

TANZANIA / JUDGMENT

19791212 TZHC Dodoma

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IN THE HIGH COURT OF TANZANIA AT DODOMA APPELLATE JURISDICTION CRIMINAL
APPEAL No.188 OF 1978. (Original. Criminal Case No.469 of 1978 of the District Court of Dodoma
Before Kajeri, Esq., District Magistrate)

- MANNER IHAIVJED IMED Appellant Original Accused) versus THE
REPUBLIC Respondent (Original Prosecutor) CHPRGETwo Counts of Corrupt
transaction contrary to section 3(1) & (3) of the Prevention of Corruption Act, No.16 of 1971. J
U D G M E N T The appellant Manner Ithmed Hemod was convicted of two counts of Corrupt
Transaction contrary to section 3(1) & (3) (a) of the Prevention of Corruption Act, No.16 of
1971 and he was sentenced to four years imprisonment on each count, sentenced to run
concurrently. He now appeals to this Court. The appellant was an accounts clerk who was
working with the National Housing Corporation at Dodoma. The two complainants Ali
Amani (P1.2) and Athumani Oman (P11.3) are tenants of a house belonging to the National
Housing Corporation in Dodoma Township. On 20/9/78 PW. 3 Athumani Oman was a
'reached by the appellant who handed over a letter requiring Athumani and Au to quit the
premises within two days. P. 3 Athumani said that he was instructed by the appellant to go to
the National Housing Corporation Office for discussion on extension of time. On 21.9.78
Athumani and Au went to the appellant's office where the appellant demanded cash payment of
Shs. 100/= or Shs. 150/= so that he would allow the complainants to remain in the premises.
The complainants reported the matter to Detective Sgt. Major Elikana (PW.1) on the same
day, 21.9.78 and a trap was arranged. Detective Sgt. Major Elikana gave Shs. 100/- to P4.2 Ali and the
serial numbers of the five Shs.20/- notes were recorded. Detectives proceeded to the scene
with an independent witness E:J4 Obedi Michael Nyeni who was also shown the paper
where the serial numbers of the notes were recorded. /2 -2- PW.2 Ali and PW.3 Athumani
entered the appellant's office and the Detectives together with P.4 Obedi remained outside.
Inside the appellant's office, the complainants found the appellant and two others P.5 Josiah
Hbacha and PW.6 Vorian John both of whom work with the National Housing Corporation, but
they occupy different flats from the appellant. P.1.2 Ali gave the money to the appellant
who received it. The appellant wrapped the money in pieces of paper and issued a receipt with a
letter (Exh. P5) authorizing P. 3 Athumani to stay in the house. After the appellant had
received the money, PW.2 Ali and PW.3 Athumani walked out of the office, and as arranged
P4.2 Ali put his hands in his pocket and the Detectives proceeded to the office. PW.5 Josiah

and PW.6 Verian John had soon the appellant bolting the door after the complainants had left the office. The witnesses said they also saw the appellant throwing something out, through the window; PW.5 said he opened the door for the Detectives. D/Sgt. Major Eliinna who entered the office after the prolonged knocking at the door, suspected the money was thrown out of the window and instructed his Detectives to look for the money which was found, wrapped in a piece of paper, outside the window of the appellant's office. The serial numbers of the currency notes agreed with the numbers previously recorded by Oct. Sgt. Major Elikara. The appellant in his evidence on oath and in the memorandum of appeal denied he ever solicited for the bribe. He also denied that he received the money. He agreed that he served the eviction order to PW.3 Athumani on 20/9/78. He also admitted he issued the letter (Exh.P5) authorizing PW.3 Athumani to remain in the house but that he did not receive any money from PW.3 Athumani or PW.2 Ali. The appellant said in his memorandum that he did not know PW.2 Ali before and could not have solicited a bribe from him. From the evidence PW.2 Ali and PW.3 Athumani went to the appellant's office after PM. 5 Josiah Mbacha had referred them to the appellant. It is true that the name of PW.2 Ali does not appear on the allocation letter (Exh.P5) but the "notice" is in the name of both complainants as they were sharing the premises. 13. The appellant further complains that the money was not found in his possession by the Police. That is true. But the evidence of the complainants PW.2 Ali and Athumani that the appellant received the money is supported by that of PW.5 Josiah Magumba Mbacha who saw with his own eyes as the appellant, received the money from PW.2 Ali in the presence of PW.3 Athumani. The appellant issued the allocation letter allowing the two tenants to continue staying in the house only after PW.2 Ali had given him the money and deny this was corruption. PW.5 Josiah and PW.6 Verian John saw when the appellant proceeded to the window for the complainants had left the office. Josiah saw the appellant throwing something through the window. It was outside the same window that the Police Detectives recovered, a few minutes later, the money. The evidence is overwhelming; it is the same which the Police had given to PW.2 Ali. The currency notes were the same ones, as the serial numbers had been recorded and independent witnesses like PW.4 Obodiyoti and PW.8 Timothy Suda compared the numbers on the currency notes with those in the paper as previously recorded by the Police. So although the Detectives did not find the money in the appellant's possession, the evidence of the complainants that the appellant received the money is supported by the evidence of those colleagues of the appellant PW.5 Josiah Mbacha and PW.6 Verian John. There was ample corroboration of the complainants' evidence and I can see no reason to suspect conspiracy to frame the appellant as alleged in the memorandum of appeal. The appellant told this Court that he intended to call two witnesses but the learned Magistrate refused him to call the witnesses. The record of the lower court clearly shows that the appellant said he did not wish to call any witnesses. I can see no reason to doubt the correctness of the record of the lower court. 14. I. M. The evidence adduced at the trial amply supports the conviction in both counts and the appeal against conviction is dismissed. The learned Resident Magistrate gave Teas 0113 for imposing concurrent sentences of four years imprisonment. The offence is prevalent and this is a serious offence. In the circumstances the sentence should not be considered as manifestly excessive as to warrant

an interf::'Lnce by this Court. Accordinly the s:r.tence which require-s confirmation by this Court is her'by confirmed, In the result this apical fails and it is cliamised in its ontiroty, W 1 . T I) . wrA Tj' i- Ut JUD-E Delivered in open Cou.±t this 12th day of Dcembor, 1979 in the presence of Mr. Alimwiko Senior State Attorney and the appellant in person. - - . W. J. MAIN
A JUDGE

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