

TANZANIA / JUDGMENT

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q/L IN THE HIGH COURT OF TANZANIA ., AT. DAR ES SALAAM.. H. C• CRIMINAL APPEAL 'NOS. 80 9, 81 & 82 OF 1979 ORIGINAL CRIMINAL CASE 'NO 81 OF 1977 dvi l OF THE DISTRICT COURT OF ILALA DISTRICT AT KIVUcONI Before D.J, UNBO, Esq., SENIOR MAGISTRATE J.Z,KIMENYA,, Esc1., DISTRICT MAGISTRATE B. 7986 D/C:JtJLIUS KITMBI & TWO OTHRS.APptLANT' versus THE REPUBLIC. • , . S RESPONDENT CH.ARGE:..;.lstCou.r: Corrupt Transaction c/s 3(1) & (3)df the Prevention of Corruption ict,i971.. ' 2nd Count: CoôrtTrànaction :3(1) & (3)' of the Prevention of corupti On Act, 1971. JUDGEIVIENT. KflVlIOHA,.. - The three appellants in. this ôase were convicted of two counts under the Prevention of Corruption Act of 1971 and each was sentenced to five years imprison- ment on each count. Sentences to run concurrently. The facts of the case as found by the trial Court are as set out in the lower Court 3u.dgement which is reproduced below for easy reference:- "The 3 Accused persons Joseph Miambo, Joseph.h Machage and Julius Kitambi are jointly charged with two count.s under the Prevention ofCorruption Act of 1971 in the first Count they are alleged to have Corruptly. Solicited to get shs.9.0,000/— from Josvand Notichand and Chotlal Laximani as inducement to forbear and refrain from takiriS the said Jasivail• and Chotlal. to Chang'ombe Police Station who were purported to have been in possession of a piece of gold. In the 2nd Count they are alleged to have received shs..30,000/— from.the two persons mentioned above •asn inducement so that the Accused persons should nottake them to Chang'ombe Police Station on allega- tions that the two were found with a piece of.golc1 These two offencesare alleged to have taken place oA 23/1/7,7. A brief outline of the prosecutions case is that the 3 Accused are polièernen. On 3/1/77 at about 5 home, the 3 Accused with another persons went to the shop of PVV1 Jasvand Motichand produced a Search -2- Warrant and told him that they were CID Officers and that they wanted to search the shop. PW1 called his neighbour PW.2 Kaba, and also the 10 cell leader PW.3 Abdallah Awadhi. During the search they opened a tunk belonging to Ckiotlal, who had kept it there for safe custody. They took out something. Which they said it was gold Accused persons told PW1 Raju that they wanted to go and search the house of Chotlal Lanan (PW4) So PW1 9 Raju, PW4 Laxrnan the 10 cell leader and Rajus Son. PW6 Devanand, went to Laxmans house somewhere at Mnazimmoja under escort of the Accused persons. There they search the house but got nothing they were after. Fromthore they went to search the house of PWI Raju, but got nothing. They took the witnesses back to the shop where they told thorn that they were taking Chotalal Lxman, Raju and PW2 Kaba that they were taking them to Police Station Chang'ombe. They left the 10 cell leader there and ordered Iajus Son who was driving his

