

TANZANIA / JUDGMENT

19890728 TZCA Mwanza2

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.1 D{ TJE CO;!rtT OF APPEAL OF T.AL{ZA.:IIA (C_Q}Mf: ,NAICAME,,,J •ii:• a Ig:S..u.122,A,
J .A.,..J.la J)MAJla J ..A.) \ CRif'iINAL APPEAL IW. 16 OF 1989 1st CALL3rA KA.M0::JD0 J
APPELLA.t\TTS 2nd FitA.NCIS GATEI'E"[Z J Versus P-.JE REPUBLIC~.....
(Appeal :tram -t~le conviction of t:le High Court of Tanzania at Bukoba) (SEKCT.,E, J •) dated the
21st day of November 1988 in Econ~.c ,Crime Sessions .8zse Ho,2 gf. 12Q.8

•• T.lese two appeJ.12..nts, C.\LL3::A KAMO!JD0 and FRA.N'CIS GATE.YE.YE~ wer.e taken before r
tile Eeonornic Crimes 001.1-rJ.; Gi-';~;ing at Bukoba,. • rr;ley were both charged wi t:b. Cattle
Theft and Karnondo wr.1.s on his own also cliarged. wiJ.;h Being in posser.,sion of ten rounds of
7 .6 m.m. a...llnuni tion suspected to]lave been stolen or unlawfully a.cquireo.. T.ley were both
convicted on t}le count of Cattle T'a.e:::-t and. Ka.i-nonu.o was also :fotmc1. gv.ilty and
convicted on the· second count. Eacl:. of them 'W'IS sen-!;enced to a substantive jail term of
ei,~j.lt yearsJ the appellant ' Kamondo 2.lso having a.'lo-t::J.er sentence of five JeG.I'S imposed on
~:i,s on ttle second count, ordered to l'tUl concurrently with the eigllt-.7ea.r sen'Gence on ttle
first cou:::lt. In t:le court below, as before this court, tiley a!)pea.red in p~rSOn azld were
unrepresented. Before ".ls \.leir a::_Jpeal was re_si::;ted on be:ia.:J.f of tile respon-2.e:nt/
RepubJ.io by Mr. Sw2.i, learned State At-',o:rney. Ten ll.ead of e~::;tle belo:ilc:ing t.o -
t~le "'2tllr of SIDION !UCilAEL PW ,1 but being kept at t:J.e homesteD,d o::: ·fae src:id l'W.l,
were sfolen and d.riven away- in t.b.e n:orning of 12t~ August 1905 at Nyamil"11lda. Village in
Muleba Dis-'~rict. An 2 of t11.e be2sts a."tJ.d ttle f cot prj_n-ts of the tb.ieves to Mibindo Gaine
Reserve w:ler0 fa.ey l'oL'nd SOii,e per~ons driving some cattle. '!he villagers scattered aliey ll1
teri~or on :lea.ring the lou.d report of a gun and went back to the village. In t::ie me8ntimc PW.l
had obt2.i1led written clearance from the village aut::lorities to se.:;rch for ·r.b.e stolen
ca:::~;le. On 14th Augu.st PW .1 and. PW .3 went to Biha.ramul-0 Police S-tation and. reported
the theft there. They were provided ui th tllr~e police officers,. inclu.cli.l1s ~ ..2 Cp1., YILLil:.M -
wb.o QeP= 4:h.o l,;:,d~ ef the· sea,rci:i. ,Pa.r'hy"• 1..t/pl::;ce called Nakaura, some t11ent-y five
miles :Crom ttle oo.rn..er wH:h Burundi, t:1.ley c.3m.e across fotir pe:rsons, including these
two a.pp61l?J1.ts, wi t::i some c9.:;~;le. A bullet w:::ts :fired in the air and the four persons were
ordered to s0op. · Two of them, w:io we:::ce im:'ront of the cat.,Gle, the search party, pe.id heed.
2.nd st:rrendered. themselves, vlb.en they were · seaxc.h-ed i;J1e eppellant
Ka.rnonclo ,ra.s :::ound wi t::i ten SAR b-.,,11lets in a pock:et of his -trousers and he s2,id

