

TANZANIA / JUDGMENT

19821202 TZHC Tabora1

COURT
TZHCDECIDED
2 December 1982

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IN THE FIRST CHIEF JUSTICE OF THE APPELLATE JURISDICTION HIGH COURT OF THE REPUBLIC OF TANZANIA NO. 105 OF 1982 C/F CRIMINAL K 104 103 OF 1979 CRIMINAL CR11 ITTJL 187 OF 1978 OF THE DISTRICT COURT OF CHITUNGU DISTRICT KASIMBA Before NUTONGOPE, Ee., District Magistrate AHMAD YUSUF & OTHEPJ APPELLANT versus - THE PEOPLE OF CHITUNGU DISTRICT P-SPONDENT 1 CHITUNGU DISTRICT Breaking into a building and committing felony therein c/s 296 (1) of the Penal Code Cap. 16. J U D I C I A L E N T. T. CHIPETA, J. The three appellants, namely, Ahmad Yussa, Baraka Twalibu and Theofil Msangula were jointly charged with four others with the offence of breaking into a building and committing a felony therein c/b 296 (1) of the Penal Code. The appellants were convicted as charged and were each sentenced to five years imprisonment. The other four accused persons were also convicted as charged, but as they were juveniles, they were committed to an approved school. The appellants, whose appeals have been consolidated, now appeal to this court. The appeals of the first and second appellants have no merit. In respect of the first appellant, Ahmad Mussa, there was cogent evidence that he was seen drinking the stolen wine in the bush. The witness (PW.3) testified eloquently to this fact. The evidence of D.C. Jumanne (P.W.5) corroborated P.W.3's evidence. Then there was also the confession of Iddi Saidi who was the third accused at the trial. He told the trial court that it was the first appellant who told him to go through a tunnel in order to break into the R.T.C. godown. With regard to the second appellant, Baraka Twalibu, he was seen by PW.3 in the appellant's group drinking wine in the bush. Indeed, he was one of the people who restrained the first appellant from assaulting P.W.3 when PW.3 had seen them in the bush. In fact it was the second appellant who offered a bottle of the stolen wine to P.W.3. Besides, Iddi Saidi named the second appellant to have been in first appellant's company when the said Iddi Saidi was ordered by the first appellant to go through the tunnel. As for the third appellant, Theofil Msangula, the evidence against him was that the culprits sold him seven bottles of wine. His explanation was that he was an innocent buyer. In my view his explanation was plausible. For he made an immediate report after realising that the wine was stolen property. He ought, therefore, to have been acquitted. For the foregoing reasons, the appeals of the first and second appellants, namely Ahmad Mussa and Baraka Twalibu must fail and are accordingly hereby dismissed in their entirety. The appeal of the third appellant, Theofil Nangui is hereby allowed. His conviction is hereby quashed and sentence set aside. He shall be released from custody forthwith unless he lawfully-detrained. JUDGE delivered in open court this 2nd day of December, 1982. T / '.

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Prepared on 13 October 2026 · Esheria