

TANZANIA / JUDGMENT

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- IN TIMHIGHCOURT OF -'TANZA9,1A ATTANGA AppElate JURISDICTION
- ... CRIMINAL AppEAL NO, 43. OF 1980 .. (original Crininal Case No. 355 of 1979 oftheietCourt of "Tariga .Distriôt at Tanga. 1 ". '• .H . 0 f MOh1 Esq 'p/ flésiden' Magistrate 0AS LUGEMALILA.I. SAPPELLANT: ;. Orig,. accused) , ... •: ('• c Versus :. 1 THE * (Orig. prosecutor) .t , , • , ' , . . - . • I , 'i , ' ; .. CHARGEg Corrupt transaction c/s 3 (1) an (3) (a)
- o. he Act No 16 of 19'71 id Count,: Corrupt trthisaction C/s 3(1) and ' (3') (a,) othe,revetin of Corptin 'Act No. 16 of 197 . • ' . . 'JUDG.EMENT 0'. This appellint •Jba 'Lu'gethalil, and another Who ha's no appealed, were joi, itly crged" witthand 1 convicted of two Counts of Corr4ticia a traiSactio,n contrary to seatiiori 3(1)' and 3(a) of the prevention of CCrrupit1o' At!.No. 16"of 1971, •hey were ea'h Sentenced by the leariied 'Principal 'Resident Magi trate to three 'years imprsonmenton Count one and' 'to a term of five years imprisonment On Coit two Sentences; to ran concurreñtly The appellant is n6vr'O.pealing to this Court For ease of reference I:. shall continue to call the accused as they appeared at, 'the" 'tri.l in the Court below; 'the appellant bing
- .th '•• the seconi accused It is now common thowledge that both accused wére at' least at the , material time,'Labour Inspectors, Grade 11, and'they were e 'a:ch.' attadad to to the Laboix'Offjce and'stationed at Tnga" The duties of the second • e.
- • S... - 4. 1W accused were mainly to dea with ::anoJor settle labour disputes that arose between employer andéi1ye-eSWhereas those of the first accused werej primarily-, o.4c .with workxien's compensation Each accusodwsaflocated :i4jp own office:. Room no. 13 or first accused and Roon 7 for second accused. It is, however, in evidence wih was not disputed and vthich the learned Principal Resident Magistrate aeptéd ad whibli'l Jàaccept ad true - that both' accused could deal with workmehis compensation or labour disputes.0. This piece oeiwairehbr'fl.LRweyongeza (PW7) who described
- . himself asa Senior Labour Inspector, Tanga, and the accusedst immedi ate senior s Evideie was 'led by the Prosecution toth effect that in December, 1978 and February, 1979 two emlyés Of the Tanga Consortium, tppullykrfo*ib* isa ony*4AEOf - were involved in separate

accidehtswhils t ° •ty Indoh oftfh6m sustained some injuries as a result thereof They vre Ramadhani Kilango (pWi) and Shabani Ratdhanj (pW2) 0 It seems both of them were working in the TIQON workshop at the tine the accidents occurred P. was cut around the fingers by an electric razor whercas PW2 1 who slipped on the oil.. r j - drenched floor of the workshop, ruptured his spleen in afail. The (same had to be removed to iravv his life and now mOves around. without one Ater being discharged from hospital s albeit at -t 4 different times, a process was commenced towards the determinaton f the compensation payable to them by their employer, i.e. TJLNCON On the la -tter's side, i.e. TANCON, this fell in the province of one Àbas Chakj (pW5) its adnnnnistrative ofuicer In compliance with the •Enj - procedurePW issued the appropriate forms to PW1 and p2 and directed them to take the same to the 'abour office, Tanga This pVfi and pW2 did but it is not clear on the evidence on record whether tiey did so on the saje day and at the same time. Suffice it to say .. .;..L -- b '•)

