

TANZANIA / JUDGMENT

19840803 TZHC Dar es Salaam2

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TZHCDECIDED
3 August 1984

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IN THE HIGH COURT OF TANZANIA ...J' . AT DAR ES SALAAM APPELLATE JURISDICTION
HIGH COURT CRIMINAL APPEALS: NO. 35/84 ORIGINAL . CRIMINAL CASE NO. 149/ 82 OF THE
DISTRICT COURT OF ILALA DISTRICT AT KIVUKONI BEFORE LONGWAY SENIOR RESIDENT
MAGISTRATE. 1, c 6363 P. o. JUMA) 0 0 0 0 . APP'"";TLAN. T.

2. C 5009 PC~ GIDION)..... (O;i.~i;al ~cused}. versus THE UNITED REPUBLIC
ooo•RESPONDENT (Original Prosecutor) J U D G M E N T JHL.VERI 2 AG. J. This is an Appeal
from Judgment dated 26th March, 1984 by M. H. C. a. Longway, Senior Resident Magistrate
in Criminal Case No. 149 of 1982 in the District Court of Ilala District at Kivukoni. Appellants
were charged as follows: 1st Accused: - No. C 6363 P/C. Juma, Male adult, Aged 21 years,
Tanzanian, Christian of Msimbazi Ila.la. Police Station, Dar es Salaam. 2nd Accused: - No. C
5009 P/C. Gidion, ,Male, Adult, Aged 23 years, Tanzanian, Christian of Msimbazi Ila.la Police
Station, Dar es Salaam. !!~t~g)fil::~of Offence: Soliciting a bribe, contrary to Section 3(1) of
the Prevention of Corruption Act No.16 of 1971. Particulars of the Offence: No. C 6363 P/C
Juma and No. C.5009 P/C Gidion Charged on 10th January, 1979 within Dar es Salaam Region
being employee of Tanzania Police Force, did corruptly solicit a bribe of Shs. 600/- from one
Ramdhani Selemani as an inducement to withhold the charge of assault causing actual
bodily harm vide 12A/IR/13- 10/7 8 age.inst the said Ramdhani and not to send the said
Ramdhani Selemani before court to answer the said charge 2nd Count - For 1st Accused
Statement of the Offence: Corrupt transaction with agent,. contrary to section 3(1) and 3(a.)
of the Prevention of corruption Act. No. 16 of 1971. Particulars of the Offence: No. C 6363 P/
Co Juma charged on 13th January 1979 at about ... 2 11 .50 a.m. within Dar es Salaam
Region being a person employed "r} t by the Tanzania Police Force did corruptly receive
Shs. 200/= from o: from one Hamdhani Selemani as -an inducement to withhold the charge
of :i:ssa.ui t causine; actual bodily harm vide 12A/IR/13.10/79 against the said Hamdhani
Selemani and as a result not to send . the said Hamdhani Selemani before the Court to
answer the said charge o It has been contended by I"lro Maira . the Learned counsel for the
Appellants that there is no~hinc; on the record that the Appellants were dealine with the
matter. According to him Appellants were not in a position either to favour or with- hold
favour in their official capacity. He further contended that Appellants were not involved
either in arresting or investigating the crime. It is not in dispute that both the Appellants are
employees of the Tanzania Police Force and they are attached to Ilala. Police Station, Dar

es Salaam. There is ample evidence that both the Appellants participated in soliciting the bribe from Ramdhani Selemani PW.5. PW.5 was charged of assault and his matter was being dealt by 1st Appellant in his official capacity. It would be an offence contrary to Section 3(1) of the Prevention of corruption Act No.16 of 1971 for a Police Constable who has a duty to do something in which public are interested to receive a bribe either to act in a manner contrary to his duty or to show favour in the discharge of his functions. This court also finds that there has been conspiracy between both the Appellants and ingredients of Section 384 of the Penal Code have been proved. It has been further contended by Mr. Maira that PW.5 had charges pending against him and that his evidence should be taken with greatest caution. The Learned trial Magistrate has exercised utmost caution while dealing with the evidence of PW.5 when she states in her Judgment inter alia: 'Since the story that the accused asked/solicited for money from PW.5 came from the complainant PW.5 himself, caution has to be exercised to see that there is supporting evidence of other witnesses or circumstances, tending to show the truth of the story. By ... 0/3. ...: 3 reporting the incident the complainant had moved a step away from his status of an accomplice.' Under Section 142 of the Evidence Act - PW.5 was a competent witness. However, it will be proper for the trial court to regard him as a tainted witness and seek, ... supporting evidence of other witnesses or circumstances tending to show the truth of that evidence. The kind of corroboration required is not confirmation by ... independent evidence of everything that PW.5 has said as otherwise he would be hardly called competent witness but what is required is some independent testimony which affects the Appellants to connect them with the crime; that is evidence direct or circumstantial which implicates the Appellants, which confirms in some material particular not only the evidence given by PW.5 that the crime has been committed but also the evidence that the Appellants committed it. This court finds that the Appellants had access to the file of PW.5 and could deal with it as Police Officers. PW.1 corroborates the evidence of PW.5. PW.4 saw the complainant PW.5 handing the money to 1st Appellant. There is no possibility of planting the money as traces were afterwards and time of searching. 1st Appellant has stated that he did not quarrel with PW.5 over the girl Theclala Kaseko. This court is in agreement with the lower court that Prosecution proved its case beyond reasonable doubt against both the Appellants. Appellants both being members of the Police Force - the offences with which they have been charged are extremely serious and in the circumstances of this case - this court holds that the sentences are reasonable. Accordingly - convictions against both the Appellants upheld - Sentences confirmed. Appeal dismissed. ' 31/7/1984 ... 0/4.

- 4 .. 3rd August, 1984 Court: Jhaveri., Ag. J. Maira for the Appellants Miss Korosso for the Republic. Judgment delivered.
- ---~--.....~',___ ---= . . _..._! - JHAVli:RT AG. JUDGE DAR ES SALAM. • ~d Au5u, t, 1984.

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