es Salaam)

(Twaib, J.)

dated the 21st day of January, 2015
in
Criminal Appeal No. 166 of 2012

JUDGMENT OF THE COURT

18th July & 12th August, 2022

KITUSI, J.A.:

Before the Resident Magistrates' Court of Dar es Salaam at Kisutu, the four respondents answered a charge consisting of ten counts. Out of those ten counts, the second and third counts were preferred against the 4th respondent only while, the fifth and sixth counts were against the 1st respondent. In our view, the rest of the counts are tertiary, so we shall take a look at the second and third counts first.

In the second count, the 4th respondent was charged with forgery contrary to section 333, 335 and 337 of the Penal Code, Cap 16 (the

Penal Code) in respect of which it was alleged that, with intent to defraud or deceive, the 4th respondent forged a document known as Request for Swift Customers Transfer Form (E.17) purporting to show that Tourism Promotion Services Tanzania Limited (TPST) requested Barclays Bank Tanzania to pay East Africa Procurement Services Limited (EAPS) TZS 338,935,337.46 for supply of campsite tents and equipment, knowing it to be untrue.

In the third count, the 4th respondent was charged with uttering a forged document contrary to section 342 of the Penal Code, it being alleged that the 4th respondent uttered the forged form E.17 to the bank fraudulently to show that TPST had instructed that bank to make payment of TZS 338,935,337.46 to EAPS.

For a clearer understanding of the rest of the counts we shall shed light on a few pertinent facts. TPST is a company that deals with hotels and tourism and it operates from Arusha region. It is among companies ranked by the Tanzania Revenue Authority (TRA) as Large Tax Payers. From the evidence of officials of TPST and those of Barclays Bank in Arusha and Dar es Salaam, there is no dispute on the procedure that TPST accountants would prepare Electronic Fund Transfer (EFT) forms specific for effecting payments to TRA, submit them to Barclays Bank in

Arusha for initial processing and onward transmission to Barclays Bank in Dar es Salaam, where payment would be made.

The 4th respondent worked at the Headquarters of Barclays Bank in Dar es Salaam and was one of the three liaison officers for confirmation of EFT forms from TPST after which he would get the documents signed by the relevant signatories within Barclays Bank. At the end of the process, he would debit TPST and deposit the money in TRA Account No. 9921133501 maintained by it at the Bank of Tanzania. It is alleged that it was at this point that the 4th respondent short - circuited the EFT (tendered during the trial as exhibit P3) that was prepared by TPST for payment of VAT for August 2008 to TRA, and instead got Form E. 17 (tendered during the trial as exhibit P5) prepared. This exhibit P5 purported to show that TPST was requesting transfer to EAPS, of TZS 338,935,337.46, the same amount as that in exhibit P3. That money was actually credited into Account No 01J2118600, CRDB bank maintained by EAPS, and there is no dispute about that.

There is no dispute again from the evidence of officials of TPST and those of Barclays Bank that if a large tax payer like TPST defaulted payment of tax due for a particular month, TRA would immediately raise

a demand and penalize the taxpayer. In this case, the prosecution maintained that although payment of TZS 338, 935,337.46 was not done to TRA as VAT for the month of August 2008, no demand was raised by it because of the 1st respondent's involvement in falsifying records at TRA.

Hence the 1st respondent, an employee of TRA responsible for recording tax collections and reconciliations, was charged in the fifth and sixth counts. In both he was charged with use of documents intended to mislead the principal contrary to section 22 of the Prevention and Combating of Corruption Act No. 11 of 2007. It was respectively alleged that the first respondent presented to his principal a false revenue collection report dated 30th September 2008, purporting to show that TPST had paid TZS 338,935,337.46 to TRA being VAT for the month of August, 2008. Further that the 1st respondent presented to his principal false electronically generated data (single record view) dated 6th October, 2008 purporting to show that TPST paid TZS 338,935,337.46 as VAT for the month of August, 2008, a fact he knew to be untrue.

In the fourth count, all respondents were charged with obtaining money by false pretences contrary to section 302 of the Penal Code. The prosecution alleged that with intent to defraud or deceive the

respondents obtained from Barclays Bank a sum of TZS 338,935,337.46 by pretending that EAPS had been paid that sum by TPST for supplying it with camp site and hotel equipment.

