

TANZANIA / JUDGMENT

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- .../t • -;j .ij' •
 - IN T :IIUH COURT OF TAIIZANIA
 - AT'MBA ..JAPPELLATE.JTJRIS]I.CTIPN. liG COURT CiUP.iNAL 4A3 (ORICINACRmIBkL CASBI'O, 23 OF 1983 'OF;, ... :TI)ISTICT COURT. OF .RUNGNE DSTRI,CT AT
 - '!.J BEFORE: P.S6 NPCTZI DISTRICT NAGISTRATE.. PUBLIC PROSECUTIONS 600000 00 6I i• 0 6 ' iPFELLANT
 - .. Versus iAAz SUMB1 KYANDO)' ;;' f . . ' • RESPONDMITS
2. FOIDA SUMBE KY4NDO) CHARGE:' 1st count foDbothes Selling goods above inaxiñiurn price c/ss 20 and 26 of the Regu- 0 . 1atIon of Prices 19 of 1973. 2nd count for 1st oni I Selling goods aiove maximuri price c/ss 20 and 26 of the Rex- 0 lation of price ct io 0 19 of 1973, 3rd dont fo 1-. aocued onr .. Failing to display prices c/ss 22 (a) and 26 of tie :iegiIation of PrieCs Act No. 19/1973 . ' : . . • JUDGNEN.T MNGAT0 The two respon4en±s iameIy:—Athanasi s/o Sumbe Irarido the first respondent, and Fida d/p Sumbe Kyand.o the socón&:reponderit were: tharged in the District Cour of Rungwo at Tukiyu as tmder:-. •. . . On the first count both respondents were charged jointly with the offence of selling goods above. maximum price c/s. 20.. and 26 of. the Rsgulation of Prices Act, 1973 in thEt :. cY,f'e'ed. for sale c.ncmboni Plasttc pail to one Igogo s/o Silva at, a price.of.shs...240/= instead of shs, 53/25 for the same is a price controlle.item.: . • . - . •'- On the socpnd count, thc,firsl . iresvqndent, alone, was charged..with..the offence of selling goods aboye maximumpri.ce :e./ s.20'snd 26. oft. egatin of Prices Act No0 19 of 1973 in that. be qno pieoe of white .ôOtton sewing thread to Hansi s/o. Mwansumbifox ..shs,601.:insead.. of. hs0/40 for the same is also. a corrtrolled price itec /2
- 2 . On the third count, the firai respohdeni alone was charged with the offence of failing to display pri6es/s22(a) d26 of the Regulation of Price.s Act No. 19 of 1973, r,.. The first repondent was found nt gui 1t for all the three offences he. was• charged and he got duly acquitted whereas the second respondent was found guilty of thb 'first offence that.she was jointly charged with the first respondent and sentenced to pay a fine of shs. 2 1 000/ and in default of payment ofsuch.'ine.she was to. ;,go to jail: for twelve moi'ths. The Director of Public Irosecution got disatisfied with the findings of acquittal in respect of the firs

respondent 8hdthe entenoe imposed against the second respondent appeals now, t...t.h,s cou
 Without hesitation, I must point otit that the evidence against the first rcspondent on all
 tlliq, th'e.cobflts charged is ovexwhlming. Briefly, on 29/1/83 at about 4,p.m. Inspector A.
 Andrean (Pw.i) with Police Constable Simon Mgen w as not Oalledtd. ia evidence happene d:
 to visit thô first respothent's re±ail shop0 While in the shop they saw the second
 iespondent ,ling one plastic pail to Igogo Silva (PW.2) for shs 0 240/= Igogopleaaed 1thgti1.e
 cond. respondent to have the price f' sho. 240/=be reduáed.: Inspector Andrean (P,ituiezi
 intervened and asked the secndnd.: respondent as towhy she• was selling the plastic rail at
 such a high price and the ecoond respondent rej5brded, by stating that tay• bow,ht 'the pails
 from far away, in Dar-s-Salaam and that transport charges were very high and at this
 juncture the firt reso,loi , -te owner of the si.top appeared and when he was asked to
 accoi.nt for tao reasis of selling that plastic pail at a higher price 'hcn t iat fixed by the.
 Govornment. he gave the same reason tCs that ivon"by the ecoad respondent, his -. As
 the arument aboutG t 1 ia price of this plastiQ pail wac going on between the police officers
 and. the two respondents, hans Mwasubi (PW.3) appeared in the s'op e ae1 to buy one roll of
 white ewing thread, and the first rcsonthnt scld him the same for sns0 60,1=. He gave shs.
 100,1= o the firob reoend.on± 10 was 'given back a b'lance of she, 40/ On hockitio pricciiai'
 PW.I fOblid out that the price of oiieplastic pail with ws s s 53/25 and tat of one roll of
 white .ewing thread ws ..fid at shs6 iOf4& Oii'furthr'investigatiOns the two police officers
 found out -b t4e irst respondent aid. not display price /

