

TANZANIA / JUDGMENT

19750226 TZCA Dar es Salaam

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L/tr- Il\T THE HIGH COURT OF TANZANIA AT DAR ES SALAAM APPELLATE JURISDICTION HIGH COURT CRIMINAL APPEAL NO. 186 OF 1974 ORIGINAL CRIT, ITNAL CASE HO. K 1185 OF 1973 1 OF IJ. HE DISTRICT COURT OF KINOJ\l"DONI DAR BS SPJJLAI DISTRIC'.11 Before P .N.

M.OKONK\JO Esq. Senior. Resident J\Iagj_strato B. 4429 D/C GODFREY 1.AISER •

• .APFELIji.1'7T versus THE RBPU13LIC ILE'.JPOHDEHT I\TY.ALALI, AG. Judge - The

appellant in this case namely 011e Ho. B4429 Detective Constable Godfre;sr Laiser 1 was charged crnd convicted on two counts with Corrupt Transaction uith agent c/s 3(1) of the Prevention of Corruption Act 1971 and was sentenced to 3 vears irn.rJrisonment on each count and sentences were ordered to ru.n c-oncurrently. He was jointly charged with another person who was fol.:md to have no case to answer and was acquitted under section 205 of the Criminal Procedure Code.

This appeal. is against conviction and senteEce on each count. 'Ilhe undisputed facts in this case are as follm.:s. Tb.e appellant at all material times wa:s employed in the Tanzania Police li'oroe as a detective Police constable and was attached to Msimbajz_ Police Sta ti on. Sometime in June 1973, The f:~rst Prosecution Witness (P. \'.1) mmiely one H.!~JI K.AfJSIM 1 who was a resident of Arusha tm;rn had his motor vehicle stolen. His search for his stolen motor vehicle took him to Morogoro Region. One day while P.F.l was in the oompany of the Sevooth Witness for the Prosecution (P.V.7) namely one YUSUF S. GOTHEY, at Chalize, he .smv a motor vehicle paso wJ-- ich was similar to his stolen motor vehicle. P. "\7 .1 took P. W.7 's motor vehicle and gave chase but discovered that the motor vehicle was not his. Apparently the police were informed of this cbase. Thinking t:tlat the cbase was an attempt to seize and steal the other motor vehicle, the Police began to look for P.1ii.7's motor vehicle 1 the particulars of which had been given to the police. Later that month P.W.7 motor vehicle was traced by the police at P.W.7's medical store in Dar es Sala~'m and warJ taken 2J'.rl kept in Police Custod:7 at Msimbazi Police Station. P. t. 7 rang u:rj P. W.~1 in .Arusb a to inform him of the developments fand requested him to come to Dar es Salaam 2.nd report at riTsinbazi Police Station. P.W.l did so and he met I .

- 2 - appellant nnd the othor accused. P.k.l was informed that he was SUfjspected of attempting to steal a motor vd.:icle. P .11.1 made his statment to the police. Th0re was sor<10 diff'i- cul ty about getting surety for J? .1:l. l to bo rel0ased on riolicc bail •. Appollant and t.he other policeman accoID1x,mic:d P. 1:i .1 to Zaire I~otel 9 thence back to r.rrsimbazi }olic c Station where p'V.l uas released on bail. Later th:::t day at about 8.00 p.m. the appollant again mot F. W.1 near Hsimbazi Police Station 1'Thilo in the bonpany of (P.V.l), the second Prosecution

Witnesses, namely Detective Inspector Joseph Lyimo, the Fourth Prosecution witness (P.H.4) namely P.O. 7200 Detective Constable Richard Isuya Aliabu, and the Fifth Prosecution Witness (P.F.5) namely Sub-Inspector Sicbone Aclimiun appeared and P.O. 12 arrested appellant, who was told by P.O. 12 to pick up some money from the ground below him but he refused. Appellant together with the witnesses were taken to Msimbazi Police Station, thence to Central Judicial Station where appellant was charged. The prosecution case at the trial was that after P.O. 12 had made his statement at Msimbazi Police Station, appellant solicited a bribe of Shs. 1,200/- from P.O. 12 so that, if appellant could settle P.O. 12's case. Appellant accompanied P.O. 12 to Zaire Hotel and to other places in an attempt by P.O. 12 to raise the required money. While so doing, P.O. 12 rang up Regional C.I.D. office. A police trap was arranged under which P.O. 12 was given 1,020/- of money to give to appellant later that evening at P.O. 12's place where police detectives would be waiting in hiding ready to pounce upon appellant on an agreed signal. P.O. 12 gave the agreed signal and appellant was to be the light, lighting of a cigarette by P.O. 12 after handing over the money to appellant. Appellant in his defence asserted that he had accompanied P.O. 12 to Zaire Hotel only so that P.O. 12 could collect his belongings from the Hotel. P.O. 12 was released on police bail and told to report at police station the following day. P.O. 12 however returned the same evening to inform appellant that as he had a return air ticket to Dar es Salaam, he had to go to the Airport to cancel his journey. It was under those circumstances that the police detectives appeared and arrested him. The learned Resident Magistrate reviewed the evidence and accepted the evidence of P.O. 12, P.F.2, I.W.4, and P.W.5 and rejected appellant's version of events. In his petition of appeal, appellant submits that the failure by the police to record the transfer of police money from the Regional Crime officer to P.O. 12 and to smear the money with a substance used for finger print purposes undermined the prosecution case. I do not think that this irregularity is material in this case since I cannot see any reason why the police officers involved in the preparation of the trap, some of whom were senior in rank to appellant, should be telling lies against a colleague who happens to be very junior in rank and whose destruction would therefore not create a promotional vacancy for someone.

- 3 - Appellant also points out a discrepancy between the numbers of a currency note as recorded by the police before the money was allegedly handed over to appellant and the actual number as found out in court. The police record showed a No. E 39464 whereas the actual currency note had a No. 394624. The discrepancy is very minor which appears to have happened through an accidental omission of the figure 2 in the record made by the police. Appellant points out some inconsistencies or contradiction between some of the prosecution witnesses regarding some details concerning distances at the place where appellant was arrested. In view of the facts which were not in dispute at the trial, these minor contradictions and inconsistencies are of no consequence. There are other points which appellant raises in his petition but they make no difference to the outcome of this appeal as the evidence for the prosecution was overwhelming. The sentence of 3 years imprisonment on each count is the minimum prescribed by law. Appeal is

dismissed in its entirety. Delivered in Court at Dar es Salaam, this 26th day of February 1975, by the President of the Court, Mr. Justice M. M. M. (I NYALALI ACJ. JU1)G :C 26/2/1975

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