fathers car to drive them. They directed him to go towards the Airport but they did not go straight they ordered the driver to take them through minor roads. The accused told the Witnesses that if they did not they would be kept somewhere where their children would notice them. It was the 2nd accused who said these words. The witnesses were threatened by these words they told them that they had no money. Accused told them that if that was the case they should pay sh. 30 2 000/—. The witnesses agreed. That time it was around 8 p.m. So they returned to the town centre. Accused suggested one of the witnesses to go and collect the money. They stopped near Chox Cinema. Kaba went to a certain house came back with 15,000/— from there they went near Cameo Cinema. Lauian went out of the car and returned later on with 15,000/—. The accused then ordered the car to be driven to somewhere near Uhuru Girls Primary School. The first accused who was the leader of the group giving all orders told the driver to stop. When the car had stopped he asked to be given the money. Kaba handed him the money. After he took the money he tore the search Warrant and threw the pieces on the ground and ordered the witnesses to go away. They however threatened them saying that if they disclosed that they had given some money they would be in trouble. So they left and the complainants went back to their home. After about one week the complainants went to report the matter to Anticorruption officials. It was after they consulted other people. After some investigations an identification was conducted, at the offices of Anticorruption squad. The 1st and 2nd accused were pointed by the witnesses. After some days the 3rd accused was also identified at Chang'ombe Police Station where an identification parade was conducted. After investigations were completed the 3 accused together with one Shabani Msafiri, now a deceased, were charged accordingly. During the investigations pieces of the search warrant that are alleged to have been thrown by the 1st accused were picked at the site where the accused and the witnesses are alleged to have parted were produced as exhibit: Also produced as exhibits were accused Note books which are used daily, by Police officers during their day to day work and the report books of Chang'ombe and Kilwa road Police Station where the 1st accused 2nd accused and 3rd accused were working. Records of identification parade and a report of the handwriting expert were also produced in court. In giving defence the 1st accused made an unsworn statement. He told the court that he went to search a certain garage situated at Ohio/Independence Street after he got some information that the owner of the garage was going to buy some gems stones from some people. So he was ordered to go by his Senior Officer Superintendent Sembe and was given the 2nd and 3rd accused to accompany him. They therefore went to the garage. It was around 3 p.m. The informer who was the gate keeper gave a signal when a Peugeot car arrived with 3 Asians. The car got into the garage. The 3 talked to the owner then they got into their cars. Before they went out the accused went to stop both cars and introduced themselves and searched the cars starting with the garage owner's. In the car under the seat they found a copper like stone. A commotion resulted and the Peugeot with the 3 Asians escaped. A 999 car was sent for and the garage owner was arrested and taken to the Central Police Station and later to Chang'ombe Police Station where a case file for preliminary investigations was opened. Accused quoted the file reference number 5 in court. He said that the file was taken by the anti-corruption squad man. Paul Mleki together with the stone. On 13/2/76 the informer gave him a report that the Asians who had escaped were having more items and offered to take them to where they were staying. He was ordered to go with the two

accused by superintendent Sente who signed a search order. Accused said he filled the names later as they didn't know the names then. They therefore went to Uhuru street near a Bakery. The informer pointed the shop it was written Bajit.. Tailoring and that Raju was the one who escaped on the previous day. Another shop was written Ohotu. He has the stone which he wanted to take to the mine's office for, analysis as to whether it was a valuable stone or not. The informer left them. So they went to ask for Raju, but they were told he was not there. They waited for him. When he arrived they were called by one of the workers! He saw Raju and remembered that he was the one they saw at the garage before they introduced themselves and then searched the shop. He showed Raju the stone, then searched the shop and the trunk belonging to Chotu but found nothing. They then decided to go and search houses of Raju and Chotu but they found nothing there. They therefore arrested them and took them to Chang'ombe Police Station, where they took their statement and released them on Police bond. The search order he kept in file which was later taken by Paul Miki of Anticorruption Squad. Accused said that the stone was found to be of value but before it was taken to Dodoma he was arrested by the Anticorruption officers. He was told that he had taken bribe from Asians. He said he knew nothing about the matter. He was kept in custody and taken to Police Kibaha. After a day or two he brought to Anticorruption offices, where an identification parade was held. -4- He said that he was not feeling well that day and so he asked to sit outside for sunshine. The person who identified him was seated outside he talked to him, because they knew him. This was on 19/2/76 another identification parade was conducted the witnesses were the same, who identified him before. He was then released on bond he not the 3rd accused Julius Katambi who said was arrested on accusation that he had received a bribe, He was later arrested for the 2nd time and brought to Court. The evidence of the 2nd accused who did not wish to take oath is almost the same as that of the 1st accused he told the court of how they went to the garage owner but other Asians escaped in the Peugeot he told of how they were assigned to go to Uhuru Street led by the 1st accused who was in charge of the investigation he said of the search in the shops of the two witnesses and into their houses, and last they took them to police station took their statements. End handed them to 1st accused who allowed them to leave until such a time they were required. He said he was arrested on 19/2/76 when he brought some exhibits of a certain case to court. He was told to see Kafipa of Anticorruption squad, and that he went to wait for a transport at the prosecution's Office.. In the office we saw the Asians Haju, Chotu, Kaba and the driver son of Raju. He was then taken to the Prime Ministers office where he found the 1st accused with other policemen of Chang'ombe police station seated outside. He went to office of Kafipa (P.W.5) who told him that he was being suspected of having taken a bribe from the Asians. He saw the Asians he had left at the P.'s office talking to the 1st accused. He asked the Policemen who was escorting him, to allow him to join the 1st accused, At the same time the Asians were told to take positions in a line. The Asians were told to point persons that had taken money from them. They pointed him and the 1st accused. They were then taken to Kibaha, on the following day they were brought again with the same cloth 05, it was on 20/2/76 The same Asians picked them again, and the 10 cell leader also pointed them. They were taken to Kibaha again and on 23/2/76 they were brought to Central Police Station and locked up. They found accused No.3 there and on 24/2/76 they were taken to their houses him and 2nd accused were searched. His Notebook and

