

TANZANIA / JUDGMENT

19760409 TZHC Tabora

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TZHCDECIDED
9 April 1976

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1.2 410 IN PHE HI11 COtT CF Th1ZANI4 A A?LLA'E JUII\$aItTCN . Vl4abøra eist y) - HGM CCUrT C1IINL A? L N *1/7 CIGINAL CtThINt4., CASE NC. 466 CF 1975 CF TH1 DISTRICT Ci.1T (F NZEGA DIS1RICT T

- . NZEGA...: BEFCRE: E. t. KWILAfth,ESQ , , D'MhGITRATE. - (Criginal Accused) VersuS TUE nEPUBLIC , ,,,. . . it , 0 RESA?CNDENT (Lriginal irosecutor) CHAk: Stealing by vant els 265 and 271 of the en1 1Code Vol. I Cap. j4 of the Laws. , - - ,,, MAK1(iANC ,J: The appellant ABPALLAH IKUJI was cohVictéd in tije district ourt of stoalthg by-serirant c.oxitraryto SeCtibi8 2b5 and 271 the ?e.näi:ode... Three 6 the rti , ;:- er8 6n,9 who were tried jointly with him , weeo 46qu3iitbd*, H-e h&s1odge.d -an appeã1. freir-.the dohlkittibn •ajd . the sentence of. serch .yoaz imprisonment.. The faøts were not iii b6tious dispute. The bone. of conte ntion was whether giveti those facts it was inevitale to arrie v at the conclsn u that the appellant was guilty of the offence. _- The lêärned 1agistt-te held that the facts gufficed to prove his guitiit\$. The giOdüns set but in this appeal are directed against .th6tc6ncluioh. . The charge alleged that à8 a NATEX stOre keeper-at Nzéga, the appellidnt tóle .Thréé hales of -cloth materialji wojt1i - Shs. 1467o/ the prOpeity of his employer. It was in &ridence and ther4 e was no denyikrg thct. the dS Were missing frcth the-' - .. - NATEX stOre, 8n 2/12/7'.and'the - dnlly reasonable irferencé was that they were stolen from the pemisés. 'It was common grund that the appellant waskeeping the keys for the store during workIng h6ür5 and.P.W.3 Anthony ?4bwäna. 1 the N6nagr4 during the rest of tho time. In the circumstances of this case the learned gistate r was right iii observing that theBe two péoirs wkdid be the oily , suspects in the theft. With that, the •lernäd ag±Strate proceeded to find in effect that .tere must have be en a conspiracy between the two men to cömmt this offence* Cn behalf of the appellant Nre Ptël has attacked that finding. He has submit ted that there 40 was no compelling evidence to ju8tify that finding. He has H argued that the evidence showed itio more than that there was such a possibility just as itshowed no more than that the goods might have been stolen by either'enè or the other acting independently. Mr. Ntabaye for the Republic has, in complete I agreement with Mr. ?atel, expressed similar: views. He has said that on the evidence available before the court it was impossible or at least unsafe to fix any of the two persons with responsibility. With due respect, I think there is cc:nsiclerahle merit in the common riiewsof the-two. Counsel. It is ttite to observe that the prosecution carried the burden • prove the charge against the

appellant. Their burden was to prove beyond reasonable doubt that it was none other than the appellant who stole the goods. In my own evaluation, I think that the evidence fell short of the requisite proof. It is that it did not exclude the reasonable possibility of being the actual

- thief. As shown, he had custody of the keys for the store after working hours and indeed it can be plausibly
- argued that most probably he had more opportunity than the appellant. I would agree with Mr. Pate that any contention that there was a conspiracy between the appellant and... can only be founded on mere suspicion. But suspicion however grave is not enough to support a conviction. For these reasons I feel that the learned Magistrate erred in his Conclusion. In the event, I will not say much about the sentence. The minimum sentence for the offence was five years imprisonment. The learned Magistrate did not consider any reason for imposing a sentence which surpassed that term and in my opinion there is no good reason for him to do so. The appeal is allowed and the conviction is quashed. The sentence and the order for committal are set aside and the appellant is to be discharged forthwith unless he is lawfully held otherwise.
- Delivered...: , . : ", LH.'f" .. ':c Thbora, D P. M4i?IGAN(I '4 JUDEO 9t1f april, 1976 / 'Mr. ttel for the Appellant. Mr. Ntahaye for the Respondent. V. (I 4 -

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