·c:h.2.,;i; a. persoxt called ~ had. a. gl.\ll a.n.d was b ~ t~1.emt TJley '1ad agreed fo n:cet at tne
 market at Mishil.la in Burundi. T'ue segnd appel12..nt was f01.md. wit;i not!ling but he too s?,id
 they were merely driving the cattle which belo11_<7,ed to Iv1re:Zu. ifoile PW.2 went for the
 caJ.;tle w~1ich llac1. bolted on b.e:J.ri21;,: the gun sD.ot, leaving the two appellailts in the
 cus~;ody of ;iis :::ellow policemen, fae second appella11t mc>..de good his esc.ape, tnly seven
 he~d of cat~le were tound :md these were iden-';i2ied as being a.mong One of tte stolen animals
 t26. • gone back b.ome on i :::s own, so "1;110 ·remain unaccounted for. T'..le se-Jreh party h~.d 2
 lltu1ch that t:ie second appellant mig;ri; be tr;ring +.o get a U:ft on a ve:icle on t:ie Bi::i.a:rawlo
 - Ru.Stuno tarmae road so -t:iey went thit).er ·i;:le ::allowing .morninJ 1.f~lere they stopped
 and. ciJ.ecked motor vehicles. Be::wld, ::lere w.qs t;ieir nwn, on an Isu·iuu lorry, shirt-less and
 with scratchn merl:s on ~is body• PW~?· told ·fae court of tried t:12..t b.e :lad been with the second
 appelLmt :ZoI' about twen::;~-- }ive mi:tlutes in ·foe ~orest befor~ ·liile 3 confimed ~;l:nt tlie
 second. appellant was indeed his compa.nion. In de:~ence both appelb.iTGS completely denied
 complicity. The :~irst e.ppell ..nt ssid hE lPd been travelling from Burundi to c::lato in
 Biliar2.,;m;lo District to collect a debt :for b.is f'2tl10r. He f2,iled to find the debtor &"lcl he d_icl
 not l-i-ve enough money :C"or :lis :~a.re back home. He ~.el'efore b.ad to we,U.: to
 Nyc>.lum1:n..lgu Vilbge anc: spent .f;lle night there in a ~'louse of a p.e.rsou. he 4ic1. not
 L.1low. T:le :following ~2..y he walked to Nyaka.bll.ra w~iere he was accosted by three
 policemen, and two ciY:i.lia.ns w'.10 told him ti11:'!t b.e llad. stolen some cattle. :le denied t~le
 allegc1.:~io11 and when lie wa3 .s.:;aroh.ed h~ was. found with only ·i;en cigarretes ;_:,nd a box
 o::: matches. He was arres·f;ed and ta.ken J;o ' Nyal::aht.u'2. Police Post wllere ;.10 saw th& ~
 ~IL.,."1.t. :Zor ~.e firs:t ·ti.J.,e, T".ie second a.ppel12..nt also said ~1.e w2.s :folsely accused of tlie
 -0atJ.;le the:Ez.. Ile told the trial co-xrt that :le was tr2,velling fro11 m.s;2i;.1a. in Burundi t.o
 Muholole Vilh. ge in Bi.c1Rl':::1E"J.o Distriet to visit a relative the:re. Ile was goi. I o::f a lorr-J ·by
 the Pol ice 2.nd wb.en asked b.e agreed Ji;ia,t he did not b,we a count:ry co ::.le w:ls surprisE:d
 w::le11 le.ter lie W8.G told j1e h2d stolen som.e cat-',l.e~ T'ue Eeonomie C:rirnes cot:rt was 1
 manimous t::iat t;le 2:.ppell2uits were gU:ilt;y- as clnrged. In .>.is apper.1 ·:,o 1:s the appelle.nt
 Kamondo complained t:lc1..t t~le:::~e was no proper i'ientFic:1+.ion o~ t::18 2.i.1¥11als w:iich
 we:~e in a:n:y case seven only, anc"i. :.iot ten, the/; }10 ~v",S not f'ov..nd j_n possession o::'
 bullets, it was j1.,st 11 an intrig...10 d.enigr:ed by ;;;.1e Prosecv_tion to m::i.ke t'.leir story
 credible" and t~lat t;ie sen·Ger:cce imposed. w,,,s 11 indezcl inco11si,er2~te 11 ~aking into
 account t:c.at 1:e had been .iJ;,. remF.U1d. c·0J;:ody ::or some t;iree ye2..rs.. In hiG
 meu1or2:...lu:um the appellant G-2.teyeye m:=i,6.e si1~iil.1,r 2.ssertions 2,ncJ. corn pl '?,;ncd
 t:..lat 11 th ere was :c;o fertile evic: ence" Befo1'e v.s the two appel:i.ants did not say o:~ anything
 of relev3nt s.lbs~.snce. The ri:rst :lprslhmt repce,tet ti:-1.t t:le c~;;tle allegeo.ly :found were
 only seven 2:ld .. 0 - 4 appelJ.2..nt said if' lie really hcl run away steps would h3.Ve been taken
 against :::::i:~., ~.J.1.9,t ho wou+d :l~we 1:ieen· given a PF.3 if he really he ~lad scr:::tch markc
 on ::::.1.is body. Mr. Sw2,i, learned. St2,te At·corney supported both convictions. Ile subiai;'-i;ecl
 that tl.1G appellants were seen a.riving the ca·ctle and il1 view· <Yf the evidence I tlhere coul:c
 l:>e no question o:i: mistaken io.entify of t:ic ~wo appel12.i'1ts, Tile evidence to see i':. t:lere is
 an,}· re'?.son wl':ly tJ.1eir vero.ci t;:" s.1ould ~ d~'::i::ed r:1x,c:. we j1~ve not been 2.bl'e 1'o
 C::Lscover any such. ind.ic:J,tion· Regarding the e,ppdla:1t ICcUnendo, :lis arre[:/ers did .not