In the seventh and eight counts, the respondents were charged with Money Laundering contrary to sections 3, 12 (b) and 13(a) of the Money Laundering Act No. 12 of 2006. It was alleged in respect of the seventh count that the respondents transferred property which they knew to be a proceed of a predicate offence in order to conceal its illicit origin. In respect of the eighth count it was alleged that the respondents transferred TZS 338, 935,337.46 from CRDB Account No. 01J2118600 held by EAPS into the following bank accounts; Account No. 240603610 of Kenya Commercial Bank Limited maintained by Romos Technology Company Limited and, Accounts Nos. 1065822 and 600283 of Barclays Bank Tanzania Limited, while they knew or ought to have known that the money is a proceed of a predicate offence, namely forgery, for the purpose of concealing the origin of that money.

The ninth count which was against the 3rd and 4th respondents was an alternative to the eighth count while the tenth count for all respondents was an alternative to the fourth count. If necessary, we will

refer to them at an appropriate stage, because they are mere alternative to substantive charges.

The appellant led evidence from 29 witnesses but in the end, the trial court concluded that the charge had not been proved against the respondents to the required standard. The appellant preferred an appeal to the High Court, against the four respondents but the High Court dismissed the appeal, hence this second appeal. We take the first two grounds as forming the mainstay of the case and for that reason we shall reproduce them as thus:-

1. *That the honourable Judge having held that exhibit P5 was a forgery, grossly erred in law and fact in holding that the prosecution failed to prove the offence of forgery and uttering false documents charged in the 2nd and 3rd count.*

2. *That the honourable Judge having held that the money (Tshs. 338,935,337.46) was transferred to the account of East Africa Procurement Services Ltd. (EAPS) at CRDB Bank, Holland Branch, Dar es Salaam, basing on a forged Exhibit P5, erred in law and fact in holding that there was insufficient evidence to establish that the money transferred to EAPS account was the proceeds of false pretences, such that the*

beneficiary thereof could be guilty of false pretences charged in the 4th count.

It was incumbent upon the prosecution to prove that exhibit P3 was the genuine document in which TPST was instructing Barclays bank to make payment of VAT to TRA, disappeared, at about the same time when exhibit P5, allegedly a forged document, surfaced to show that TPST was instructing Barclays Bank to pay EAPS. The prosecution led evidence of two officials of TPST Arusha confirming to have prepared and signed exhibit P3 for payment of TZS 338,935,337.46 being VAT for the month of August 2008. They sent it to Barclays Bank, Arusha branch through PW3 an office attendant and it was received by PW4 an employee of Barclays Bank Arusha Branch. PW4 sent it to Barclays Bank Headquarters by e-mail and DHL. PW5 of Barclays Bank Headquarters received the e-mail and printed exhibit P3 and gave it to the 4th respondent who was the focal person for transactions involving TPST.

According to PW5 and PW6 who were immediate supervisors in the department in which the 4th respondent was working, they signed their approval on exhibit P3 and assumed that he was going to complete the process of remitting funds to TRA. That was on 29/9/2008.

Come 3/10/2008; according to PW5 and PW6, the 4th respondent presented to them exhibit P5 purporting to show that this was another

transaction by TPST instructing the bank to pay EAPS an amount of TZS 338,935,337.46 for camp site equipment. They said that the 4th respondent had complied with all the procedures including making of confirmation with the client (TPST). The prosecution alleges that exhibit P5 was forged.

The prosecution sought to prove forgery through PW5, PW6, PW26, a gazetted handwriting expert and PW29, the investigator from PCCB. The respondents totally denied committing the offences. The trial court found PW26's evidence to be of no value for the reason that he did not display photographic enlargements of the handwritings as required by law.

On the other hand, the learned judge of the High Court was satisfied from the totality of the evidence of PW5, PW6, PW26 and PW29 that exhibit P5 is a forged document but concluded that there was no evidence to link any of the respondents with that forgery.

We note that there is no appeal by the respondents against the finding of the High Court that exhibit P5 was a forged document, and having taken a look at the available evidence, we are satisfied that the learned judge was entitled to that conclusion. We shall revert to this later.

Of course, the laxity on the part of TPST to raise a flag upon receiving bank statements showing that TZS 338,935,335,337.46 had been paid to EAPS, raises eyebrows. This curious omission to take action will be determined later. For now, it is our conclusion that the finding of the learned judge that exhibit P5 was a forged document is consistent with the evidence and has not been challenged.