- .. - 3 tags on the above two stated items thus the f1Dt spqndent was duly arrested and taken
 to the Police Station with tie plastic pails which wer&in the s1- op together rith the rolls of
 sewing -threads and charges were then ,p'ferred aarnst both resp'ondenis as stated above.-
 The plastic pail was tendered in court as Ekh- IIA1 1 9 the roll of thrd was te- ndered 1xh.
 ""the radiu. liconce °b-f the first respondent waa put in as Ech.F" (a1 he book containing the
 price list was put mae]ch. "Ga. The.:firtpsj-,qi.ent denied all the chargos
 preferred .aginsthm. ' ,,::J Asi±lar as the first count was conOernM, the first
 respondent contended that he die. n9 -t cel). tho plastic pail n question to Igogo (PW.2) only
 that he wa cwermn a question put tb him by PL1 as to why he was selling that pail 1for a
 hiher price than ha put in the price list. 1 ee - This ian utter nonsense for had it no/for the
 intp'ventmon of the police officers surely the pail could nave bon' sold to PW.2 at shs. 240/=
 contrary to the price fmed in the price list flh. and sale as defined in section 2(1) of t'e
 Regulation of Prices Act 1973 includes an offer to sell. The first res2ondeit -t 2herefore can
 not be heard complain that h did not sell, the plastic pail to Igogo (PW.2) when hejiimself
 tp).d thq arrl6sting, officers -tnat hc. we seling tao p-ui at such a hiEPher pr&ce because ho
 bouçht the pails prom' far away md also he transported the pails at a high cost, In the
 second coimt tIC 'first respondent stated that he sold the roll of thread to Plr.3 for s 1 s, 40/=
 and not shs. 60/= as contended by prosecution and tie did so because he bount the thread
 from Dar—es—Salaajn for 'sh 35/= and acdod slis. 5/= as a profit for the same was imported
 from India aM it was i ot a i)ce controlled iteri. This is 'unbe.ievable for I find: no reason as
 to why PT.1, PU.2 7 PI,3 should be telling lies against him wh triey stated th.t e sold tho rQll of

there-ud for shsQ 60/= and not shs, 35/= as cqnte ied bj t uc first re46n1ent, .. There is no evidence what- -. - .4' .J"), sover - --t -tue roll of trread as an imported one rendering it to be not a 'rice cantroiled itc It i' a fact as shown in Ebdi 1 ItG - the price list that t e rol of t re.d cold by t he first respondent to PW.3 was a price controir-d mLe i cld thab ti10 fir repndcnt sold mta-t a higher p rce than t at crio i the price liis -t Exh, "G. eoi As far as the t ii'.. coat ,oes, elrmdenco is very ample that the first respondent die not isioy price tigs na the plastic pails and the rolls of sen.n t' rc4s rnach -re price cortrolicl lten3 in his shop. The first e o • /4 respondent admitted in his defen6e that he cliLlno c1ilay±'ie tags...on the plastic aiis and this w 5Q: because lao was ±d t1& ce o these pails and that ho went to the District Biasliara Officer to enqui'p about the seine and after being infoirod. about to price of the items hewaned to display the price tags on the pails. but before he did so he was arres'ed, This story is just a more aftertiought for ther a is ample evidence rcpi PW.1, PW2, and PW.3 that whon he was confronted by t police officers he was heard. to say th t IC was selling each pail for shs. 240,1= because 'he bOJTt the -oJ.ls from far awaond he.incwred heavytransportohares for trnsnporting the pail to Pukuyu and if he was not sure of the pr&oe then why Clid he offer the pails for oalc at shs. 240/= eachF . It is therefore evident that the first respondent did deliberately omit to display price tags on the pail 0 a. also alleges in his defence that he did. display price tags on the sewing threads. I can not believe this story for I d.c not find any reason -is to why Inspector indrean (Pw.i) should. frame him u by tlling the court that ther was no piöe tag s on this item, even the first respondent neVer told the court any reasons as to whyP 0 i-fr.amod him up. . . r the.. above sttl oacns, .thc ppagnin th first respodent is allowbd.ndthe. ordox of .ac.:qii.l pa all. t,e thrsp.pe.unts.is . saside and the first respondont is a000rdinlj found guilty on all the three counts and he is thus convicted on all the three counts.., As far as the appeal against the: hentence on the: secpn 'espondent is concerned, 1 do not hositado to state that the appeal has no merits, In -seterping the appellant, the :learnecl trial magist rate rightly obseived that the second respondeht ras a. first offender and that ..he was merely isting the: first respondent her brother -to sell good n the shop. The power of sentencing lia-taial cburt i iscretionary and it j rarthat a Superior Court interfersith.this discretipnary power of lOwer courts unleCs the ioJer.court:trhdes:on wrong.princip1. insentenciig. Though severe sentences i.bay he justifiablo.fo certain.ofrfences wider the Regulations of Prices ot 19739 the. fines. .ipipose. .j,n.such cases should bear a reasonable relation to the ..couseds powe.r to psy the fine .nd it should not be such as to rondcri,t dllusory hp. opti. 9o f a .fi fle . specifically granted by the Legislature in the Op3e.. a first conviction under the Act. Accordingly the appeal against, the sentce.. impsed against the seoQnd / 4