lose sig-1t of ilim since the encc:,mter in the bus)1 time l.le was t?l;:en to t:le Police Po.:t,. As 1111' • Swai rema.rkeC:. 1 isu.~e w.:s not t:le identiit oz ·c~e 2.11imals: there was no cont.:raver>sy about :.:i.le/;,. Regarding the buJ.J.ds, the nllegatio:1 W"S that such bnl 7.ets we: e .for SAR g;~.ns. 0 WhGre t;:iey c;,re :1:"nu.r.'J.c-/;:.1.rocl is of no consequence. Not only;rdi~ the a.ppelL:..lt re:r-u-ced pocsession of t.:le:n in t:le ta.oe of, cogent 2..nd convincing evidence., Allio according to ~lis mm evj_clence he was not v.nf'a.rniliar With -;:::1e villa:J"eS t:iere, so it, is signfica.."1.t faat]l.e did. not offer to show t:le l::ouse whei e :le spent -';he 0 2light 3:t Nyalumbugti Village. iis expl2:~:,tion was -;:::_!.,d; :ie did r,ot know ·tle o.-mer .,_, of v.U. C:-; ~.toFse • T.le seco:..lcl a,::,pel12,nt w,1.s spo-:/;ed on -~:1e lorry by pw.2 a""ld evidence was / given b;r ;,10 less t~:.. u1 ·(hree people, -r,1.1, PW11 l nnd PW .J, ·c<l.at he was :.;he sa,1;1e 0 \ We .:,re o"" t~. e C'!.re7.'ul view t.h 0.>t t].le appelle.n-!;s we:'a each properly coi:r,ictscl and. we J.1:c.ve no rC:::ason to d.is-bcITb t:'le d.ecision of' -(;:te -';rial c_ou:rt+ We accord. ·ngly :.limni3s -t).10 r.ppsr.ln entirely. We 2lote however ttle,-; no c0Dpensa-tio1:i. order was ma,de reg2,rding t;:ie two head of c.,t'Gle s;i;olcm ~nd no~; recove:::ed. We ~ccordingly order thnt tn.e appellants .. /5 ... 5 compensate PW .1 shs. 10?000/= on the basis of the valne of the caj.;tle as disclosed in t.;2e inform"tion. R. IT. KL~AFGA t.TT.T:./}!I CE 0~ APP~AL A. M. A. 01-14.R JU;~,?ICrE 07 APP:SAL \

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