1. . ' 2• TocttouT. (uaixtuxed). stt ;o et4UOoJe1 otq vtjq. wj pT(totjqpsnoov pUOOes et Tj O. WEpJoOOV :Jaqqpoaq, pUt Tu €SaXd OXOM peflooV tqO 'ezYço .xnoqtr att -t put ia et ê Ocldt et uo tp OUTMOT1 0 i et UO SUM q.i tq'pçts. T3 'Ap J OtIT outuo tunz pu o puv IL&cI pToZ, Pesnoot .SXT3 OW-- '9tUl q; Sb -T 9 'sçtq- ;o uotq.uout ou °PM ti posnoot puOoes oq, qttq. pcvs ra pesnoot
- s.ZT; ot O. • etq. .xa.o popItItT put e;jo a -noquT aqZ oq •stiLXO; et. tOO. TM put) all 0m13 sTtIq' 0q trtpXOoooy ' oOT;jO anqvrl ot Oqotq owts ax4 a3juT o. ttIOT4 pio . ut'ptXt EMA: f'O'TfSIOUMO OAI3OCISO.X JtOt O. XOi.O PGpq'Ctl UOTIT Ott ttotttM sur.Xo e.fT.zdozdh3 Ot4). UT
- TrloTqJt3d Aivssaoau owi-. wç pofl; tpptm ZQ PTIGO èTpaUmtxo uTeq aaqn 'Os op oT ! 1ITt .103: £lts000u Stm q.t T ,6tTT XOPTSUOO 'I OP .IOU — etO otj. trç OOtZaPTAO OK!3 Tou pçp 11OAoMOT('0M'tX'p!Tptttt oto / .•• I 'io.00p C)Fus . MtS wotq ;0 toq 'pu '6L/9/I e'ç vp OtIIt3S OLfl. 120 ztvcdsott oquIo OT Tuam put •EAva 'O'T 'suos.xad oq. aq. trçi t eouepiAo U pe41p. put po.iOpueq. ie tLOtTtM (TeAp.oedseJ ea a.s.tqtttxa) put T 3:0 C-OTTF 88t3 TuaPTOOV Otfl. oq. uTp.i000y '-I • - • E3TJrt_ TmIT -t) posflood pti000s otj. Utaos potuop 'd: '100Op t O. eUlts OT.. 9ttYI- O T UITtt pT°- put sUi.I0; TVOTP@d mitpv uo asflood s.rç; e'ç 'zo--t1 et 'pesnoot s.rç; at O .1OLQ UlBtfl POPUt)tt put OOTJJOamoqt'i eT?4. oq. eUlts et .@tj ç q 2tzTeq xe;t g a Oq. 2ulpa6opty •T%4TcsQH (qJxouru..IeAoe) otuoq.t 000p t oq. outs et. att. o. wtj Pto. put Io;uTtteAt pasnoot .s.t etfl eurcsTtj.peu.xnq.e.x T 4tp trpApTTo et u 'MO4.10Ur ot u.xnei put o oq. MTT4 Pl 0 q. pesnoot UO ptt003s put qs.rçj tjqoq o.;toiatj. ptxt:stlLto; etI . peATeoex JETtrLOt 0tM - U0S.1ed qtjT StM Pesnoot .S.1TJ 8T.1J r'SUOSJOd pesnoot oq. @iqT o. urçt peOe.1Tp UOT4 OtM 400T3;:O .In0qtItctTotrt.I<] allo, 09, rmaoj etq. peWose.xcl aq laoTj.To ±noqtr O 2 tKJ.Iv STtt riO 'TM oq. tZTp.XoQot •.tt I - !.. •t
- :- / J 4 , as L1ssessedby the doctor was toa, high: Thiwd sdssd oi fixed a 15% The second accused went on to ten hith thit if he were to be compensated at that rate then h, i.e. P, wduld'l-idve topayhim. second. accused..Shs 48 2 2 000/ or else the medical forms were to be referred to the National. Insuraee Corporatidn If this were done then. he PW1 Would ran the risk.. of facing (Crimin.1) charges in relation thereto - Pn agreed topay the - money;

Zhs2,000/, where upon the forms were five; to him with directions that he should submit the same to his employer, TANCON, who would then issue a cheque in the name of the accused. Now, to PW12. According to the first accused told him that the doctor had fixed his incapacity at 60%. which, after conversion into monetary value, amounted to Shs 24,984/76. The first accused went on to tell him that, however, out of the Shs 60% only 40% was the proper assessment. The remaining 20% was insufficient. The percentage remained at 0%.. the National Insurance Corporation would query. and consequently "they would be taken to court of law. PW2 told the Court his evidence that the first accused ended up by, telling him that, however, if he i.e. PW2 paid the accused persons Shs. 8,000/= then he would not be (Orinually) charged and at the same time lie, PW2, would be paid "All y (i.e, his) money", Both PW1 and PW2 stated in evidence -it the trial that eventually they left with their friends together. However before proceeding to TANCON they went to the Police station -which reported the incident. It was decided by the Police to lay a charge and apprehend the accused in flagrante delicto, and PW3 and PW4 were duly commissioned by the then District I.D. Officer, ASP Temu, who did not testify at the trial to act accordingly and deal with the matter. Thereafter PW1 and PW15

