

# 19711019 TZCA Dar es Salaam

DECIDED  
19 October 1971

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S IN THU HIGH COURT OF TANZANIA AT 2ThR VS SIJAM Ciraina1 Appeal No. 409 of 1971  
Origtnai Criminal Case tTo. 72 of 1971 of the ietric Court of 18wara District at Mtwara before: Y,S.  
Mperella, Rsq., District iaistrate. All DALI . o • • • • • ..•••.... • . . . . . • . . . , . , . APSLLANT V versus  
THE; RPUJ3LZ(. • . a I • • • I • S SI I I I I I I I \$ I I \* I a IISI RRSi.OHDNT CHARGE Stealing c/s 265 of  
the renal Cçde. WAKA31D0 AG4 J. - The apeliant in this ease was charged before the twara Ds;riect  
Courtiof stealing contrary to section 265 of the Penal Code. He was convicted and sentenced to  
one year's imprisonment. He has appealed against both conviction and sentence. 'it was aile;ed  
by the prosecution that the appellant and the comiainant iore among many people wkio were at  
Nanyeia poinbo shop on 3rd April 1971. The complainant had gone to the pombe shop on a  
bicycle which h.e jiaced under a mango tiee, not far from the pombe shop. After taking a  
censideahle amount of liquor, complainant fell fast asleep and a;ellan.t noticing this, took  
complainant 's bicycle and rodeaway. There were, however, people, including two police  
constables, who had soon appellant take away complainant's bicycle. These people together with  
the eotiiplinant went out in eearch of the appellant. it did not take them long to apprehend the  
appellant but at that time he did not have the stolen bic.ycle. SubsoquerAtly the bicycle was found  
hidden in the bush by the side of the road leading to appellant's home. Appellant was accordingly  
charged anUconvicted of stealing the boycle. The appeliantmerely denied stealing the bicycle  
alleging that the police had for no apparent reason framed him. I do not think there is any  
subscance in this kind of arguient. Perusal of the record plain1 shows that there was  
overwhelming evidence to ground his conviction. 1 cannot therefore accept thesey, groundless  
and unsubstantiated attacks upon the prosecution witnesses. In his memorandum of appeal,  
appellant has claimed that he was prevented by the trial Court from calling his witnesa, one  
Musea Selernani. This allegation is patently false. There is nowhere on the record where the  
appellant is recorded as having indicated his desire to call any witness or w±tness. In fact the trial  
løgietrato's note relating to a V)peilant's answer after being addressed in terms of section 206 of  
the Criminal o i .2 2. Procedure Code puts this matter beyond any dispute. Appellant is recorded  
as saying "Ii shall give evidence on oath. I have no witness to call.' I have no reason to think that  
the Magistrate could have recorded statements other than those made by the appellant. I would  
accordingly reject this baseless attack upon the trial Magistrate's integrity and impartiality.  
Appeal against conviction is accordingly dismissed. As reardssentonoe, the Ilagistrate serit,enced  
the appellant to one year's imprisonment despite the fact that appellant had adniitted to having  
two previous convictions for theft. With respect, this sentence does rot in my opinion, indicate

that - the trial Magistrate considered the fact that the appellant was a hardened criminal and not a first offender. In all the circumstances of the case, the court was satisfied that the sentence imposed is absurdly inequitable and ought to be enhanced. It is to be hoped that after a longer sojourn in prison will turn him from being a sucker and a nuisance into a self-reliant law-abiding and a hard working responsible citizen. The sentence imposed is accordingly enhanced from one year to three years' imprisonment. In the result this appeal is dismissed in its entirety. Delivered in Court this 14th day of October, 1971- (Y.M.M. Mwakafolindo) AG. JUDGE.

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**CASE PAGE** <https://chat.esheria.ai/case-law/tanzania/ali-dali-v-the-republic-theft-tzca-1971>

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