

TANZANIA / JUDGMENT

19711026 TZCA Dar es Salaam

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IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM High Court Criminal Appeal No, 203 of 1971 Ojnal Criminal Case No. 348 of 1970 of the District Court of Mtwara District at Ytwara before Y.3, Mperells, Esq., District Magistrate. A .8765 P. • ATATOLY , •..... ••

APPLICANT versus THE REPUBLIC OF TANZANIA (3. Common assault 240 of the Penal Code, (2 Malicious damage to property s/n 36(1) of the P.C. (3 wrongful confinement s/n 253 of the Penal Code. Biron J. - The appellant, a police constable, who was charged on three counts of common assault, of malicious damage to property and of wrongful confinement, was acquitted on the first count and convicted on the other two counts and sentenced respectively, to a fine of Shs.1/— or imprisonment for two months in default and a fine of Shs.200— or imprisonment for three months in default. He is now appealing, evidence was given by the complainant, his wife, and by a neighbour of theirs, to the effect that in the late evening of the 2nd of August of last year, as they were sitting in the complainant's house, actually outside in the backyard, the appellant appeared and requested permission to use the latrine. His request was granted. As he delayed unduly in the latrine, the complainant went to see if there was anything wrong, but was assured by the appellant that there was nothing wrong when the appellant emerged from the latrine it transpired that he had fouled it. Although, according to the neighbour he at first apologized, according to all three witnesses he proceeded to abuse the complainant accusing him of witchcraft, grasped hold of him and hauled him to the police station. There the story is taken up by Sergeant Selemani who was in charge of the police station. He testified that he saw the appellant being brought in the complainant forcibly to the police station, and on his enquiry why, the appellant refused to give any reason but stated that he wanted the complainant to be looked up. The Sergeant refused to comply and he telephoned, to Inspector who was the duty officer on call. The inspector testified as did Detective Constable Samweli who had also arrived on the scene, to the effect that the appellant insisted on having the complainant looked up without giving any reason. The complainant himself complained that the appellant had fouled his latrine, then accused him of witchcraft, had assaulted him and in the process had torn his vest. The police went to the complainant's house where they saw that the latrine had been fouled and the Sergeant drew a sketch plan of the scene. On their return to Mkwinda, ..., 2 days later the appellant was brought before the court. He pleaded guilty to the charges. He was sentenced to a fine of Shs.100— or imprisonment for two months in default. He is now appealing.

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1CRAWI NA 11I fIWIZI!" As the learned magistrate very properly tiireoted himself, this use of abusive language certainly does not constitute an assault, and he therefore very properly acquitted the appellant On that charge. With regard to the sentences imposed on the two conviOtions, they cannot by any stretch be regarded as ciceselve. The appeal is accordingly dismissed.. Delivered in Court at Par es Salasm thIs 26th day of No,sMBER, 1971. (PBILIP IEON) fIThe

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