identity card were taken. They were then brought to Prime Minister's office, where their relatives bailed them. In March 1977 they were arrested and brought to Court. The 3rd accused Julius Kitambi gave the same story as given by the 1st and 2nd accused. He said that he was arrested on 20/2/76 when some people from Prime Minister's office came to Chang'ombe Police Station and asked Officer in Charge of CID Superintendent Semboja that he was required to go and help them in their job, he was then handed to Paul Meki who told him that he was under arrest for offence of taking a bribe. He was put in custody till 22/2/76 then he was taken to an investigation room by one Chacha who then went to call the witnesses in the same room, He talked to them because he had known them since 23/1/76 when he searched them. He was later called outside to join other people in a line. Chacha brought the witnesses who were in the room to point out a person who had searched them. Raju pointed him also Kaba and 10 cell leader and Chotu.

0. 0044, -5- He was later taken to Central Police Station. On 25/2/76 M. Ieki released him saying that he would call him if he was required. On 27/2/76 Mleki went to take a case file that was connected with the stone they caught with the garage owner. He took the stone as well and, the search order also report books of Temeke. On 23/3/77 he was arrested again and taken to court to answer the charges. The prosecution led by I. Mchatta submitted that apart from P.W.1 & P.3 the witnesses who are mentioned in the charge sheet as the accused solicited to give 90000/- their evidence was confirmed by P.W.2 and P.W.6. that the demands of the accuseds were addressed to P.W.1 & P.W.3. because P.W.2 & P.W.6 were not actually connected, they were mere escorts, P.W.6 being a driver, both these heard the demands and their evidence was not challenged by the accused persons which shows the truth of the fact that the demands were made in the car, and no one suggested that the witnesses were telling a lie. On the 2nd count: Nduku Mchatta submitted that the accuseds persons in fact obtained 30000/- from the two witnesses and again the 2 other witnesses P.W.2 & P.W.6 saw the money being handed to the 1st accused and as in the 1st accused, it does not suggest that the witnesses were talking lies when they were given, a chance to cross examine them. He pointed out that the accused the witnesses car for over 2 hours. It was a civilian car and was used to do a police work involving the 4 witnesses. themself's. Wano is, this is a matter of fact to the court to consider this fact. J. () ; , , . . . , '3, 't CC)k- 0 -! : J. (2b 'U'V the identity of the witness who did this. This witness (PW:7) ; w-Eb , conducted it complied with all the rules and regulations of the parade. The investigation officer W.9M1bki pointed out that after the record books that were tendered in court, not only any report regarding P.W.1 or 3 and that even in the rote books Exh. M and N 'Of Mad'hago and Julu there are that the court should therefore draw an inference as to why the accuseds did not try to retrieve the book. - cied No "X" w/ho :ge ubth isi ah-fb- ai'ón ehlf'f 1 'all told the court the anticorruption people took the stone "and the police case file that concerned the diamonds and me the prosecutor. it is not 'v, an act to"- the hearing officer -re & sbiè uhkflowvn. He denied to have threatened the witnesses and, did not have weapons which might have threatened the witnesses and had they done so the witnesses - SS' S' 'côuld ha go'ie ta -'Mimba'i Pa'l'i'" 5r Cntr'al Pàlice Sthtion vther they" could" - hie' eported t'H'ad'tht' they did not use Police vehicle because the witnesses did not want to get into Police car for -

reasnknown töLthémSb1ves. , He 's'aidhät' ere-lotroved to be th e azn ieces"iown t to P.W'2" and'that eh' thef'they nt,itteh - by - any of th?p'i but b'-the 1"ateacoused'ana theevi'd.ence th.t Tbht wbre torn-bg tiem"is not true, t i"ps'ib1etha tt they were eo1- in order to, strengthen their, case." And, conclemmeci, the identification parade saying 'that the' sujDerv1sr'- skipped - the regulations her wondered"why thepr6'secutioh fa11edCtocal1 the persons dntif.i th ' .int, T4p" 14 6 said that people from Chan.g'ombe police were taken becäu.se it was known that the witnesses were searched by people from Charig'ombe. He said they had taken. 30,000/- they would had been.found with some money and if they had solicited to get the money they would have notaken them to Chang'ombe Police Station. He pointed out that it was normal thing to be in a car of, a person who was not char- ged and 30,000/- .could. not be given easily unless they had been lockup words alone could not threaten anyone firstly he point that the 'ant.icorruption people arrested them is a clear indication that they wanted to 8.ave their friends and hida the, truth of the whole issue that was wh,y they did rt even inform their senior officers.

