

TANZANIA / JUDGMENT

19761015 TZHC Mwanza

COURT
TZHCDECIDED
15 October 1976

Source: media.tanzlil.org · Research copy typeset by Esheria. Not court-issued or certified.

IN LJ -1IGi COU1-?T OP ZAIA AT L•L2 APPLL.TE JURISDICTION CRI1;THL. .PPiL. NO. 205 OF 1974 ORIGliAL CRL.i ;ICi O. 893 O 1973 OF Tt DISTRICT COT1ET OP BUROBA DLTRICT AT BUKOBI BUF ORU C H 3u T I, D M THE T n D D. .r..c . T T S DD

- versus S. ITO B. 7984 P C L.LAVI • , RLSPOiBTB 000Ooo'o JUDGEI.NT IIIAGAITGA, J.:
The respondent in this case was charged with Corrupt Transanction with agent c/s 3(1) of the Provention of Corruption Act ITo. 16 of .1971 and in the altorntive he was charged with "Publ±c Of ficer obtainin, advantage without consideration or t:lithout adequate cohsideration' c/s. 6. of the same. Act, Tie .,qaq acquitted on both counts. The Director of Public Prosocations is agTivod by the. acquittal In the Corrupt .trnsnction with an agent. count and is appealing against the acquirt al on the follloin grounds - "1. The larned District .iagistrate crred :jfl holding. tht the prosecution had . . failed, to lrove its case beyond roaoflabl doubt. The loanod District Magistrate erred in holdiig that there was material contradictions on the,.ovidnce given :. by the prosecution witnesses. . Tnc learned District Magistrate erred in holding that prosecution witncs
- 2 wu. s an unreliahle witness. . . '4. The learned District Magistrate orrod in tht ho failed to give the prosecui .
- . . • tion caso the consideration which it would have 'boonroquired. tobe given.."
- The Director of PuUic Prosecution therefore prays in this appeal that tho doposion of the trial magistrate
- be set aside and a convicti'o].i for the offence under section. 3(1) of the,PrevcntioT1 of Coruption Act tO substituted., The prosacution case was that the respondent, who was a police officer, .doiandod and corruptlyrocoived Shs 200/= from : one Robert Liutaloma who had a criminal chargo. 1pondin8.agains't him. Thi evidence led at the trial was as±ollows: Robert ilutalema, (p1,2) a school teacher s was on 17th Ap'il: 1973.. arrested by the respondent . after a cornplaint of.; tha't .hd been made against hith by a. fellow school, teacher.. He was however.;later released on police bond but was instrupted to. report.. to the police station in a week's tine. He did and after tolkitg to the rosponocnt fOr sometime the :ospondent. t4, him to "make all efforts or anything o t,at the matte±' would bb finalisod'!. The respondent then told hin to par Shs. 250/=. He was reluctant to do this but the

responthnt later thretncd to belt him up. . . . /2

- 2 -. It was then that he sought advice from his District Education Officer who advised him to report the matter to the police. Four police officers namely, Sergeant Liaj or Kisika (PW.1), detective sergeant Tidolis (PW.3), detective sergeant Charles.. (PW.5) and another police officer were by Regional Crime Officer to lay a trap to catch the respondent while receiving the bribe. The leader of the police party was Major Kisika who was given Shs. 250/= in notes by the Regional Crime Officer and the notes were made up of 2 Shs 100/= notes 20/= notes and 1 Shs; 10/= note. This was on 11/2/73. The police party, together with the Regional Crime Officer and Robert then proceeded to Kamuchumu police station where the respondent was seen. On the day before reaching the place the four police officers alighted from the vehicles in which they were while the Regional Crime Officer proceeded to the police station in the vehicle. Sergeant Major. Kisika (PW.1) stated that he saw the respondent handing over the Shs. 250/= to Robert after he had taken their numbers in the presence of his comrades. He then hid himself together with sergeant Charles in an appropriate place while his two colleagues also hid some distance away from their place. They however had a good view of the place where Robert was instructed to be while handing the money to the respondent. Both Kisika (PW.1), Fialis (PW.4) and Charles (PW.5). stated that at the respective hiding places they saw the respondent approach on a bicycle and proceed to where Robert was. They all stated that they then saw Robert hand the money to the respondent after which the respondent hurriedly rode away. Kisika stated that he saw Robert handing over only Shs. 200/= and that he and Charles were only about seven paces from where the handing over took place. He further stated that who responded did not put the money in his right skirt pocket before he rode off. Charles on the other hand stated that he did not see the actual notes handed to the respondent by Robert but saw the respondent put the money in his right trouser pocket. Tidolis and his colleagues were hiding about 50 yards away from where the handing over of the money took place. He only left his hiding place when he saw his colleagues follow the respondent. Both Kisika and Charles further stated that they saw the respondent go straight to the house of P/C. Colesin after he was handed the money and they followed him there. As the respondent came out of Colesin's house they noticed him and they told him that they suspected him of having received a bribe. He replied that he knew Kisika, then raised a row and started a scuffle, hitting him with a thorn. The scuffle developed to a fight and it was then the Regional Crime Officer who appeared and stopped it. Then he ordered the respondent to submit to a search. He was searched but nothing was found on him. He was then taken to Colesin's house which was searched but nothing was found there. It was then the two witnesses heard Sgt. Tidolis say: 'He has gone out of the house, say that he has picked the Shs. 200/= in two notes which the scuffle was about. He was in place. All of them checked the numbers of the notes and found them tallying with
- the two Shs. 100/= notes which had been handed to Robert. ...; Tidolis further stated that he called out immediately he saw the money lying on the grass where he had seen the respondent fighting with the two police officers. Several other witnesses gave evidence which was fully relevant to the fight and subsequent searches. They also related how they heard.