The central question is who authored exhibit P5. The prosecution has advanced two hypotheses. The first is through the handwriting report made by PW26 showing that the 4th respondent is the author thereof. On PW26's own concession, this report is incomplete for not being accompanied by photographic enlargements. On this ground we think the trial Court as well as the High Court rightly attached no evidential value on it. [See the case of **DPP v. Shida Manyama @ Selemani Mabuba,** Criminal Appeal No. 285 of 2012 (unreported)]. The appellant has not pursued this lead before us.

The second hypothesis is based on a presumption that whoever is found in possession of or utters a forged document is taken to be the one who forged it, and by extension it should apply to whoever is in possession of or utters exhibit P5. Mr. Shadrack Martin Kimaro, learned Principal State Attorney pursued this line fervently and referred us to

Mukhsin Kombo v. Republic, Criminal Appeal No. 84 of 2016, **Alley Ali and Another v. Republic**, Criminal Appeal No. 51 of 1988, **Amon Mwaipaja v. Republic**, Criminal Appeal No. 69 of 1981, **Hillary Colman Lugongo v. Republic,** Criminal Appeal No. 51 of 1988 (all unreported) and **Joseph Mapema v. Republic** [1986] T.L.R. 148. He was being assisted by Messrs Ladislaus Cosmas Komanya, learned Senior State Attorney and Tumaini Maingu Mafuru, learned State Attorney. In **Hillary Colman Lugongo** (supra) the Court stated that principle in these terms:-

> *"Once the appellant was found in possession of the forged cheque just before encashment then it necessarily follows that he had forged the cheque himself or that the cheque was forged by someone with his knowledge and approval."*

That is a settled position, in our view.

The prosecution produced evidence of PW5 and PW6 to testify that the 4th respondent uttered and made them sign exhibit P5 to authorise payment. As alluded to earlier, PW5 and the 4th respondent were working in a department supervised by PW6. The 4th respondent was a signatory with powers limited to TZS 50,000,000.00 while PW5's powers and those of PW6, were unlimited.

There are considerable arguments revolving around the evidence of PW5 and PW6. Mr. Richard Rweyongeza learned counsel for the 1st and 2nd respondents as well as the 3rd respondent who prosecuted the appeal in person had, in essence, two attacks on PW5 and PW6. The first is that these witnesses were too involved in the authorisation of the challenged payment so they had interests to serve and would hardly be expected to be free agents. The second is that the principle of presumption stated in the case of **Hillary Colman Lugongo** (supra) is not applicable in a case like this one where any employee of the bank may innocently find himself in possession of a forged document in the normal course of duties. The third respondent demonstrated how exhibit P3 differs in appearance from exhibit P5 and argued that there is no way PW5 and PW6 would have mistaken one for the other. The 4th respondent did not enter appearance even after being served by publication in a widely circulating daily newspaper. Hearing against him proceeded in absentia.

In response to the first attack, Mr. Kimaro submitted that the learned High Court judge concluded that PW5 and PW6 were not witnesses with interests to serve, therefore they should be entitled to credence. The learned Principal State Attorney cited **Goodluck Kyando v. Republic** [2006] T.L.R 363.

We shall sort out this aspect first, whether PW5 and PW6 had their own interests to serve. The relevant part of the learned judge's pronouncement goes thus:-

> *"At this point, let me register my agreement with the contention that it was wrong for the learned trial magistrate to treat PW5 and PW6 as accomplices. But they were clearly negligent, since by signing they were confirming the authenticity of the document. Whether they had an interest to serve that makes them accomplices is an arguable point."*

The learned judge never deliberated on that arguable point because immediately after the preceding paragraph he said:-

> *"However, I do not think we need to be detained by it, given my findings on the other grounds of appeal as I shall endeavour to explain."*

In our consideration, the learned judge did not expressly conclude that PW5 and PW6 were not witnesses with interests to serve, but that does not mean they are. As there are no concurrent findings on that point, we will reconsider the evidence and make our own finding on it.

