

TANZANIA / JUDGMENT

19760211 TZHC Arusha

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TZHCDECIDED
11 February 1976

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/7 Tt1 IN THE HIGH COURT OF TANZNIL. .L.T ARUoi{.

- JPPELLATE JURISDICTION . HIGH COURT .CRIMINAL APPEL NO. 136 OF 1974 •ORIGINAL FAI CRIMINA CASE NO. 142 OF 1973 OF THE DISTRICT COURT OF ROLO DISTRICT AT 15M BEFORE: N. MXERO, Escj., District Mistrato Cil 10 ALPHOIWE ASENKA AI?ELLPI.NT ... (Original .Lc.eusod)versus THE REPUBLIC ..-'... .. RESPONDENT (Original Prosecutor) JUDGMENT 1'TJLTCATEE, 'J. - The applicant LLI'EIONCE ASENGL. • was convicted for Giving False Information and was absolutely discharged under Section 38 of the Penal Code. He has appealed to this Court. The appellant reported to the Police at Iflau Ronbo that while he was riding his motorcycle the complainant in the case, one ELLTUEL IKiIOYO, who was driving a Peugeot car, tried to knock him down. The Police investigated, the allegation and decided not to charge Lakamoyo, whereupon the latter instituted a private prosecution against the appellant, which led to the conviction. The appellant was in fact time-barred but because my brother judge adj.itted the appeal this court found itself obliged to decide the appeal on merit • I answer in the affirmative the question posed by my brother judge as to whether or not appeal lies to the High Court where a person is given an absolute discharge. Under Section 38 of the Penal Code quite clearly a discharge, whether conditional or absolute, must be proceeded by a conviction and Section 38B (2)(a) removes any doubt there may be that a person so convicted and discharged may appeal. I am not surprised that the Republic refrained from prosecuting the appellant: There was really no good evidence on which to proceed with the charge of Giving False Information. Christian Peter, who testified on behalf of the complainant and who at the time of the alleged incident was the appellant's passenger on the motor cycle, agreed that in his statement to the Police he said that when the two vehicles were crossing "W1 (the complainant) was trying to dodge something in front and I was shocked thinking that he would knock us down". In the circumstances revealed the appellant may be forgiven for thinking, perhaps wrongly, that the complainant was intent on doing him harm. It was not established beyond reasonable doubt that the appellant gave the information knowing or believing it to be false". The . •1 •, • • • • . /2
- —2— -: • The more fact that oaticrn was -o might have been false would. no f coi,rse sustiri a coiavicion In the present case, one Lacy iish to- add bh b the, in\rcs igators did not corc1tc1e that the informatioi.. was false. They moiely found that the allegation c'ainst ha co iplainant

could not be proved, which is sayin, a sinL[icntly doff ocnt thing. The learned trial magistrate expressly partly, ha ;aed his finding o aseerLiem thot alb±iouji the allced incid.cnt was oi 2/9/73. the appellant, did not rLakc a report to the Police unoil on 4/9/73. iith lespect ho overlooked the fact that ':fl hi.,,fence the appllant conteided that he made the initIal repOr on 3/9/73, which contention was not challenged and which in fact finds support in the testimony of the Police Officer Cpl. IbrahiLl, .17.2. This appeal is allowed. I Thb conviction is therefore quashed and the ordor.for discharge is oct asi,.X.b follows also that the order allowing the a onIinhht to take 5tL.S to recover costs is also eeL aido. Ti. JUDi. ' Asha: February 11, 1976. • ' • '- .1 LI3J/MTPTv1.

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