- 5 .espndn-t jsclistnied.: ni .'
- J:..
- -! 17/4/85 Deliverec in chaxbers in the presence of Mr. Mbise - learned State Attorney and Mr.. Bateyunga - learned counsel for both rspondenthiUih darpriJ, 1-95:... ;,:. ;. ;.Y

- G.G. litonga Jo . A sy : 17/4/85. Ny Lord,I ask the court to consider the fol'owing while .passing the sentence against the first responden-t: . The first respondent is a first offender, he is married with four children threof..whoni ar.. attending school. H. has::two - pareits who depend
- n.him. -Immediate.1. after he was acquitted,- the Rpullio appea. against
- the acquittal therefore .his:.trading licence was never returied tohe first respondent. The first respondent had. 600 plastic pails teth&t with other items in fhe shop which. he oulcltiot dispose. of li absence his .?tr.d.ihg -lencé *hih is bVill , with the court .- liay_:l983 he was arrested by the Pôliqe dtirii the Sàb5ta-e ChpLnfor having hoarded the 600 plastic not listen the storr of the 1st respondent as to why he tas ké'tliose1ail in his shp and lie was accordinTly charged under the Anti Sabotage Act vide Criminal Case No, 93/83. His case was tried by the Tribunal and he was acquitted on 20/10/83 for the g6o reason that he could not dispose of the pails in the absence of his trading licence which is still with the court. He stayed in custody for a long time thus he dift not enae iinoelf in business. £fter his acqi. attal he reported at the lie 3tation to inçuire about the wlereaboixts of his 600 plastic pails. He was informed that they were disposed of.b4 despite several demands to get the proceeds of sale of these plastio pails, he has never got anrthing from the Police Officers. Since the respondent's trading licence is still with the court, the 1st. respondent has never Jone any gainful business and his shop is still closed up to now. I therefore pray that a lenient sentence be passed against him.. C.G. I;Itenga, J. 17/4/85 . . /6 -6 Mr • MM se State t to rney : I have no record againstthe- 'IfiTsi respondent, he is a first offender The Republic sycppathises with ti first respondent and I pray that the court should pass a, meet the juptice of this case. S 0,0. tega, 17/4/85" . ' 1st Respondent: I have rio±hing more to Cpyap't f'om what my advocate has stated. 0,0, Mienga, J. 17/4/85. So n t enc e In sentencilig the 1st iespondent I have in mind that he is a first offender and also he has undergone a lot of ordeal because of having these ..plasticpails. Accordingly . I sontencehimas under:- 1st count: A fine of shs 0 2 1 000/ or six (6) months jail in default. 2nd coimt fine of She 2 1 000/= or six (6) months jail in default. 3rd count. A fine of s' s. 2 9 000,/= or six (6) months jail in default. Sentences are ordered to run consecutively. 0,0. Mtenga, J, 7/4/85., . . Th lst espondent' trading licence j,nt :bub stored back to him immecliatly.. ' - . . . 17TH APRIL, 1985. JUDGE.

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