3. PW2 returned to TANCON where upon presentation of their respective medical forms cheques were issued. On 6/79: PW1 and PW2 accompanied by PW5 took their cheques to the Labour office for moral facilities. The first accused, amongst other things, made an endorsement on the cheques. The second accused too was present. According to PW1 both accused then told him and PW2 that they would follow them to the bank to collect their share. The accused told the witnesses that they would have to do everything lest they i.e. PW1 and PW2, "ran away" with all the money. PW2 confirmed what PW1 stated on this aspect of the case. Eventually PW1, PW2 and PW5 left for the bank with the cheques for encashment. PW3 accompanied PW1 and proposed of identifying them as the true owners of the cheques to the bank officials. Meanwhile PW3 and PW4 who had been alerted had already moved to the National Bank of Commerce Market Street Branch where PW1 and PW2 were to cash their cheques. They sat at a table and pretended to be filling some forms for deposit account. When the trio i.e. PW1, PW2 and PW5, entered the bank the two cheques were presented at the counter. While the cheques were being processed the first accused entered the bank and sat close to PW3, PW4 and PW5 also sat at a table. The first to be paid was PW1. He was paid cash Shs 5,268/75. According to him on receipt of the money the first accused approached him and told him to pay him there and then; and not outside. PW1 then took out Shs 1,400/; all in currency notes and paid it all to him. The first accused received the money and put it in his trousers pocket. There were therefore many people in the bank and PW2, PW3, PW4 and PW5, among others, saw all this. The second accused had then not yet arrived. Later PW2 too was paid. His was a larger sum of Shs. 24,984/70;
- 1) PW5 kept the money for PW2. Round about the same time the second accused entered the bank PW2 asked PW5 to count out Shs 7,000/= and give it to him. This PW5 did whereupon PW2 received the money and handed it over to the first accused. The first accused received it accordingly to PW2, PW3 and PW4. the first accused then passed over

the money to the second accused who received it and put it in his own trouser's pocket. According to PW5 the first accused, however, split the money into halves: He retained one half which he put in his own pocket and passed over the other half to the second accused who put the same into his own pocket. As the two accused prepared to leave, the bank PW3 2' who incidentally was armed with a pistol, and PW4 rose from where they hitherto sat, nearby, and challenged the accused. After a short commotion which was short-lived, PW3 managed to get hold of the first accused whereas PW4 held the second accused. Nevertheless, both accused managed to put

- their hands in their respective trousers pockets and as it were, relieve themselves of their monetary load. It turned out, however, they were seen to do so by PW2, PT3, PW4 and PW5 and the money was not thrown any farther than the bank floor where they then stood: On a request by PW3, one Clement Yala (PW6), who happened to have been in the same bank at the time, picked up the money. A total of BShs. 8,400/= and in Shs., 100/2 currency notes, were recovered there by. There was an extra Shs 30/= which was also recovered from the floor. This was traced back to the first accused PW3 - then returned the same to the first accused. It is not immediately clear to me why he did so; particularly when he was not the person who was to determine the case. As an investigating officer one would have expected him to retain the money and tender it as an exhibit at the trial, just as he did with the Shs 8,400/ (Exhibit PJ 1, however, do not intend to say anything more on this point. The accused were eventually brought to justice. In his own defence at the trial the 'second' accused denied that he ever dealt with PW1 and P2, or any other person in connection with the matter at all. According to him, he was dealing
- only with complaints in connection with payments and working conditions. The second accused recalled that, on the morning of 6/6/77 he reported on this matter fifteen minutes before the normal government hour and soon thereafter, he proceeded to Gofu area at the premises of Ws U.K. Sin;h contractors. Where he settled a trade dispute: Thereafter he proceeded to the premises of Tanga Welding Company and Katibe, Company. At 11.15 am, he rode his motor cycle to Chuni bageni Area where he met one M;wa Sajehe (DW3). The said M;wa Sajehe is a Salesman of Amboni Plastics Ltd and he had asked him to receive a letter or him. When he arrived DW3 was preparing to go to thank the second accused, then gave him a lift to the Market Street branch of the National Bank of Commerce, P.O. which the second accused did not explain and he elected to give an unsworn statement it was not possible to question him on the same. He followed DW3 into the building, while the second accused, the first accused, and the second accused told DW3 that he was going, to greet him, i.e. first accused. It is perhaps convenient at this stage to let the second accused continue to narrate his own story. The second accused, went on to say, and I quote from the record of proceedings: "... I found the first accused counting money with some person. I greeted him. I asked him whether he had money. He told me he was entrusting some money to those people. I told him I had come with Lisa. Soon a policeman with a pistol came and told us to put our hands up. A commotion occurred. I only recognised the first accused. I saw the appearance of PW5; When I was talking with the first accused the money was on the

