

TANZANIA / JUDGMENT

19710814 TZCA Dar es Salaam2

COURT
TZCADECIDED
14 August 1971

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I Lft 11L(Et UVU= U ligh øort Criminal Appeal Nc. 23 of 1971 Oxiginal Criminal Cae 76 of 1971 of the Mntxet Court of Dar ee Salasm Diatricht at Dar e a Salaa before A. . lakanga w EMUiXe, Dintriot Magistrate BASEIDI DAKAfII PME APPLLA (iiina1 Accused) vernue IPUBL1C * BDSPONDENT (Original Pro ec utor) Chargo1 Uttering false doownent .contraa7 to oection 342 of the Penal Code, Cap. 16. MWAflSTO, A0.J1 he appellant was envloted of an offence contrazr to section 342 of the Penal Code, his offence being that ho on the 6th •dar of April, 1971, within the city of Dar as Salasm, in the Coaet Region, did knowingly and fraudulently utter a falee tocwnen.t, to wit, a false driiing licence, to one A. S. Sumbo# a Revenue Officer, purporting that the said driving licence was genuine whereas he knew it to be fa3se. He wee convicted ipon his c'in plea of guilty and ae sentenced to twelve monthe' imprisonment. No appealed against the severity of aenten an orly Thin appeal s hoard on 13th Auguat, 1911 and after hearing submissions by counsel for the appellant and the State Attorney on behalf of the RopubUo I directed the ivaodiato release of the appellant from goal I now give the reasons. The counsel for the appellant who 1 in zW view, did not dispute the correctness of the appellant's 'conviction, criticized the trial magistrate on his failure when passing sentence, to take into consideration all 4the mitigating factors in the cane s which, as counsel contended, if he did take into account his conclusions on sentence might well have been different, Counsel most appropriately obserreft that the trial ragistrate appears to have felt impelled W. the heinousness of the offence' in imposing a sentence which ,mall jn all the circumstances, manifestly sevar.* Zn this I entirel agree It seems to me that the District Magistrate completely ignored to take into account when sentencing the appellant two important factors which to my mind weigh heavily in appellant's favauri These factors 'sri that the appellant was a first offender and that he had pleaded guilty to the offence' thereby saving ;the prosecution the trouble and expense of proving itS: 0500 and avoiding 'the possibility of the appøllt securing an unmerited acquittal through a technicality. Though neither of these factors consid.red alone would entitlod an accused. person to leniency, there is nothing which precludes the Court from showing leniency whore the accused has clearly reponted his wrongdoing and the circiistances taken an a whole call for the exercise of aorc This I bel eve is the appropriate 4udicial approach even when the kind of offence the magistrate is dealing with may be one that is to be nverely discouraged as the present offence ie Goimnol for the appellant was also critical of certain obsez'vationsa mane by the migiokrate in the courae of paasin aentonce, tn particular where be said that most asoidenta in Dar es Salaein were done by inexperienced thivera who inatead of paaeing the req4aite proficiency, driving teats went and bought forged lioencet This observation,

though quite understandable was clearly regrettable and testified by the evidence before him, more so as the magistrate had not taken the trouble to find out whether the appellant fell in 'the class of persons who according to him were responsible for the rising incidence in traffic accidents in the metropolis. As a matter of fact it has now transpired that the appellant is a proficient driver, having been employed for the last three years by the reputable Dar as Salaazi Travel Agency of Reareloy#841. Another matter which may have influenced the magistrate in imposing a stiff sentence upon the appellant may have been the fact that the appellant when requested by the Police had refused to reveal the source of the forged document. Appreciably appellant may have had reasons for doing so, the fear of betrayal probably being one of them, but whatever were the reasons for his refusal I can hardly think that these reasons are either honourable or reasonable, therefore I have to remind the appellant and people like him that it is the duty of every citizen to give every possible assistance to the police in waging the war against crime. Anybody who does not do so is to say the least irresponsible and an unworthy citizen of this Republic. He is in no better position than the criminal against whom he refuses to testify. The appellant, has now genuinely admitted his conduct and realised what a fool he had been. In reference to a similar case of a person of law and order, He has accordingly given an undertaking to give the police every possible help in tracing the authors of 'this evil trade in forgery. I had taken note of this change in attitude yesterday, and, having regard to all the circumstances of the case I fully concurred, I did not feel it right that the appellant should continue to languish in gaol. After a term of four months' imprisonment which he had already served had in my view adequately punished him and perchance brought home to him the seriousness of this offence. On consideration, I reached the conclusion that the term of six months was unduly excessive and thus reduced the sentence to such term as would have amounted to the immediate release of the appellant, which in effect means the appellant has suffered a term of four months' imprisonment. Before I dispose of this matter, I should like to reiterate the notions that both learned counsel appeared to hold with regard to the heinousness of the present offence, I do not think there need be any doubts or misapprehensions on the matter, as the kind of offence committed by the appellant not only lowers the standard of, driving in the city, thereby increasing the insecurity of every road user, but it also adversely affects one of our important sources of revenue. The more people who have never bothered to pass a driving test are allowed to drive on the roads = the strength of these roads driving licence, the more insecure every citizen of the metropolis will feel. No, I could not view this offence other than as a serious one, and it is high time that the tendency that is fast developing of treating minor offences as paltry ones needs reversing. The sooner this is done, the safer everyone of us will feel in using the roads of this metropolis whether as drivers or, as pedestrians. Slzd ~ (Y, Mw L Makaaendo) AOTIM JUM Bar, as Salawa, 14/5/11

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