A distinction needs to be drawn between an accomplice and a witness with an interest to serve. We shall begin by straightening up this

point asking ourselves; Is a person an accomplice because he has an interest to serve or that a person has an interest to serve because he is an accomplice? Obviously not every witness with an interest to serve is an accomplice, as some may simply be inclined to help out a relative or friend, without their taking part in the commission of the offence. An accomplice as defined in the case of **Adventina Alexander v. Republic**, Criminal Appeal No. 134 of 2002 (unreported), is as follows:-

> *"The definition of the term accomplice covers* ***participe criminis*** *in respect of the actual crime charged, whether as principals or as accessories before or after the fact."*

Going by the above definition, for one to be an accomplice, there must exist in him the mental element in committing or assisting the commission of the offence. The learned judge considered PW5 and PW6 as just negligent officials who authorized payment by signing a forged document. In our finding, being negligent, PW5 & PW6 could not be said to be accomplices because there would be no evidence to show that they had the intent to commit the offence or assist in its commission.

Did PW5 and PW6 have interests to serve? We shall address this question simultaneously with the issue of their credibility. The concept of a witness with an interest to serve is meant to discredit a witness by

establishing that he told a lie in order to serve his skin. The evidence of PW5 and PW6 is mainly that they signed exhibit P5 to authorize payment. Nowhere are the respondents contradicting this fact, which means they accepted that to be the truth of the matter. If anything, therefore, PW5 and PW6 merely admitted to be the signatories of the disputed document, but that they did so innocently believing it to be genuine. A witness who tells a story that, if not for the fact that he was innocent, would have implicated him is, in our view, candid and credible. We agree with Mr. Kimaro that PW5 and PW6 have earned credence [See **Sabato Thabiti & Another v. Republic**, Criminal Appeal No. 441 of 2018 (unreported)]. Corollary to that, for the Court to doubt PW5 and PW6 as witnesses with interest to serve the respondents must demonstrate that they have lied. That is not the case here. Rather the respondents have used the evidence of PW5 and PW6 as being proof that exhibit P5 was a genuine document for legitimate payment. Therefore, from the foregoing, PW5 and PW6 were neither accomplices nor witnesses with interests to serve.

Next is the argument that any employee of the bank might find himself in possession of a document that may turn out to be a forged one. That is certainly probable, but we hasten to say that such documents do not drop from the air.

PW5 and PW6 testified that it was the 4th respondent who presented to them exhibit P5 for them to sign it. We have just endorsed these witnesses as being truthful for the reason that they were ready to stick their necks by telling the truth.

The question that follows naturally is where did the 4th respondent get exhibit P5 from? Through PW8 and the General Manager of the company (PW27), TPST denied transacting with EAPS. We are aware that the prosecution is always under a duty to prove its case, but that duty does not extend to proving a negative, an impossible venture, in our view. Without shifting burdens of proof, one would expect the 4th respondent to challenge PW8 and PW27 by, say, showing them invoices or delivery notes for the goods ordered by TPST and supplied. That would be quite in line with the import of section 110 of the Evidence Act which demands a person who asserts existence of a fact to prove that it does exist, and section 164 (1) (c) of the same Act, which provides room for a party to impeach a witness by referring him to previous statements that are inconsistent with his testimony. But that was not done.

During the trial, the third respondent testified that the PCCB seized all documents from him, insinuating that even the documents relevant to the transaction with TPST were taken. Before us Mr. Kimaro submitted

that during the trial, the 3rd respondent was cross examined on the documents, and he argued that the third respondent who was then represented by an advocate did not quite pursue the issue of the alleged documents as he would have issued the PCCB with a notice to produce. We note that the 3rd respondent testified that he concluded the deal with PW8 by using a fax whose number he could not recall. That is not the same thing as alleging that the documents were seized by the officials of the PCCB.

It is a known principle of law that failure to cross examine on a material point is taken to be admission of the fact in question. [See **Nyerere Nyague v. Republic**, Criminal Appeal No. 67 of 2010 cited in **Chora Samson @ Kiberiti v. Republic,** Criminal Appeal No. 516 of 2019 (both unreported)]. In addition, cross examination has the object of advancing the version of the party cross examining. In **Haji Manelo Bonye v. Republic**, Criminal Appeal No. 338 of 2008 (unreported) quoting **Goodluck Kyando** (supra) it was stated that: -

" The object of cross examination is-

(i) To elicit from the witness evidence supporting the cross-examining party's version of the facts in issue;

(ii) To weaken or cast doubt upon the accuracy of the evidence given by the witness in chief; and

(iii) In appropriate circumstances to impeach the witness's credibility". (emphasis supplied).

