

DECIDED
23 June 1980

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• The villages are 4 remit to „sqOP'1° National Milling Corporation, Korogwe. . . ;.;. . " . ' • E.f.co. n: idenco was given at the trial. by one Mohaad Mbi.. (iho described, himself as,a Store keper thpio &bylie..lational Nilling . . ; 1 .; Corporation, Korogwe, to the effect that on 10/5/77 he procoded to Kwasunga village to bags wiu.h ierc originally issued to that village. On ius rrival hornet the Wilage ChirMan, one Goo'rigo Girin (pw2)' who then had note No.399 60 dated 18/4/77, ixh. P3, which showed. that 196 empty gunky bags had áIrea bèn cIIôc ted..' PW2 oId 'Im, i.e ?Wi'thatt'hO' ...; .;. C... .. ':', said" bags were collected by the appellant. .' :.' • : '...' •'....- 'C'. ,..... - '-ii \"..... • - . . . ; 4'...' , - 44 AM & - 4.. -, , •. 2 ,, 1M2 1 in his evidence in the Court b tvt confirmed this and added that he knew the National Milling Corporation, Korogwe 1 before that inOident (1 Thereafter PW1 po19e4 .pCho1ce1ei yiliage f or the same pur- pose. Likewise the Tillage CharmnLthero,(' oi Bakaalimu (Pw3) told him that the empty had been collected by the appellant sometime in April, 19770 The said. Chair1trtL, F3, then showed him a chit .ouw zecoipt.of 90 bas4s1xty being for maize and 30 for dotton) PW1 X'ecognisod the' handwriting on the said chit which, incidentally,appears to have been inadver- tently left ext.. fom bei2ig fema1ly tend ai o l.tbut in- stead was only tendere 4titionjasindeedbeing that of the appellant, PW3 himself corifirme& at tho trial toJ have .hnded ovp the empty gunny bags to the appellant Eventually PW1 returned to Korowe.and asked the appellant about the matter. The latter then admitted p have collected the empty guiny bags, 196 bags from Kwasunga v.l1àge'nd 90 bags from Chokoloi village. He, appellant, went on to toil P. that he d.eposited--tlie., bags for cotton, thirtina1l, into the cotton godowni This appa- rently was estabulsItld., as' bcording to P'vibi 'eciords of all the

bas are maintained. As regards the romanilg :.56 l?ag l meant. fqr maize,, the appellant.to1d him,-4.e,,. PW1,, jhathe had sold the same to a r driver from Moshi. The appellant did1 not name the said driver. ¶Phe I appellant was however, not authorised to sell any empty gunny bags 'JVfl: to anyone. Noverthgless,h,apellant, also failed to produce the t ..QL•,.).. :: proccd thorccif.!PW1 then rebtrtd the matter to the branch Manager' of the National Milling Corporation, Korogwe, one AbcLi. Lumbo Lumbo (PW5) - tetified to tho effect tbtt,on receipt of some information ho callo& in tho plant and asked him about the empty gunny bags from ICwasinga' The appeLlant admitted to him to have collected thoifland ddod that he had sold the same. P115 .1 then asked thoappe11nt to.put this n writing which lthe appe].- lant did. This was produced and admitted, in evidence as Exh. P2. Eventually, PW5 gave the appellant five clays in which to look or the proceeds of th6 % aid sale. The appellant failed to do ISO wherepon the matter was referred to thbP:o1oa: ,.. LL! •; In a sworn statement in his defonde the appellant gave an account of his movements as from 10/5/774 He told, the lower Court that he was - -7 admitted at Magunga Hospital on that day with a bad leg. He was discharged twodays later but he was exempted from duty for a fort-

- night. On 22/5/77 he received information that be was required at Tanga by the General Manager of the National Milling Corporation. He left for Tanga on 24/5/77 and on his arrival he was, shown Exh.P2. He denied writing and signing it and added that there had been cases atKorogwe whereby some people immitatod other peoplost signatures: He, appellant, being one of those whose signatures were being forged. The General Manager, nevertheless, insisted that he, appellant, should make good the lbss but the latter refused on the ground that he was not involved. However, this notwithstanding, on 26/5/77 he discovered that Shs,300/= had been deducted from his salary. When he querried the Manager then called in the Police who came and arrested him. The appellant had expressed desire to Call some witnesses but later he changed his mind. He, therefore, called none on his behalf. The leArned trial Magistrate reviewed the evidence adduced before him at length and came to the boncli.sion that the chaige against the appellant had, fully, been established. In his petition of appeal the appellant avers that on 10/5/77 he was in hospital and therefore he could not have possibly gone t.o collect the bags. It seems the appellant was not paying attention to what was being said at the trial. The charge sheet as well as the oral and documentary evidence shows that the offence was ôommi- tted. on 18/4/77. In his defence the appellant does iot say what he did on that day i.e. 18/4/77 When cross—examined, the appellant stated that there was bad blood between himself and Lumbo (Pw5) and his assistant whose namo the appellant did not disclose, Even if it were so the material witnesses in this case were PW1, PW2 and PW3 and the appellant does not say why these three witnesses for the Prosecution should deli- borate]y lie against him. The learned trial Magistrate believed those three witnesses and I cannot say that he was wrong in so doing. The case as a whole raiseB simple faotual issues centering on the question of credibility. On my evaluation of the evidence I find that there is over- whelmirig evidence to show that the appellant did receive the 256 empty gunny bags from the two villages and failed to properly

account for them. Not only that. And on his own admission he stole the same. The conviction is, therefore, sound as it is supported by the evidence. - .. 4 •. Turning to sentence, the accxsed is a first offender and the value of the stolenbags is Shs.11664/=, As correctly observed by the trial Magistrate the offence is scheduled under the Minimum Sentence Act, 1972, However, I do not see any aggravating circum- stances warranting th9 imposition of a sentence higher than the mini- mum which, to my mind, is sufficient to meet the justice of the case. • Accordingly the sentence is reduced to one of three (3) years impriGoñ- merit. In the final result, the appeal succeeds to the extent that the sentence has been reduced. In all other respects it is dismissed. Delivered in open Court at Tanga this 23rd Juno, 1980. (H. E: D.'Bya) JUDGS

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Prepared on 14 October 2026 · Esheria