tabie When th cōthotion oQoured I saw money on the floor. Thefirst accused had money but he told me it belonged to those people. The first accused wanted •5554•. / "' I 1 1 - .; ;• ; to give me money It was the money he as countii 'le stre. tched his iand but before I received te.mony the Poiioeman intervéned. The moneywas counted in my presence and,cash \$hs, 8,430/= was tound I,.hAi c.r seen FW1 and PW2" tThe second tc bsetlled the manWhb. . presen1.ed ri/S .U. K. Singh Cdñt'ctora'at the,].abur dispute which-he settled as a.wjtness on '1 his 'side a -tthe trial He is .one. Jag ji7t'; Singh (DW2.)' .. Ja.jit. confirmed that from 8430 am. to ibout forty minutes late.r,th,second, accused was at his', 7 i.e.'DW2, office.s'ettling a:d.iepute between h.m-and one o his employees' one Niohael - who did not testify in he cse As'oejntjtjed iusa'Za1ehe (DW3,)was caided as awitness and he'gavè'evidence on the 8iae of the second appollant.- -.He, testified an aent'f W'Ab'bni.nastics ' t4 And his jthe I is nèar"thë New i.venue Bar and HOte1. He recalled -tiat on 6/6/79 'the' ecnd accued approached him in his.. office' at.bout fl'am. and arlae'a pail which.he had orderd. He,'W3, iOWé, 'Went on td st.te that he was, preparing,o g:tohbank at the"tm 'the eeoxid cusedarrived He,,theref ore, asked...:the second cuseafor lif t"and promised to deliver the pa.l to him later. The two f 'them then tode toe Market \$trBrnoh of the National

- aYf Cöerce At he 'bank DW3. to1, the seond ccused to wait:fe) him 2r ,.:ile' "I:thé bank D\3 saw him .ta to-a certain his ss1o, the ba.i3che DW3, told the seócrnd 'cs'ed"Wh&, ppctr-ently, was tiLL, 'talking to the other person that he would find' 'him au.tside While he wa outS.de he heard noises of a commotion: isid He reentered, and the second accused under' preh'Srrrte ? olice.
- .,I;'.1'1'.,- - In hi reaned and wel3 lxlnced judgemeiit the learned Principal Resident thagistrateviewed all the ev1derce a4uced n the case He was s4tisfied'tha& the complicity of both accused 'on both Counts was i £ I He1.thrf.oe, ;prceeded to I
- /
- - 9 .m convct both ,accupe.d as.eharged. In his petition of 'j- pea1 (misen-titled memorandum 'Taf appeal) whiCh was drawn on his bevalf by learned Counsel, ishta 4ie send accud advances five resons of appeal, that is to iay
- (i) The learned ri1 Magistrate erred in law and in fact in holding tliat Im appellant had also solicited the alleged rewards foxn pJi and pW2, the original complainants in the caS . •.. The ieirned trial Magistrate erred iz law and. 1X iGt .fl believing th? vidence of pW1 and pW2 that they had seen the appellant at th Labür office on 6/6/79 Whew ther Was ample &jdce (e.g.' that o pW7) that at the material tIme the 3pøllant WAS nt in the off ice ' Because the ierned trial Magistrate made the fo'egoing error s he failed to oppreciate the fact that there was*a distinct possibility, indeed a'proiabluty.that PW ,1 an&2 never intact saw th€ 3ppellant prior to their meeting at the bank and that thex fore, the Story about their having met him Labour office,. prior to 6/6/79 Was a contrived one -' aimed at fuLy ixioIving the appellant inthë commission of he.offences ' The learned tajal Magistrate erred in law and in fact in not believingáppcilant.'& defence that his being' at the bnk at the matri.l time was entirely

