

TANZANIA / JUDGMENT

19710609 TZCA Dar es Salaam

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9 June 1971

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IN TBB SIGH COURT OF PANZANTH AT DAR ES BALAAM Criminal Appeal No. 175 of 1971
Original Criminal Case No. 719 of 1970 of the District Court of Dodoma District at Docl,oma
Before: N. N. Mushi, sq., Resident Magistrate BENITO \$AMANI ,•• . •• ... •
• ,•• APPELLANT S versus PHE REPUBLIC RESPONDENT CHARGE: Stealing by
Servant c/se 271 and 265 of the Penal Code.

JUDGMENT

PATEL, AG.. J. - The appellant is convicted of stealing by servant by the D1tict Court, Dodoma, and sentenced to three years' Imprisonment and 24 strokes of corporal punishment. He now appeals against both conviction and sentence. The appellant was at all material times a clerk employed by the Central Region Co-operative Union at Dodoma. As a clerk of this Union he had to receive money from the buyers, enter it in the books of the Union and take the cash so collected personally to the cashier of the Union, and after paying this sum so collected each day he had to obtain a receipt from the cashier stating that he in fact did handover the sum involved. It was alleged and so found by the trial magistrate at Dodoma that the appellant on 17th of October, 1970 stole a sum of Shs.22,397/7 0 which he collected from the buyere of the Union's goods which he ought to have handed over to the cashier of the Union. The appellant did not deny that he received the sum of Shs.22,397/70 on 17th October, 1970. But he says that after having collected this sum he personally took it to the cashier of the Union and handed him over this amount. This was denied by the proseotion witnesSes at the trial court. There was no entry and no receipt showing that the appellant handed over this sum to the cashier though it was proved that he did receive this sum on that day. Evidence reveals that the appellant left his office with Sbe422097/70 at about mid day on the 17th of October, 1970. He walked towards the cashier's office and then disappeared till he was arrested after ten days. The learned State Attorney submitted that there was more than enough evidence before the trial iagistrate to prove the guilt of the appellant with enough documentary evidence to support the oral evidence of the witnesses. The learned State Attorney further submitted that the conc]Lu5ion and finding of the trial magistrate is correct and there is no merit in the appeal and this appeal should be dismissed straightaway. The State Attorney further submitted that in view of the amount stolen, that is Shs.22,397/70, a sentence of imprisonment for 'three years is not at all excessive, but is reasonable in the circumstances. 2. I have carefully considered the evidence on record, the memorandum of appeal and the eubmissione'made by the learned. State Attorney and I do find.

that the trial magistrate tried this case with extreme care and he covered all the points in issue before him. He decided to believe prosecution witnesses and accepted their evidence as true and rejected evidence of the appellant as untrue. He was certainly entitled to do so. This is merely a question of credibility of witnesses and this Court will not interfere in the finding as to the credibility of the witnesses by the trial magistrate. In fact there is overwhelming evidence to prove the guilt of the appellant and the trial magistrate could not have come to any other conclusion at all from the evidence before him. There is nothing whatsoever on record or in the memorandum of appeal that will make me reverse the finding of the trial magistrate. I am also satisfied that the sentence of three years' imprisonment is adequate and not at all excessive. For these reasons I find there is no merit in the appeal and dismiss it in its entirety. Sentence is also confirmed. Delivered in Court at Dar es Salaam this 9th day of June, 1971. (J.B. PATEL) AG.
JUDGE

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