In this appeal, the respondents' case was that there was a lawful contract between TPST and EAPS, whose sum was TZS 338,935, 337.46, the basis of the payment in exhibit P5. Although the respondents were expected to cross examine on that fact, it does not mean that the onus shifted to them. Mr. Rweyongeza argued that at best, the prosecution has no more than suspicion against the respondents. We agree with the learned counsel that suspicion alone cannot form a basis for a conviction. However, that is true only if we read the pieces of evidence in isolation. We have at our disposal a number of pieces of evidence to consider. One, exhibit P3 disappeared at about the same time exhibit P5 emerged. Two, the amount involved in exhibit P3 is exactly the same as that involved in exhibit P5, and we are not at all prepared to subscribe to the idea that this is a coincidence. Three, we have already made a finding that exhibit P5 was a forged document, therefore we cannot hold otherwise.

The effect is that the evidence of PW8 and PW27 that TPST did not have a contract with EAPS for the supply of camp site equipment,

remains unchallenged. It is our finding, on the foregoing reconsiderations, that there existed no contract between TPST and EAPS on the basis of which exhibit P5 was prepared. Our conclusion is that the 4th respondent manufactured exhibit P5 or knew the manufacturer and approved it. We reject the contention that he innocently came by exhibit P5 in the normal course of his duty at the bank.

We also wish to consider whether the laxity on the part of TPST to take action affects our conclusion on the validity of exhibit P5. With respect, having made our determination based on the foregoing three pieces of evidence considered together, this issue becomes moot because it could all be just another instance of negligence. If it is to be argued that this point raises a doubt, we do not consider it as going to the root of the matter. [See **Dickson Elia Nsamba Shapwata and Another v. Republic,** Criminal Appeal No 92 of 2007 (unreported)].

There was evidence from PW12, the then Manager of CRDB, Holland Branch, that the account of EAPS, the third respondent's company, received TZS 338,935,337.46, and that some of this money was subsequently sent to the second respondent's bank account who in turn sent some of it to the first respondent. The third respondent does not dispute receiving that money, nor do the first and second

respondents in respect of the respective sums of money paid through their companies. Having held that exhibit P5 on the basis of which payment of TZS 338, 935, 337.46 was effected to EAPS was a forged document, we agree with Mr. Kimaro that *" it follows naturally"* that uttering a false document was proved against the 4th respondent and obtaining money by false pretences was proved against all respondents. [See **Hillary Colman Lugongo** (supra) and **Stanley Murithi Mwaura v. Republic,** Criminal Appeal No. 114 of 2019 (unreported)]. We reject the respondents' contention that the money was legitimately earned through contracts, as such contentions are not borne out of the evidence on record. Consequently, we find merit in the first and second grounds of appeal.

We now turn to the fifth and sixth counts that were preferred against the first respondent, alleging that he tampered with the necessary entries into the TRA systems to make it look like payment of TZS 338,935,337.46 had been duly made by TPST as VAT for the month of August, 2008. The appellant's case testified to by PW16 and PW25 was that the first appellant made entries in the tax collection report for September, 2008 and also in a single record view, both indicating that TPST had made payment of TZS 338,935,337.46 being VAT for August 2008. However, for payment to be proven, it must be reflected in a

statement known as PACS. PW25 testified that the PACS statement dated 30/9/2008 did not reflect the said payment of TZS 338,935,337.46. The trial court considered the prosecution case weak for not leading evidence of auditors and wondered why the alleged false entries were not detected by them. The High Court took the view that the money might have been lying in one of the TRA's other accounts, as intimated by PW14.

The fifth ground of appeal specifically challenges the latter decision. It states:-

> 5. *"That the honourable Judge having found that the money (Tshs 338,935,337.46) was credited into the EAPS account basing on a forged Exhibit P5, erred in law and fact in holding that the money could have been posted into a different account within the Bank of Tanzania (BOT)".*

Mr. Kimaro submitted that what PW14 stated was that there was that possibility in the event of an error, but he pointed out that there was no error. Further he submitted that the prosecution tendered exhibits P16, P17, P18 and P19 to prove how the system of reconciliation of payment works and that the absence of the disputed transaction in the PACS statement signified that payment was not done.

Mr. Komanya submitted in addition that the auditors would not detect the scheme because the entries were on their face correct, though in fact no payment had been done. The learned Senior State Attorney further submitted that the first respondent was working in common intention with the other respondents. He cited to us the case of **Kileo Bakari Kileo & 4 Others v. Republic,** Consolidated Criminal Appeals No. 82 of 2013 & 330 of 2015 (unreported).

