

TANZANIA / JUDGMENT

19710604 TZHC Arusha

COURT
TZHCDECIDED
4 June 1971

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IN THE HIGH COURT OF TANZANIA AT ARUSHA APPELLATE JURISDICTION * CRIMINAL
APP.SAL NO. 94 OF 1971 ORIGINAL CRIMINAL CASE NC. 18 OF 1970 OF THE DISTRICT COURT
OF PARE DISTRICT AT SAI B efore C.H. Msamati, District Magistrate ALLY RASHIDI ...
000 •000 APPELLANT/ACCUSED vers LiS THE RIPUBLIC RESPONDENT/
PROSECUTOR CHARGE: 1. Burglary contrary to section 294 (i) of the Penal Code Cap. 16

- Vol. 1
- 2. Stealing contrary to section 265 of the Penal Code Cap. 16 Vol. 1 of the Laws. J U B G M H N T
BRAMBLE, J. The appellant was convicted of B urglary and stealing and sentenced to 2 years
months imprisonment. He was further ordered to receive' 24 strokes of corporal
jxinishment. These are appeals against convi- otion and sentence in each case. The brief
facts are that some one broke into the complainant's house on the 30th July 1970 and stole
his goods among which there were watches, shirts and trousers. The appellant's house was
searched and there were, found 3 shirts, 2 pairs of trousers, 6 watches, one new pair of shoes
and some lm blanket. The ôomplainant was called to the police statipn where he was shown
certain thiigs and he there identified an old shirt because there was a tear in the 'baok; two
pairs of trousers bcause one was black and the other brown; onepair of shoes because of the
clour; five watches beoadse he used to wear them. ' . There was no evidence that any attempt
was made to identify the goods in court, and it is for the fr'ial magistrate to be satisfied on
this question and not the complainant or the police. In any case the only evidence of
identification worth cOnsideration was the fact that one of the shirts had a tear On the back
and this was not positive enough since there was epsial about a tear. Moreove, it was not that
the complainant gave a description before inspecting the goods at the police station. Any
person can describe..... an item after inspecting it. The learned trial mgistrate said that the
complainant had identified one shirt to his Ba*iisfic.'tion. It may be that p he is easily sa.±
±sfied but for the reasons given above and the fact that a large number of items were stolen
and this was the only.one as to whici there was any suggestion of identification I do not
c'onsidor. that, the, evide- nce could supeort the convictions. .4 ' •• I will, therefore, allow the
appeals quash the convictions • and sente- nces and order that the appellant be imrately
released unless otherwise lawfully held. Delivered in court at Arusha the 4th day June,
1971. .-.- \ • .. (.. ? A1444t4. . (C H BRAIiBLE) - JUDGE qbj7f jsm \ , .-.-

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Prepared on 23 October 2026 · Esheria