

TANZANIA / JUDGMENT

19780107 TZHC Tabora 1

COURT
TZHCDECIDED
7 January 1978

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IN THE HIGH COURT OF TN-Z-PIA AT MWANZA. APPELLATE JURISDICTION IGI-i-COURT CRIMINAL APPEAL NO.245 OF 1977 (Original Criminal Case No.685 of 176 of the District Court of Shinyang District at Shinyanga - before N. G. C. KAJERI, R.M.) BUNDALA MKOKOTENI APPELLANT (Original Accused) vs THE REPUBLIC RESPONDENT (Original Prosecutor) 1st count: Burglary c/s 294 (1) of the Penal Code Cap.16 Vol.1 of the laws. 2nd count: Stealing c/s 265 of the Penal Code Cap.16 Vol.1 of the laws J U D G M E N T MAPIGANO, J: The appellant.Mkokoteni was convicted in the district court of burglary and stealing, contrary to section 294 (1) and 265, respectively, of the Penal Code and sentenced to concurrent terms of imprisonment for three years and four years, respectively. He has appealed but I see nothing of substance in his petition. There was no dispute that the dwelling house of the complainant Paulo Ngasa was broken into and several of his belongings stolen. This took place at night and the culprit disappeared without being seen. There was no serious dispute that three weeks later the appellant had one of the stolen items, a Kaunda shirt, which he offered to sell to one James Shija (P.W,3) In the course of the transaction the complainant appeared and put it to the appellant that the shirt was his. At that stage the appellant tried to hide the shirt but in vain. He was arrested and brought to court on the charges. He elected to offer no evidence at his trial. On this evidence, the only question which arose was whether the appellant was the actual person who committed the offences charged; or whether he was a guilty or innocent receiver of the stolen shirt. The learned resident magistrate held that he was the actual burglar. The learned state attorney has argued on this appeal -that the evidence left a reasonable doubt that he was the burglar. He pointed out that three weeks had elapsed since the burglary when the appellant was found in possession of the stolen shirt and that nothing else was traced on him. He expressed the view that there was a possibility that the appellant was a mere guilty receiver./2 I

- 2 - I fully agree with that opinion and I will vary the decision of the trial court accordingly 0 The convictions are set aside and it substituted therefore a conviction for receiving stolen property contrary to section 311 (1) of the Penal Code, for which he is now sentenced to three years imprisonment the minimum under the law 0 The order of the trial court in respect of compensation is set aside 0 Pronounced in court 0 Appellant absent 0 Mr 0 Sengwaji for the Republic

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