On the other hand, Mr. Rweyongeza submitted that the prosecution did not tender the documents which the first respondent is alleged to have used to mislead his principal, nor were the reconciliation and bank statement of TPST for purposes of establishing that the money was indeed paid. The learned counsel's point was that only the missing reconciliation would have established if indeed the money was debited from the account of TPST or not. He even wondered as to who actually is the complainant in this case suggesting that PCCB took upon itself the task of investigating and prosecuting a case that had no victim of the alleged crime. He submitted that the first respondent dealt with exhibit P3 which had been prepared to make payment of VAT to TRA.

There is no doubt in our minds that TZS 338, 935, 337.46 was debited from the account of TPST as none of the respondents

challenged that fact. The third respondent has actually confirmed that he received exactly the same amount of money from TPST. In view of that, we do not see the purpose which would be served by the reconciliation which Mr. Rweyongeza has insisted on.

Back to the involvement of the first respondent. To begin with, it is to us plain that the documents the first respondent is alleged to have presented to mislead his principal were electronic entries as opposed to physical documents. In view of the fact that the first respondent does not dispute making those entries, and in the light of exhibits P16 to P19, the argument that there was omission to tender relevant documents, cannot stand. Then there is the evidence of PW25 stating the fact that when payment has been effectively made it gets reflected in PACS statements. This fact, in our view, is not displaced by the appellant's omission to call auditors to testify. Therefore, the fact that TZS 338,935,337.46 that was supposed to be paid into Account No. 9921133501 held by TRA was not reflected in PACS statement, is proof that it was not so credited into that account. At about the same time TZS 338,935,337.46 was paid into account No.01J2118600 held by EAPS.

We have two invitations to respond to. The appellant invites us to conclude that the money that was paid into the bank account of EAPS, is the same that was meant to be paid into the Account No. 9921133501 maintained by TRA. The appellant's case aims at establishing that the respondents fraudulently obtained that money and the first respondent's act of making false entries misled his principal into believing that payment was duly made, while it was not. On the other hand, the respondents invite us to find that the money paid into the account of EAPS is distinct from the money that was supposed to be paid into the account of TRA. The respondents' case is that the money that was supposed to be paid into the TRA account might be in other accounts held by TRA quite in line with the High Court finding.

Not only have we concluded that the payment into the account of EAPS was a result of a forged transfer form (exhibit P5), but we are far from convinced that these two transactions are isolated or that they are a mysterious coincidence. Rather, we take them to be a manifestation of the same jigsaw, which, when its pieces are put together, there is left only one conclusion that there is no other TZS 338,935,337.46 lying somewhere in one of TRA's other accounts.

With respect, we consider the suggestion by the respondents to be fanciful and we reject it. It is now settled law that fanciful or remote possibilities cannot be allowed to benefit an accused at the expense of solid evidence or irresistible inference. [**July Joseph v. Republic**, Criminal Appeal No. 226 of 2021 citing **Chandrakant Joshubhai Patel v. Republic,** Criminal Appeal No 13 of 1998 (both unreported)]. The same is the case here, despite the respondents' ingenious that had everything figured out.

In the end, we are satisfied that the first respondent misled his principal by making false entries of tax collection and a document known as single record view of VAT payment from TPST for the month of August 2008. We thus find merit in the fifth ground of appeal.

Next for our consideration are counts seven and eight, alleging that the respondents committed the offence of money laundering. In the seventh count they are charged to have transferred property for the purpose of concealing its illicit origin, while they knew that property to be a proceed of a predicate offence. No evidence was led in respect of any property having been transferred by the respondents, so there was no proof of that offence.

In the eighth count it was alleged that the respondents transferred sums of money from Account No. 01J2118600 CRDB bank belonging to EAPS to other bank accounts while knowing that money to be a proceed of corruption or related offences for the purpose of concealing the origin of that money. There was evidence of PW28, that upon receipt of the money, the third respondent transferred about TZS 120 million to Romos Technology, a company owned by the second respondent, via a bank account at KCB bank Samora Branch, a fact which was confirmed by PW22, the then Branch Manager. And that about TZS 85 million was transferred to a company known as HG Equipment owned by the third respondent via Barclays Bank Ubungo Branch. Romos Technology transferred TZS 67, 700,000.00 to Just Investment, a company owned by the first respondent. These transfers were confirmed by officials of the respective banks. But then, even without such confirmations, the respondents did not dispute transferring moneys, but disputed doing so with wicked intentions. They maintained that there was a business transaction between them to justify the payments, the subject of the suspected transfers. There is more to this than meets the eye.

