

TANZANIA / JUDGMENT

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IN TN J, hIGH COURT OF T .NANIA AT MvANhA. APPLLATg JURISDICTION CRIMINAL APPAL NO. 154 OF 1970. ORIGINAL CRIMINAL CASE NO. 482 OF 1969, OF TH DISTRICT COURT OR MUSOMA DISTRICT AT MUSOAA. BEFORR: M. Mhang, 3sq. Resident Magistrate Athurnani Ally Nyabayi..... APPTLLANT (Original Accused) versus TR R3.?PUBLIC.....R? SPONJTW. (Original Prosecutor) Charge: Corupt Transaction with agent C/S 3(1) of the Prevention of Corruption Ordinance cap. 400 of the laws. Defacing Bank Notes c/s 7 of the Currency Notes Ordinance, Cap, 175. JUDG EMI'TT. Seaton J. The appellant was a clerk in the office of the Regional Police Commander at Musoma, where his duties involved inter alia the processing of appli- cations for permits -to possess firearms. It was alleged by the prosecution that in July, 1969 he had corruptly obtained ohs 30/= from one Gibago Kahu.mbe as an inducement to be issued with a firearm licence and swallowed the shs. 30,1= in Tanzania Currency notes when about to be apprehended for the first mentioned offence. Accordingly he was charged on two counts of corrupt transaction with a ;3nt and defacing bank notes. This is an appeal from the jigsaw of the Resident Magistrate of Musoma convicting the appellant on both counts and sentence of 10 strokes corporal punishment on the first count, the appellant having been discharged conditionally under 5.38(1) of the Penal Code for one year on the second count. The main ground of appeal was that the conviction on the first count was based on the uncorroborated evidence of the complainant, Gideon (P.8) a plice spy. The appellant did not appear and was not represented at the hearing of his appeal but has submitted an intelligent and cogently argued memorandum of appeal which has been profitable to read. In support of his submisrion regarding the evidence of a police spy, the appellant referred to Mrs. Alexandra Parantis vs Rex, (1937), T.L.R. (Revised)208. In that case, it gas held by Dalton C.J. that the evidence of a police trap or decoy given in support of a charge of committing an offence is not in law the evidence of an accomplice and does not therefore in law require corroboration. In practice, however as a general rule, the evidence of such witness should not be acted upon, unless the evidence pointing to the guilt of the accused is corroborated in some material particulars. 92 4

- 2 - Learned State Attorney has drawn this Court's attention to two more recent cases involving police spies or decoys. In Petro. 8/0 Sanundi v R. (19 68) R.C.D , 40, Cross J. held that the fact that complainant may have bean acting as a police decoy did not require that her evidence be corroborated, The Parentis case (above—cited) was distinguished on the

ground that that case involved professional decoys employed by the Police. Cross J, also distinguished *Petro_sLo_Kasernbe V. H.* (197) H.C.D. 338, an earlier decision by Georges, C.J., on the ground that the ruling in the last—cited case was based on its particular facts. Learned State Attorney pointed out that Georges C.J. had held in Kasembe's case that the police decoy who took part in the trap should not be treated as an accomplice, and his testimony need not be corroborated as a matter of law. However he is not a disinterested witness, and his evidence must be examined closely. Georges C.J. went on to state as follows: "Though corroboratioh would not be required as a mat;er of law, it would haril ever be safe in practice to convict unless there was corroboration'. As there is already a wealth of judicial opinion on this subject of police spies or decoys, I am loath to add to it. In the present case, the complainant Gidion (P.N.8) was a fereman at Buhemba mines who had sent in his application to the Regional Police Commander's Office for a firearm permit and when it was delayed, went in person to inquire. He testified he saw the appellant at the office, wno told him on each of the two occassions he went that he had toc uch work and was hungrr. This the complainant (P.W.8) interpreted as a solicitation for a bribe. Ha reported the matter to the Officer—in—Charge of Police (P.d.7) who arranged with him a trap for -the appellant. It is clear that the complainant (P.A.8) is not a professional decoy as was said to be used in the Pdrentls case (above—cited) Nevertheless at the very least, the learned Resident Magistrate should have directed himself that the evidence of the complainant (P. 1,4.8), as he was not a disintero- rested witness, should be examined closely. He failed so to direct himself. In fact nowhere in his judgment does it appear that the learned Resident Magistrate iwas aware of the need for any particulr care in regard to the evidence of police decoys, whether prplessional or amateur. In this respect, - he was in error. However, from a perusal of the record, it would apear that there was some corroboration of the evidence of th complainant (P.v.8) that he handed the shs 30/= in two currency notes to the appellant who put them in his pocket. The handing over of the notes was seen by etactive Inspector Maurice (P.:i) who said the appellant -took them out them in his mouth when he saw the Detective Inspector (p,w.) following him on his bicycle. This witness (P.i.i) was three paces from 1h3 appellant at the time and he caught his shirt and held him until other detectives arrived on the scone. One of these detectives was Detective Sargent Bosco (P.4) who confirmed that he tried to help the Detective Inspactor (p..i) retrieve the notes from the appellant. The Detective Inspector put his fingers in the mouth of the appellant and was promptly bitten, suf:'ering an injury which left a scar that the Detective Inspector (F,w.i) exhibited in court. The learned esident Magistrate accepted the evidence of the two detective officers (P.W.l's and 4) as being truthful. Learned State Attorney has submitted that on the evidence as a whole, it was safe to act on the evidence of the complainant (F.8) -3 * The appellant has submitted that there was no search of the complainant (P.4.8) before or after he had allegedly paid the shs 30/u and no control or savaillanca whatever oxrcised by the Police over his movements; every- thing was left to his good faith and due to this lack of control, there was entirely absent in, this case that extremely valuable and almost indispensable element of confirmation. With respect, I would disagree. 1 The Detective Inspector (P.w.i) was stationed in the shop of Karim Groc(s about 40 paces fre. the appellant and the complainant (P0W.8), The Detective Sargent (P.4)

was standing with another detective at a novelty shop about 60 paces from the appellant and complainant, The Detective Inspector (P.W.1) said as soon as he saw the complainant hand over the notes to the appellant, he pursued and caught him. From the evidence as a whole, I am of the view that despite the failure of the learned Resident Magistrate to direct himself on the evidence of a police spy or decoy, there was ample evidence to support the conviction. The sentence can certainly not be said to be excessive. The appeal is accordingly dismissed. Delivered in court at Mwanza this 21st day of May, 1970. MWANZA. (E. .SEATON) JUDGE.

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