

TANZANIA / JUDGMENT

19810302 TZHC Tanga1

COURT
TZHCDECIDED
2 March 1981

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/AC174 CP4_~ , 4-e 1tt IN THE HI Gil. COURT OF TANZAN FA AT GA - 18 MAR 1981
APPELLATE .3IJRISDICTION CRIMDAL APPEAL NO. 12 OP 1980 (Original Criminal Case no. 81 of 1979 of the (District Court of Handeni District at Handeni Before: MH, Bakari, Esq., D.M. DAVID KISINGERAppellant . . (Org. accused) Versus THE REPUBLICResondent (orig. prosecutor) CHARGE: 1st, 2nd & 3rd Count: Stealing by servant c/s 271 and 265 Cap. 16 Vol.1 of the 9 Revised laws.

JUDGEMENT

Bisya, J:- The appellant was ccharged with three Crnmnts of Ztealing by Servant He was convicted on all the three Counts and sentenced to five years, three years and three years imprisonment,. respectively He was also ordered to pay Shs. 7,039/90 as compensation to the Regional Trading Company (hereafter to be called simply as the R.T.C), Tanga. He is now appealing Evidence was given at the trial by one Rajabu Lusewa (pW2) to the effect that o n 14/3/77 he was summoned to the R.T.C. depot at Songe where the appellant was supervisor by one Kerefu, an auditor of the R.T.C., Tanga. He was then asked by the said Kerefu to take over he ranning of the said R.T.C I depot at Songe from the appellant because he, i l e. Kerefu had found "a big shortage with the accused' t , i.e. the appellant. He agreed After five days I - another employee of the R.TIC., one Abdi caine and took over from him. One Arnold Tarimo (pW3) testified to the effect that he went to audit the accounts at the R.T.C. depot, Songe, on 10/5/77. He audited the said account covering the period 22/4/77 to 10/5/77. He did so basing his findings on, among other things, the report prepared by one Kerefu, whose photo copy the witness, i l e. pW3, was permitted to tender in evidence. Kerefu who is said to have been the person who discovered the "big shortage" in the accounts of the appellant did not give evidence at the trial and no reason was given why he did not do So Nevertheless, on this set of facts the learned trial Magistrate ced upon the appellant to defend himself which he did by denying the truth of the charges Without beating about the bush the convictions in this case cannot stand The main and only reason for this is that there simply was no evidence s properly so—called, which was adduced in the case and on which a conviction in a Criminal Case could properly be founded-. Since the Republic does not support the convictions, in any way, the same are hereby quashed and the sentences passed thernan ataida Unless - the appellant is being held on some other lawful charged it is hereby directed that he should be set at liberty forthwith For the avoidance of doubt the order of compensation is also set aside. Delivered in Court at Tanga this 2nd day of March, 1981.

- (H.E.D ST&YK) aDDGEI

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