- Having heard the evidence given wo'.havO come to.a fail that it is a fact which i• not denied that the accused searched the shop and houses of P.W.1. P,W.3 using a searc.h order. He is also a, fact that they arrested the .witnesses purporting that they were taking them to Chang'ombe Police Station but they did however attempt to put it to the witnesses in cross. examination that they had done so, Accused persons also deny to have torn.the search order in question before releasin.g.the witnesseswO have considered the evidence carefully and we haveno cause whatsoever to doubt the testimony of the witnesses that the 1st accused Joseph Mihambo tore, the search order since we have accepted that accused searched the shop, and the houses of the two witnesses, took the witnesses iritheir own (witnesses) car but never took them to Chang'ombe Police Station as they indicated before. The witnesses claimed that the accused thre.ataned them, by telling them if they did not give them the money they would be detained and their, families would never see them again. It was after hearing these threats that the witnesses undertook.to fetch the 20,000/-which accused agreed to receive. We were surprised that none of the accused persOns in theirdefence.ever made any denial of going round with the, witnesses in their and the subsquent payment of the 30,000/- the subject of the 2nd Count, had witnesses told lies on this issue the accused persons intelligent and educated as they are would have certaixily challenged the allegations. We had the opportunity of seeing and hearing he witnesses as they testified •before use From their demeanour in court. We have no reasons to - doubt that they were not telling the truth, On the evidence, given we are satisfied and find that the search order that was written by late accused persons, was torn by the 1st accused near the girls School on the right on question and in prese- nce of the witnesses and the other accuseds before thy. parted and after the payment of the 30,000/_ had been made to them. 7/. . I --7...- On the issue of the identification, although accused person have challenged that it was improperly conducted, in that they claimed to have been seen by the witnesses before the identification parade itself was conducted there is, however their own admission in their defence that they went and searched the shop, and the withesaeshouseon the evening i.qucst±.n: From the

Since it is found that the witnesses had enough opportunity within which they saw and recognised the accused persons well. We, therefore, dismiss this argument as having no merit, because the accused not only searched the witnesses shop and houses but they also went around with them in their car, for about 3 hours until they got what they wanted. On these facts, therefore, we are satisfied that the prosecution have proved their case on both counts against each accused beyond all reasonable doubt. Accordingly we find each accused guilty as charged and convict them on both counts. Sgd: D. J. Gumbo Senior Magistrate.

Prosecution: Accused persons have no previous records. Accused Mitigation: 1st accused I ask the court to consider the time I have worked in police, 6 years I have people depending upon me. I ask the court to send my message to I.G.P Mgaya that what he wanted has been fulfilled. Accused No. 2 JOSEPH MACHAGE: I ask for lighter sentence for the following reasons- My both parents are very old. I have 9 young ones depending on me including my wife and 3 children. I have worked with the police for 10 years I actually did not count the offence. Still I ask for pardon. Accused No. 3 Julius Katambi: I ask for leniency. On 6/2/79 my father died he left 10 children all depending upon me. I have a wife with 2 children. I have worked with Police for 8 years. Court: Although the accused are first offenders. It is obvious that they harassed the poor citizens to obtain 30 9 000/—. They have not only ashamed themselves but they have ashamed the Police Force of Tanzania as a whole. We feel that a deterrent sentence is therefore called for. SENTENCE: 1st Count: 5 Years imprisonment. 2nd Count: 5 Years imprisonment. Sentence to run concurrently. Right of appeal explained. Sgd:— D.J. Gumbo S. Magistrate Sgd: J.S. Kimenya D/Judge Sgd: T.N. Bwire DM. 3/2/79 I have carefully read the Lower Court record and considered the appellants memoranda of appeal and law, fully satisfied that there was no evidence against the appellants sustaining the conviction. The appellants have been sentenced to be excessive. Their appeals are therefore dismissed in their entirety. Delivered in open Court this 8th Day of October, 1980.. . A)

JUDGE 8th Oct 1980 /

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