

TANZANIA / JUDGMENT

19921102 TZHC Mwanza 1

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2 November 1992

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1--h b-t-1 TIT TJ:J TIIGH cot.m OF T::n3~1TL1 :.'T I.ftT.'INZL ·no:: COTJJ.T CRIH}}L,I, }..?rJ~:::J:, NO. G OF 1992 (CF) ID/cn/,".P.P.No.a 434 OF 1991 (Oric;in:,l Cr:i.raincl Cas0 No.534 of 1991 o:f the District Court of Hv.s6mn. District n.t i'Iusor.m., J.xfo1·0 r.I.J · · Lugo.zi31c1, :':sq. Rosid~mt ·Magistr do). 2.D1l).. 'US IC.:':.l1.:JD!l,::::l =mo ····-mo ~.1,1...I.:")U.L 1·J.v1[':~.t'S-J..L l·.....oo o o o c o o o ~ · .., . , , . . !-1\ml .1.~ J. ~.i.J.J.l.J.-..1.4.L (0-c':l.c,'i.n~~l Locused) S t

3. IL'l.oID],JlRU . versus TIT;::; fu.."?UTILIC (O:dGincl Prosecutor) JUJ)GM:::l;NT cont:c::ixy to coction 297 c..nd 380 of the ~cn--:J. G0·lo. Tho paJticuJ.n.i's of t~10 ch:::r[sc o.llccc:d t]:~ ~ on or 2-lJot:ct: ~-- tho 22nd of' SoptJnbc r 1991 c.t 14.45 hrno at tho ::?:c,::;ion;,1 Stoxcc, I-io.,jite. Rond wi. ti.lu.11 . 1'.lusoma 1 I 01m::il.11p,· J.n T . . . 'f ,., · ha..rn. _;_,.ogion t; ..loy n;;;t or.1pt od· J.l,o ,orccc l ~.-nc.1 on 01~, t the st'.id :!..legibm,l Sto::x> t)JpoUGh tho roof u:i:t;: intont to col:1:1it _., fclon3, thoroj_n. 1..t [ho end of ,chc · t:ric.,l the n.ppcll<'!nt o uoro convicted 2.0 sent enc od to 'lhcy ~ci 110,r 2::1._)j_)Oa..lil'lG c.cainst both convict~.on ~..nd sentonco.~ Tho , l 2l1d ond 3r(l :-,ppoJ.lnnt s ucro ::_~;::Je~oc!lt od lJy r1r · Ilc.ntuJ.n.lci lc<'Z'nocl Couns·Ji" The J.r;_t ~:~P~Olln.nt ~-:::..i/l_ i'iJ. 'c! ~,:::..... ovm]_)Ctition _of' 2::9])onl c.11.d J.J.o clid not 1rit:i to :).U p:rcsont c.t t!10 hcc;cinc; of the awocJ.. The _..... I I 1. L ... 2 Hr. BcntuJ.v..ld., a,t the strt of th: I2u,,d11c of tho r..1J11c~J.,· withdrew. tho 1st groU11cl ho hc.d filed in r :::spoct of t::1.0 2nc1_ c..nd 3rd C.J)poll:-.nts on the cvidonc,i 1-u-opor a.nd lWll :fotmd0d. lce,ruly n.nd in tho cii:'otnotnncos of the cnso,, ITc thus invited the coui..t to int orf Cl.' trit h it· I have perused encl oon::ii(lCrod tho cv::i.dcmoo on rcoord ~ cJ;J. tho .:il.)polln.ntot groundo of n:p1,cn.1 2.s ,~oll L'C Con1s0ls'sullrnisoions, nnd I am of. the settled 011inion thn.t tho conv:i.ct1.on of tJ11J tJ.rrco a,11p<ll.ants uc..s p:i:-op0r cmd. well founc.lc<l. T)1c cvicl.cncc· to;_1clc::_,cd did in ny view cstablil On sentonco,- fi':-Gt t~10 offence foJ' 1~!..:icl: the o,p:pollr..)'ltG wcro convicto~ for icr c., oohodtt1cd offence in t(:,-:::is of pc:ir:::,·crih 12 of tho , lot sc:1cdulo to t!10 lli.niour.1 SontonccG ~\ct, 197::1, ~ 1n·oc..kincr into n 1JUilding cmd coru::iittin{s' :_:, ~"oJ.onf tho:::-cin, contrc,ry to section 296 of ·tlw I>ona1 Code being c oc::,odu.lod offonoc · in terms ./ of 11c.rnc, rn.ph 6 of thq scid 1st f.lchcdulo to tho ;_linir:nm Scn.tcnos /:ct, 197. . Tho trial Ooui't t ;_10roforo l.12..d pourn:> in t c:::~r,10 of Sect ion 170 (1) (a..) of tho Criminal 1'l:'o0otll.r:-c .:ict, 1985 to in1101Jo Be~1tonco not c:::coodj_nc.- o:i.cf1t yonrs. The offonc? undOJ:-: aection 297 o.-!..l':dcs a rn¢our.1 sentonco of 14 yor.rs imp.i.'isonr.lent. In, j_n:rosing t210 sentence of 7 yon:rs inprisonmont · tl.10 trial cou:rt

tool: into. nccount tho :JCj:fousncos of the offenco fo:t' l rhicl1 thejr wore conv:i.ctoc'l.
Ind.cocl it u~'s :~.nd ;,c,c1 it not been for t:'l.o

- "-,,I .. - - • I vic;:U,:mcc of Jc::.<; uc.:bc::u::,,:n, :~ lot o:i:' provc:::ty could :::,~wo boon lost
• . an inclined to t210 viow, it is not so o:o.-:rn:d.vo r:s to wr'.rr::mt tho within the
compotonco of t::~c trial Court t,, :in:::ios0 0 The sc:ntcmco is acoord.itigly UJ.)hold
and ,con:firra,1;; In th0 end. result these a:P1,eaJ.s fr.~il ancl they aro dismissed in their
cntiTe~y• l!ppoaJ. dismissed• i ..J Delivered on this 2nd da3r of }frno1:111or 1992• in
tho :r;xroscnco / At Mw-a.nza., 2nd November, 1992. • ,,,_ ,,,_ -..._~ .:- ';;, ~-' '! , , _ ,,,
""' /-:r, f ,,, ' t - : I • . • \. i'

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