fortuitously, this being particularly clear in the light of the averments of DW3 which are as follows: (1) The learned trial Judge erred in law and in fact in holding in effect that the appellant received the money from the first accused knowing the same to be for corrupt purposes. The appellant, the second accused appeared in person, Mr. Bishota, having since left the country for he is said to be in West Africa where he is gainfully employed by an international organisation. In his address to this Court the second accused stated that he did not know the grounds of appeal. Mr. Bishota had written in the petition of appeal. He went on to state that he did not want Mr. Bishota to continue dealing with this matter because he was the one who brought him and, apparently, as a result of which he found himself in jail and further that the second accused wrote to the trial Court and asked for a copy of, judgement but none was sent to him. By a letter reference no. BC/CR/Q/4 dated 23rd March, 1980, Ws Bishota and Co Advocates gave formal notice of appeal for and on behalf of the second accused. The learned advocate also asked for

- copies of judgement and proceedings to enable him to prepare the intended appeal. The said letter was copied to the second accused, care of Maweni Prison, Tanga where he was incarcerated. By a Saving Telegram no 112/P/1/X.1/259 dated 24/3/80. the Officer in charge of Maweni Prison wrote to the District Court and asked for a copy of judgement in order to enable the two accused to prepare their appeals. The Principal Resident Magistrate, per his telegram no CRo 355/79 dated 17/4/80, sent one copy of judgement to the officer in charge, Maweni Prison for the first accused only. As regards the second accused it was intimated via the same saving telegram that his copy of judgement had been "forwarded to his advocate, Mr. Bishota". No further communication followed thereafter. I disclosed these details to the second accused and read over the petition of appeal to him. He opted to adopt the petition and with leave of the Court, he proceeded to address the Court on appeal. The second accused denied that he conspired with the first accused to demand a bribe from PW1 and he said, he did not, in any way. He reiterated the fourth ground in the petition of appeal, namely that he went to the bank on the relevant day and at the material time merely to see DW3 and not to meet anyone. His being in the bank I simultaneously with the first accused was purely coincidental. He, nevertheless, greeted him. At the same time he saw the first accused take out Shs 500/= which he then paid out to him, i.e. the second accused. The second accused received the money because it was within his knowledge that the first accused was indebted to him to that extent. The second accused stated that he did not drop any money. He was, however, only then
- ordered to produce the money which was not as much as the Police alleged. According to the second accused PW1 and PW2 were taught what to say in Court and both the prosecutor in the case and the learned trial Principal Resident Magistrate were bent on putting him into trouble. He, however, did not permit himself to be alone establish the reason(s) why these two administrators of justice according to law should do so:

- The learned State Attorney, Mr. Akaro, who came out in full support of the conviction. Stated that apart from the story of Shs 500/-, which he said was new and in obvious after thought on the part of the second accused, the petition of appeal raises nothing new worth any serious consideration by this Court, Mr. Akaro contended further that although the evidence clearly shows that the first and second accused did not go to the bank together there is sufficient evidence to show that these two accused persons shared common intention, and they were pursuing a common design. This appeal raised purely factual issues which rest squarely on the question of the credibility of the witnesses who testified in the case. This is so because if we were to assume for a moment, and without prejudice to the ultimate result of this appeal, that the prosecution witnesses spoke the truth then there is no doubt nor can there be any that the accused persons engaged themselves in a corrupt transaction, judging from their position as witnesses of the transaction between them could indeed qualify to no other epithet than corrupts. There can be no doubt whatsoever that the star witnesses in the case are PW1 and PW2, These are the persons who as I think clearly narrated in the synopsis of the evidence hereinabove, were asked to pay the money if they were to receive their respective compensation in full, in the full view of all among other persons PW3, PW4 and PW5 that they paid out the money. An argument was put forward by Mr. Bishota who, as aforesaid, represented LAO the second accused at the trial in the Court below that, if believed, then PW1 and PW2 were no better than accomplices in the case because they were the givers of the bribe. Their evidence, therefore argued Mr. Bishota, required corroboration as a matter of practice. This argument was, however, not repeated when this appeal came up for hearing before me. Nevertheless, in dealing with this point the learned Principal Resident Magistrate directed himself in the following terms and I quote from his judgement: "If Bishota has submitted that both PW1 and PW2 are accomplices in the offence whose evidence requires corroboration in material particular. With respect I do not share the view that PW1 and PW2 are accomplices. An accomplice is a person who has to a greater or lesser degree participated in a crime and his evidence is therefore suspect. However, it will be noted that PW1 and PW2 promptly reported the matter at the Police station with the result that the machinery to trap the accused was set in motion. This, after seeing the labour office and before their cheques were even written and issued by PW5. To my mind, by promptly reporting the matter to the Police they absolved themselves from any evil intention or mens rea in connection with the part they later played in the matter. They rather became Police decoys in the trap whose complicity only went to the actus reus and there was never any intention on their part to commit an offence. On that account I would agree with Inspector Mgandila that PW1 and PW2 are not accomplices, whose evidence, as a matter of practice, requires corroboration". With this I most respectfully agree. In all the circumstances of the case PW1 and PW2 cannot; under any stretch properly be regarded as accomplices. As a matter of fact, if anything, PW1 and PW2 who were described as simple and 'ordinary labourers, must be commended for their prompt decision to report the matter to the appropriate authorities. The second accused both at the trial and before me on first appeal, denied any knowledge of PW1 and PW2 prior to the day of his apprehension. He added that he and the first accused used to sit in separate offices. Both PW1 and PW2 asserted that their

they returned to the Labour office with their foima fulfilled in by

- - - 1: - - - 3.3 Dr. 'undikira they met both accused. PW1, in fact, said on this aspect of the case and I quote from the record Of proceedings:.. "At the Labour office I saw both accused and I handed over the form to first accused Who' summoned the second accused *'The, first : accused told me that I should return .(qn) the following. , FWI went on to say:
- "On the following day I, saw the first accused who. submitted: the second; - accused The second accused told me that the "percentage was too big. .that if -I wanted to get 3lyei'e to say him Skis. 2000/ otherwise they would refer be'fbs:. to Insurance'aj, d loter .akiard (sie:), ,...I m-or. Shabani imdiani (ie ?2) We used to work together at TA?CON He had Same problem I found him in the Labour office, He had
- h.s.fors as well and be Ws present when the second accused demanded the money from meShabani'-waa 'told .tp, pay Shs' 8000/= 1 : -
- PW2 had this to say on this aspect of the case:- I "I took the medical forms back to (the) Labour office and saw the first accused, He told me to come another 'day for the forms I went back-- and first accused told me he had calculated that :I would be. paid' She. 24,984/70 He was with . second accused: I know He was present He had his claim 8 !e took our
- : forms to- Labour (office,) 'together Both accused told me that of the 60- only 4t was laWul and . 20% was not paid. They continued that 1t it -rdmains at 60% the Insurance would pay and we could' be taken . - o a Court of law They told me. to give the STis 0' 8000/= :L If I were not 'to be - charged' If, I paid them-- Sh8 8 1 000/ I' would then be paid all my money. P. was asked- to -give Skis. 1,400/' for the same purpose" It must -be conceded that ?Wi -and PW2 differed on the amount P. Was -- told to pay'. Both of them are agreed, .howe - er, that this second accused was not - only present and together-with the: frSt. Accepted but
- ' - he also took part in making the demands: for money. - :... - AS aloresaid in para:-. 2 of the Petition of appeal It is, 7-erred . that the learned- Principal Resident Magistrate erred -in believing PW1 and PW2 that they had seen the second accused at the Zbqur, r. office on 6/6/79 when there was "ample evidence" : (e.g that of PWT) that the second accused was not in the office at the material time. With the greatest respect to- the learned Counsel who..drew the petition of Appeal there is not even a grain of conclusive evidence, - let alone "ample evidence", to show that the second accused was not even at the
- - .'
- - - - - . 4 :i. p*. I - I L labour office at the same time as PW1 and PW2 In his defence the second accused did try to give an account of his movements on the Saturday day from 715 a.m. when he reported on duty and left immediately thereafter for Gofu. ee. up to the time he was arrested at the bank while engaged in a process of collecting his loot. He was supported by DW2 who stated that he found the second accused waiting for him at his, i.e. DW2, office at G-ofu on 6/6/79 at 8.30 a.m, According to DW2 the second accused remained there for about forty minutes. If then the second accused must have left at 9:10 a.m. The second accused,

who stated that he was riding a motor bike on that day, went on to state that thereafter he visited the premises of Ianga Welding and Katiba Bta, also in the Kaine Gofu area. The second accused, however, did not say whether exactly he went to do at those two places and how long he stayed at each place. All he said was that he completed his field work at about 11.1 a.m. when apparently, without returning to the Labour office first he made to the office of -- . DW3 and then to the where he was subsequently apprehended. PV7 Rwenyongezaf Who is said to have given some of the -- "ample evidence" to show that the second accused was absent from the labour office state that Cgoicll' that he second accused came into: here, 1.; PT, office at 1100-a.m. Xit:J - tried to say that--Wenyongezaf -denied seeing the second accused at the T2aboux office before that time. His evidence however, by contrast -indicative that the second accused was not at the Labour office at the time. From Rwenyongezaf's own Word of mouth he and -second accused were: not sitting in the same office and although, admittedly, ; , he senior in office Rwenyongezaf, apparently, had no reason to look for the second accused during, the morning in question..... . " -- . If I may digress a little, Rwenyongezaf testified, -inter alia, that both accused were dealing with Labour disputes and workmen's compensation: 60/15 91/" it per TM A& 9 J t .nq aq.Onb Oj '4uemptlC sTt. wr JelfJte UOA , 04ttt I qOTtIm 9 OU8pTAG al1q, ;o cXotL&s 3IJ. trç fj.ro q.tnOq ueaq fpterv M?tj sauO PUTaU1.2 qsOtu 911,1 i apTs U0!4flOesOJa OTUO seTOUvtosip put suo o -cptxq..uoo wo eietq. pepouuOo eq snUt .I pesflood puOoes eT. qqvoTTdMT oq. 310as put 9TI 'LTeq.tJeqóp OoZ e oextduo piflOt.s 'I PUT jM TI ZTA 'sseUT esetq. lit iVttM MOTIS O. ;lesç .Ot JUt PTP XOU pesTTq4se StM DUTT4 q.OU 'MCTA SM UT poA.xesqO AioaL':Oo eçflb tSTtw .UOp TU tCdTOUT.X1 POU.ItOt aqq. S V UITtI !.sUTtt peT UOTq.noasooa et .xo SCSSOUTM aseqq. lit ulqz eotie;ep S T'q Ut 3qT3S pesfloodpuOoes 9T put iM 'C&cl ;o 1.tTI. Vq 'IttnoT!Itt Tt - zo,tux UT 'peqt.xoqo.ioo. • SUM Z Ad put T&cl ;o COUCPTAC at. ttfl. paiesqO a t Itdouc.xa pCUltel etjqMutq atq v eottd oo q.tt - 'sot; at eset. pu; seflbetIO JO qJxeurqstoue epeoacr seTuuTurtieid aqq. eeicIwoo o. Put TMa O eUrfl. 3Al2 Ol- .iapxo UT çjrj jo eçj;o GIN, o. 9 uTPTa o.xo;eq I& i JO COTJJO Ot. UT peflto ett uett eiirç. eq rntm ee p rçtuioi OAtt. 'pesnoot 'puOoes °H ; li- sa n b atlo qeT.T. eJeq. OSV 0.1CM e&d put i,a CWT eqq. q.noqt st q.tt put 'utt o6 Sq eo;;o .xnOqv et, oq, pIT4e.x aA.tti fl.sflUI pesflood pu039s ett - , pUTUr JVUL UT qqncp eqtuOsto.x 1ctxv osTt.I .Ou seOp 6L/9/9 T o D uluao et. UO SUCUIOAOW sTtl oq. st GAUD pasflD3t pUOOGs aTfl. tOTtjM ZUT100ou OT.j. pUT; oSt I 9 etç9 UaPTS011 ttd'uT.1a: pouaval etfl. etTl 'ouepTAQ etq JO UOTvfltlAe 4cT:1I UO eqanoo uedo UT POTI " a.IOJE)aaLlq. pesnoov pu030s otq. uotsuedwoo s l uouDlaOak t TMt9p of; . peen OO et vt.q ~ DuTguap 41cJ uçod sT1. UO pe(çUlcXe—ssO.IO ZOU StM jAd 11 spesflood toq Aq eUOp DuTaq sum 3laom sTtj !X0tIOW JO SULI3 UT OWvs 3t e!1.tTfIDTt 0 UCTJ. CM JVJfICUT qq. jo UeWssçst ?t. 9AT830.I CM COUO 7pessesst eq Sum fçxnCut etq. r,tl I. os .io.00 u 09 .tetqtd et.q. Xe;CI , , put ext; t uedo e eo-t;o Moqtr O. sUO. sluiq uet ejj '5111.10; 9 çç 1a11 \$IITJ ,io1dule 0t pe.flUp ST oa&otthne ut —'.x&j4tW OtI Jo ! IOCdSt Sttp. uo PTtS 1d 4, I I

