

it in the name of Sciicli Yus1.1.fu whose trading lic~ncc ho wcis :i.u.:115. The cement was
 • /3 two hundr'cld b3.gs not !:our hundr,,d, Jnci. ~; 'lat the · -wagon , usc,d could not
 possibl;r h,•vo carri:i:l ,!12 ;;1r::ny c1s four hundrod bags as its maximum c.c,pacity was 220
 D::c's. Ea duly cloarcd. his cement, aftor ho had got o~h.:r cioouments . \ br,io'3lly as
 alleg:Jd1 as tho noc0ssar~r ,;_ocwr,0nte had got lost when ill, w:is st'.lying at an hot-al
 in~., ;;rn. He did sell -t-h.e. cpm-,nt, two hundred. bags to t. i-I, 3. 'rhcr:: 1•1ae no ship to
 carry the oom0nt from Mwanza to Musoma so he lli:c, to offload it in Mwanza. In ~a
 defonoo the appellant J0hn c1.icl not deny hcilping J3wiro to cl,pr tho oom,;nt nnd
 facili:::tine: its sal\I to r. W. 3, He rui.d been ~pproahod u,y :1 mnn C'Jllorl lb1'.1,ua (whl)
 w~a • • (..._ co-charged with them but got acquitt.:id) ;;:id Bwire. 'j · j l !ls aforos~id, tho
 appellants' app,;:-:ls to the High Court were unsucc~esful, Moshi, J. boin,-;: satisfied that tho
 issues were f:::ictual and tr"" ro was no t:o(r)r.1_ rc,aeon for him to interfere. J3efore us the
 ar,pollants conduc;;;t ti"!,,ir ar,p~als

- i. I 'rersonally. Mr. Bila:c0 '-lfponn,d on bch,;::: of tho r!'Spndent l .. I ~ '1 ; and- · ~-
 declined to surport John's conviction. He howevor sui'ported the conviction in reEpcct o:i
 '~lw 2.prellant Bwirc. Ordin::irily cf course this court ,lould not intt.rfl'rc with the
 concurront findings of f:ct of a trial court '!nd th1,1 ijigh Court. ,Tho few oxcoptional
 r;i-tur..tiona in which wo can intorforo inclu,ie ,;.netElncos in uh:Lch th(courts bolow ;::r,
 ·: · 'l appear to havo ovorlcokoc to t:::ko into ::wcr,unt certain aepacts ~l · of the evidence
 which in oi;r view woulc: h"IVO led to different 'i .J conclusions had those portiotls of the
 cvicl;;;ncEJ being considor<:d "lnd analysed. W,~. arc rcspectfu.lly of ~h,.. view that this is
 one such case. J3wiro haz given hie EirJ::: of the• story, th3.t tha . . I . ' . ~- ~-~:~i . ,_1 ,. ' .:~,I
 4 - :: cement wae really his. We ,;arn ou1•a:1J.~::: "h;t h(;)ro, on oith:3r side, we aro
 (1.u1;.1ling with indivj,_,:1.,nl1;J who moy not be all th.'3t etr;;iight for,-mrd and truthful.
 Wc, have r. W. l and P. WJ.2, · tho compbinante who, Wh'3tGV\:::' thdr ~xplanation, were,
 going to ch:-rnt Railways of thJi:!' i-::: .Utc'S by d,· claring fowar bags than they say
 they ,;ictu~lly con:-lign;,d. Indeed evc-n wh.Gn 'F. W. 1 pres-intcd his ptiyors ...:~:~;~c
 rort he said he h13d come to clesr hio two hli.ndre1 b::;;s. Only whon ho w:::ls told that the
 oomont h.:1d been collectoC:. b,· somebody olSEi did he disclose that it was in f<1ct four
 hun<.lr:::,d. bags. r. W. l .lnd
- r. W.12 are the samo shady charactGre ,1~10 rushe;cl to obtain Exhibit r.16 1 an extr~lct from
 the Rcgio~:::~1· of Business •Names to prop up thvir clai:11 that they w:-ire op~r"tine; as a
 partnership. But thon the dato of rc.gietration was l"it\ Octob<:r 1 1986 1 a day afto:r tho 31:-
 pcellants h11d boon ·h~k.:i,1 to court, But <ilVon moro, thJ witness Ch:::rngwo, oM of thu
 po.rtno:s, cnteg,;:,rically told th., court of trial thd he h':ld left th.) conijunt in Tanga. The ,I
 Railway~ consignment note however contr:::clicts him 1.nd appears 1. r, to support J3wiro's
 contention. l.ccord.i:::; to th_, noto, the cement was oonsigna:i from rongwo 1 of which wo
 tako judicial notice th?_t_j._i is tho r:::1.ilway station ncui•,;st to th(: comont facto~ 1:1nd not
 from, Tonga which is f:-rth:::~r away fTom Mw:rnza. '-ley should P. W. l t'lkv the troublu ,ncl
 i:1cur th(' unnocc-sa~u-y

- k. oxpen.110 of t,;iking b.'lck thE cement from ~;,c etorc in Tanga, i. f. to r-ongl(e 1
presuma.bly by r0c1d, so .-i.s -to consign it to Musoma? ! I I J3wire sa:~ he consigr.od the
cemflnt fro111 _.:._onvwe, and th,,t thoy · :tend to sun,riort him. ,. ' ... ,. . . ;
- . . L.. 7F r: ... ; ., ..i,....., .. ./r.(~\ ' . -.... ~. .1- : \ 1;_,; _.,,.,.,.,_.. ~~-!- 5 :/J"·Jt(:.J!4:.,·.-: ~f~ ·..
~' ~1_.,, I:t is conceiv'ble that F.H.1 1 P.l.i.12 ~nd Bwire wcro all crooks .in the 'lffair and
that eucl-; 1·12s trying to r,ull I -a fast one on the othor. This was ~ crir,1inal trial 1:1nd in
-.,,. ~· viov of what we hav;;i s.:.,id, w0 aro unablo tc, sustain th(!;! ~-~:~ 'J ~-.' finding that
tho ap!)Oll3nts 1 guilt h;id b.:...in established beyond .} .. ;? ; roasonablo dou.bt. WCJ allow
those a-pru3l:..: 1 riuosh thQ nqnviotiona r ;· . ~- and sot aside th<1 sentences.. If tho
ar,i,c:..lants ::ire not otherwise in lawful custody they should be f:<;;t :fro() for-thwi-t.h.
Who~)vor has cl::,ims on the ccmant er on the 01.onioa .-tho eu.bject matter of tho trial
court ord.ci s, anc:. tho claims 0 aro resisted by aey pore on among P. W. 1~ P. il.12, !. lcl. 3
and Bwiro, h~ should seek to recover th~ sam<1 by wa,' of civil acti~ D.\TI!;D at M'.fl.NZi",
this llt,h dny of Docombor, 1988. F. L. :1:f.\11.LI 9HIEF JUST I CE. L. l>I. lii.Ki.till!: " JUST
IC:..: CI' Atr. EH · t.. --- ~- -. \. l,1. ,.. 011 ;1. R JUGTI CE Ct' MtLl~L td--- ;;I) ··:'!-.,,
., _.,t: ·'flt: . (J, If. EJOFFL) 81:NIOR :~:m:::cyY RlGISTRJ\R ,. . . . ?- · ~- - . ; '---.~tt
- . · .. ,t . . ,i ,· ~ ~ ~"}J1 it,, J,r

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Prepared on 14 October 2026 · Esheria