

TANZANIA / JUDGMENT

19741016 TZCA Dar es Salaam

COURT
TZCADECIDED
16 October 1974

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. IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM APPELLATE JURISDICTION HIGH COURT CRIMINAL APPEAL NOo 5.1 OF 1974 original Criminal Case Noo 119 of 1972 of the District Court of Ulanga District at Mahenge BE·FORE: Ao So tUKANGA Esqo, District Magi\$trateo DANIEL Ro RUPIA 0 C) 0 0 ci O 0 0000000000 APPELLANT Versus THE REPUBLIC 00000000 0 0 0 0 0 e o o o o RESPONDENT CHARGE::1.Giving False information to a person employed in the Public Service - els 122 (b) of the P.,Co and 2oSteaiing by a person employed i.n the Public Service c/ss 265 and 270 of the PoCo JUD.GM ENT MWAKIBETE, Jo Before the District Court of Ulanga at Mahenge the appellant - Daniel Ro Rupia - was charged with:- Giving False information to ·a person employed in the Public Service - c/s 122(b) of the Penal Code and Stealing - c/ss 270 and 265 of Penal Code.; the He was convicted in both counts and sentenced to 3 years imprisonment in respect of count 2 and 6 months in respect of count 1. Against the convictions and sentences he has appealed to this courto According to the record of the lower court, the appellant had been employed by TANU as Revenue Collectoro At one time during the month of July 1972 the appellant is alleged to have reported to Mahenge Police Station that he had been robbed of shso 170/- the property of the "Party" - by one Ahmed Kipao Subsequent investigations by the Police revealed that the story was falseo It was ·against this background that the Police decided to check the Books of Account held by the appellanto The check revealed that the appeilant had collected shso 932/50. He had shso 230/- in his possession· but could not account for the remaining amount., hence the charge against himo On the evidence on record I am unable to say that the conclusions of the trial Magistrate were wrong. The appellant had reported that the robbery had occured at the pombe club during the day t.ime and in the presence of several personso But none of the people present at the pombe club gave evidence in support of his allegations .. Those who were at the pombe. · club., who happened to give evidence, testified that the appellant was creating disturbance at the club and that Ahamed merely rose to warn him that if the appellant continued his unbecoming behaviour Ahamed would report him to the Policeo As if to heed the warning the appellant is alleged to have left the place without uttering a word of complaint on the alleged stolen moneyo The appellant would certainly have not kept quiet .- 2 if he had really beeh robbed as he reported to the Police Stationo I am satisfied the report by the appellant, to the Police, that he had been robbed, was false... In so reporting the appellant must have intended to cause the Police to use their lawful power to the annoyance of Ahamed for the report would have resulted in the arrest of Ahamed., The appeliant' s act offended against the provisions· of Section 122(b} of the Penal Code., He was, therefore, properly charged and convicted under the section" It

is immaterial that the appellant was not arrested by the Police as for the count of Stealing the appellant would not account for the amount of shs. 752/-o He has not explained in his memorandum of appeal whether the amount was available and where he had kept it - if at all. The conclusion that he stole the money was both irresistible and justified on the facts on record. The appeal against the convictions is accordingly dismissed. As for sentence, the 3 year term of imprisonment imposed on the stealing count is the minimum under the law, the offence falling under the Minimum Sentences Act. The sentence is confirmed. 6 months term of imprisonment in respect of count 1. However, is the minimum under the section. Appellant being a first offender deserved a more lenient sentence than the one imposed. Corollary the 6 months term of imprisonment is reduced to one of 3 months - to run concurrently with the sentence in count 2. The Order of compensation is confirmed. Delivered in open court at Dar es Salaam on the 16th day of October, 1974.

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