

TANZANIA / JUDGMENT

19830715 TZHC Mbeya2

COURT
TZHCDECIDED
15 July 1983

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- b S rv~ 119 OCT ± .THE HIGH COURT OF TNZ i't j 1983 PPELIJJTE JUi1SBIGTION (Nlbeya Registry) CRL1INAJ IPPEAL NO. 56 OP 19 83 . ORIGINAL CRThLINiIL CASE NO. 220 OF 1979 OF Tjjii J)IJ1i.ICT CUTlET OF SU1vBAWNGA DISTRICT IP SllViBt'hU'G Before: J. B. lviIaama,Esqva , l!agisl.mte,, BNlvTO. 1. .., • ..• driginal Aocud Versus' - THE REPUBLIC •.....,,.....,..... RESPONDINT: •1 (Original Prosecutor) RGE tea.l'ing t,jy a person employd in the Public Service cjs.265, and 27Q of the Penal Code; OR, - loss oQCasioned to the Goisernjaent /s.284 (i o to pena]. Code. JTJDGIVIENT J. The appe].lant was charged with two aJterna 44ve counts; r4ealin. by a person in pubilo servant or c.ausing loss to the Goijeuint, The £a,ct were that the appellant was wdrking as a Clerk in the Internal Revenue Office at umawanga. His du'ies included receiving reenuea and making payments. In the month of igust, 1978,the staff of the Revenue OffiQe did not receive their 3alaries frou Dar es Salaam in time. It was 0e3lled that they should be paid, locally to alleviate thedr hardship. A payment voucher was prepard and cheque drawn. Members :d1' the Staff, though not all, were paid. Ilean while a payroll was received from Bar es Salàam with a cheque 'o the &'ount of s11,43 8/50. The appellant cashed the cheque md made some payments out of the abo m-, leaving a balance of Shs,7,717/30. It was assuuedthat bal-anoe. would have been accounted fcr with Bar es SalaaLi. This was not the case, the money disappeared. The appellant was fixed with esponlit,y and was charged. In his defence he stated that the money was kept by one John Sigareti, whom he said was the: àashier in charge. The trial court rejected his defence and convicted hiLl of 'e first countof tieft (2) by a public seriaat and sentenced him to five years imprisonment. In his memorandum of appeal he again implicates John Sigareti. There was evidence that the appellant was respsible for aocountin for the money. In his defence at the trial he said he kept the money in question with one Sigareti. Now in his memorandum of appeal (para 15) he argued that John Sigareii returned the money to hiu and as he had no where to keep it (para 16) he put it in his drawer in the office which means, although he doesn't say so, it was stolen by someone else. I haw pe'ued the .9vjdae and am saisf.ed that the appellant had failed to account for the money Shs.7,717/30 and ao no satisfac.txplana.ion. The presumptii was that he converted the same to hi own ILSeZ# He was rightly convicted of theft and the sentence of five years was4lie nii.niiium fixed by jaw. The appeal is dlississd in is etr*ir&ty. : eya, 15th July 1983

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