Instant for our consideration is whether the offence of money laundering was proved against the respondents or any of them. The High Court concluded that since the prosecution had failed to prove

forgery and obtaining money by false pretences, all other charges collapsed. The fourth ground of appeal raises a complaint against that finding. It states:-

> 4.*" That the honorouble Judge grossly misdirected himself in law and fact in the evaluation of evidence and therefore reached erroneous conclusion that with the fall of the two counts namely; forgery and obtaining money by false pretences, the other counts could not be proved".*

There is not much argument to go by from both sides on this. However, as we have alluded to above, the transfers of moneys from one bank account to another, are not disputed. The question is whether there is proof of money laundering in this case. The contemporary view is that:-

> *"On this point, we are of the settled position that, for the offence of money laundering under section 12 of the MLA to be proved, the prosecution need not necessarily prove the process of laundering the money so to speak, that is placement, layering and integration.* ***It suffices to prove that the suspect dealt with the proceeds of a predicate offence by engaging in a transaction involving such***

proceeds". [**Stanley Murithi Mwaura v. Republic** (supra)]

In our consideration of the evidence, we have no hesitation to hold that the money that was transferred into the bank account of EAPS was subsequently dealt with by transferring it to other bank accounts, almost immediately after being received. Some of the money was transferred by the 3rd respondent into another bank account owned by the 3rd respondent himself. This unexplained transfer of funds alone, would not require nostrils of a trained detective to smell foul play, so we conclude that the transfers were intended to conceal the origin of that money as charged. There is however no direct evidence that the 4th respondent dealt with that money anyhow. Our conclusion therefore is that there is proof of the eighth count of money laundering against the 1st 2nd and 3rd respondents, and that makes ground four of appeal partly meritorious.

As we are about to come to an end, not much information was placed before us for the determination of the first count alleging conspiracy on the part of the respondents. Mr. Komanya referred us to the case of **Kileo Bakari Kileo** (supra), in arguing that the respondents had a common intention. The relevant part of the decision of that case is that common intention may be inferred from actions or omissions of

the suspects. We find that principle applicable in determining whether or not the respondents in this case conspired to defraud Barclays Bank as alleged in the first count. Considering the actions of the respondents in the case that gave rise to this appeal, there is no doubt that they were acting in common league and had conspired to defraud that bank. We accordingly find them guilty.

Lastly, it is our finding that the prosecution proved the charge against the respondents beyond reasonable doubts. Thus, all respondents are found guilty and convicted on the first and fourth counts. They are also convicted on the eighth count except for the 4th respondent, who is acquitted of that count. The first respondent is also found guilty and convicted on the fifth and sixth counts. The 4th respondent is in addition, found guilty and convicted on the second and third counts. We quash and set aside the judgment of the High Court upholding the acquittal of the respondents and allow the appeal to the extent shown.

We also order that upon delivery of this judgment, the respondents should appear before a judge of the High Court, Dar es Salaam Registry for sentencing. Meanwhile the respondents to remain in

remand custody pending remission of the record to the High Court by the Registrar.

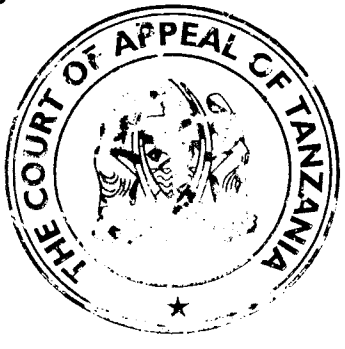
DATE at **DAR ES SALAAM** this 1st day of August, 2022.

S. A. LILA
JUSTICE OF APPEAL

I. P. KITUSI
JUSTICE OF APPEAL

L.L. MASHAKA
JUSTICE OF APPEAL

The Judgment delivered this 12th day of August, 2022 in the presence of Mr. Nasoro Katunga and Hellen Moshi, learned Senior State Attorneys assisted by Mr. Tumaini Mafuru, learned State Attorney for the appellant/DPP and Mr. Protas Zake, learned counsel for the 1st and 2nd Respondents, the 3rd Respondent unpresented- present in person and in the absence of the 4th Respondent, is hereby certified as a true copy of the original.



G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL