

TANZANIA / JUDGMENT

19771220 TZHC Dodoma

COURT
TZHCDECIDED
20 December 1977

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. ,,_ ,,' r IN THE HIGH COURT OF TANZANL\ .AT DODOMA APPELLJ\TE JURISDICTION HIGH COURT CRIMINAL APPEAL NO. 122 OF 1977 ORIGINAL CRIMINAL CASE NOo 60 OF 1977 OF THE DISTRICT.COURT OF MPWAPWA DISTRICT J\T MPWAP\;Ji\ O O O ••• District Mngistrate DhUDI MANYIKAo o • o O O O o •••• Appellant (Original Accused) V(:rsus THE ;:i.,EPUBLIC. ••••• 0 0 0 0 000000 ■ •• Respondent (Original Prosecutor) ChnrnQ: Shop BreQkin0 und Stealing c/ss 296(1) and 265 of the ~~~~ P<i.mal Code Co.po 16 Vol. 1 of (T) Revis~~d Lawso

JUDGMENT

On 8th oecemb,,!r, 1977, I quash,~d the appellimts' convictions, set aside the sentences, Ql'ld .ord':!red their inn:~di :-:~::2 release from custody unless ath,~rwise lawfully detained. I rc.:s\;rv . :~d my reasons fur doing so, which I now Oive. · In Mpwapwa district court th,~ thn~e app~lLmts,. Daucli Mzmyilc:-, Francis Chisv, rn.ga und Augustina Mtwale, were jointly ch :,;~,~:,1...:!'...1 \Ji th ::!fld convictt!d of the offence of shop-breaking ,!'11c1 steeling c/ ss 296 (1) ,~md 265 of the Penal Code, :md were 'c=:>.ch S;:,ntenced to thrs:::e y~nrs imprisonment. They now appeu.l, ;:md th,~,ir o.pp2:,1l s h,~ive b :-:m ccnsoliduted. For convenience, I shilll h~r,,~in2fter refer to them as the 1st, 2nd and 3rd accused pf!rson :ccr.:;p.c:tively, which is the order in which they cl.ppe::lred at the :::ri ·J.o The f,J.cts are lar<Jely not in dispute. In brief, they ar," ls L,lllows. Mtannna. ujo.maa vill.:10e in Mpwapwa District owns a shor,, or so it r.liJ at the materiul time. In ·pebru1ry, 1977, ·ch.) 2nd uccused w,ls the shop ma.nnqer, the first a,:cused wns a. 111.:ttchrn.:m of the shop, nnd the 3rd accused w,:is a committee memb2r o:f the shop committ~"le, 2md sometim~:s useu to do the cluti"s c,f a vJG.tchman of the shop. On 16/2/77 at about 3o00 Pomo there w ls a m ·eting of the :fin,JJlC<:~: :md plannin<J committee of the vilL1<Je. Among those pr2.s2n~c at th lt m0-etincJ were the 1st and 2nd accusr~:d pfJrsonso At th,~=: nLeting tht.:~ 2nd accused reported that there was shs • . 4,272/45 in the shop. The m8eting ended o.t 8.00 p.m. :md it would appear th ,t th:-' 1st uccus::d was the watchman on duty th,~1t night. The next morning the 1st accus~d reported to the 2nd c:1.ccused th .Jt the shop had been brob~n into during the night nn< 1. tb<lt al 1 the mon,3y h0.d br,ien sto_len o ooo/2=· ·:-,___ ---~· -~: \ 3 To make good some loss of ,propt~rty which w,3.s under cme 's control is not, without mor~, a confessiun to the theft of such property, '.. un~ in the instant casE:i thf\re is no evidence .that they C\>nfessed to th,~; _offence o . Their_ decision to make good 1:he loss, th=refore, cunnot hE, tulcen to m~'un anythin<J more th.:m _th.)t they were r~:SpGnsible" for the Su.fety of th~ stolen. mont::y. On my own vL=w of th~! evidence, tht~! re fore, I am not

p,")rsu<1d:.2d th,1t the_ c-ircumstantial evidence was incapable of , innocent explanntionso I think there were circumst.:mces which weak- eneJ :::h~ inference of (JUl to The accused P""rsons, th,-~refore, shoulc1 h.:ive b~;en 'Jiven the benefit of th~:~! doubt to .J . Not' surprisingly, the 1-~::i.rnf-!d state attorney did not SUJ!l)Ort the ~onvicticJnSo It was for th~2se re;;i,sons th.tt I quash~:d the convictions, set .:i::;j~,Je the sent~nces, illld ordered th.,, appellant.';immediate r.::::l .;:1-s0 from custody unless oth,orwise~ lawfully detained o I/~:/:/,-.:~, _; ... _: i i I ,1,~1v _.-_- ,/ ,~- _.. ~ \" ' ' Ba ~oo--cHIPE A I ' ,. JUDGE Deliv2red in open court at Dodoma- this . 20th day of Dccer;~J)cr, 19 7 7 o •• J •' .////:-:~ ' ,!{:!.._; ::.~ B~ b~ ;CHIPFJ~A . ' . JUDGE

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