- 16 :. the second accused told him to pay Sis. 2 1 000/=if he wanted to be paid his compensation in full"wherea, according to PW2 1 the accused demanded only Shs. 1,400/= from him i.e. PW11 according to PW1 the first accused approached him immediately after

being paid at the bank and demanded his share PW3 however, said that it was P1 who approached the first accused and paid Shs 12,400/= out to him; according to PW1, PW2, PW3 and PW4 after receiving the Bus. 7,000/= from the hand of PW2 the first accused passed it all to the second accused who put the same in his own trouser pocket * PW5 however, stated that the first accused split the bundle of currency notes into two: He, first accused, retained a portion thereof which he then put in his own trouser's pocket and only handed over the other to the second, :: CO1 who too put the same in his trouser's pocket etc However, as this Court has often reiterated contradictions and discrepancies in the evidence of witnesses are not necessarily indicative of, the falsity of such evidence Honest witnesses trying to tell as truthfully as possible what they experienced or witnessed are much more forthright, each others evidence and their evidence depends so many factors including their powers of observation, recollection, expression than would be a well rehearsed fabricated story Further it may not be important to observe that in fact the absence of discrepancies in the evidence of a number of witnesses is more calculated to make such evidence suspect than credible The learned Principal Resident Magistrate who had the advantage of seeing, hearing and assessing the witnesses in this case accepted PVL, PW2, PW3, PW4 and PW5 as honest and truthful witnesses There is no material before me from which I can properly conclude that in so doing the learned Principal Resident Magistrate palpably abused that great advantage Like him I, therefore, also accept the sum total of the evidence of these witnesses for the Prosecution as a true and correct statement of facts In doing this I should not be taken as not to have considered the evidence of the witnesses called by the accused From it I have considered it as conscientiously. Was I could say They both, no doubt, sound credible However, in the light of the evidence adduced by the Prosecution in this case

- the evidence of DW2 and DW3 hardly raises any reasonable doubt in my mind
- During cross-examination by Mr. Bishota for the second accused PW3 is recorded to have said inter alia:- "I was attentive as I was on specific duty The second accused asked first accused whether he had (already) received money from PW1. and he replied that that money was small and they would wait for the one for PW2 (sic)" From this and the fact that these two accused persons were together at the Labour office and jointly demanded the payments from P.
- and PW2 and also the fact that the second accused was seen receiving part of the payment by PW1 and PW2 from the first accused I am satisfied, as was the learned Principal Resident Magistrate, beyond a
- peradventure that this second accused and the first accused were sharing a common intention to solicit and receive bribes from P.
- and PW2 The two of them were acting in concert pursuing a common and ari unlawful design Having said this and on my evaluation of the evidence it is now open to this Court to declare, which I do, that there is no real merit in the appeal against conviction which is hereby upheld Turning to sentence, there is no material which could lead this Court to consider that

the sentence of five years imprisonment, which is the substantive term to be served by the accused persons in this case should be reduced as the said term of imprisonment is the bare minimum under the law, i.e. the Minimum Sentences, 1972. If anything I would not hesitate to point out that, in fact, it errs on the lenient side. This is not only because of the flagrant way the offences were committed but also because of the flagitiousness of the whole affair. The money, it will be recalled, was received in broad daylight and in an open place as a bribe. Without prejudice I am yet to be convinced that a person who is engaging himself, for the first time in such an activity as did these two accused persons in this case which, per se is putative, intended and vitiated, would have the nerve to do it. So openly and shamelessly. Further the second accused was in a position of responsibility which he has, deliberately opted to abuse. As a labour Inspector, Grade 11 he nevertheless did not find it revolting, so to speak, to feed on the sweat blood of these two poor labourers whose injuries will definitely affect them for the rest of their lives. I have seriously considered: on this account the possibility of enhancing the sentence of course after giving the second accused the opportunity of being heard. In the event I have desisted from so doing mainly because of the accused's youth; he is now in his mid twenties, coupled with the fact that he did not benefit from the bribe at all and all the money received by him was recovered instantly. More importantly I feel a term of five years imprisonment is sufficient to meet the justice of the case. In the final result this appeal fails and it is dismissed in its entirety.

- A. Delivered in open Court at Tanga this 20th October, 1982 // I (H.E.D Si'a). Judge -

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