Fidelis admitted that he had picked 'the ramiey and sa h ~ n holding two Shs 100/= notes. /2. A —3- Robert (PW.2) related how on that day he was handed. Shs. 250/= in the donatium montieiaed by Kij. and after they had lcntdropped!.. by the .c gi onal Crie Officer he proceeded to the Police Station and saw who respondent. The respondent d.ir otad. hia.O ! atnd the Di. by., to a, certain ld man bat he v7as rclitcant to do so6 7hon 'h loft who respondent followed him on .a.bicyclo alior they h>d walked some distance he ki.ndod. nc Las. 200/= o hc rspc1zdcnt. He when iiL and told theolicedfficere.thio. Thi polic oliicers wore than only about 10 paces from ihom .nci he sa' the rospoildent put the money in his trouser pocket. He ltor saw 'the rosponeont light the police officers ne; a houso and saw him throw away something like grass0 A sweeper a Lie polio station (P03) related. how on the clay in q. uestion at aeut 10.39, a.m. the rospontont called him and sent him to c-ollocit .

lottorforhim :rom Robert. Ho app; ochod Rob rt who told him tiit the poson with the letter had not rr1ved. lie v.'it and informed the r ;sponlet of this. The rk. aain sent him aftOr SObo Lbi ae had olapsod. Robert wa thon seatig along th road. inI whon he approached Rob-rt on the same matter lie was givon the saae ±bjly. Later on he saw thdresondoht fight the policcnon. also witnessed the soarche' and heard Fidelis ay hore i the laiaoytt but did not soc him actually pick the Shs. 200/= which Ile showed around. ThO resond.ont made an unsworn statement in which he stated that after tao Rogi.ual Crino Officer had found him on duty iii:tho charge r.m around 10.30 a.m. he wont to Cel3tin h;uec for tea. Ho.dd,aot find the -boa ready and. left br tao oficc. whor' no nad walked about five paces from the huso he was accosted by two peplo in civilian clothes who set upon him and told him that ho had received aL bribe. He denied the allegation but they insisted on searching him. Two more policemen irrivod and he sensed danger. He therefore resisted the search and: occidod o aefend himself. The Regaal Crime oiiiccr then, weat t the scene ad told him to submit t a search. He complied but nothing was or hi apart from his own Shs.. 20,'=. A. 'search of Coleetin's 'hOuse also produced no require ±"usult. Fi'dclis 'then went oat "to look for the money without , ±.ist being ' sea:cched and. after some minutes he heard him sari that 'ho h d feund. the no ,cy They. all we.lt eut and saw Fidelis holding Shs.'200/=. Theunumbers of the notes was then chocked against thoe on d pi.. ce of paper. It was thon that he heard then say that Shs. .50/= was missing. He was later charged as indicated. ' The. lerned district magistrate; after' reproducing who evidence adducod the rjal stated that there weoe three issues tL be consioord nd frarLd the saic as under: DI the accused solicit a bribe with PW2? Did the accused receive Shs. 2007= being part of the bribe?' • 'Howd. the Sias. 200/= come to be found in the grass? He then rOiwod the cidonce and answerod, issues Nos. 1 and 2 in the negative'. 'The relevant part of the. judmnt is hereunder reproduced: . . ' . 'First I start .ith' the 2nd issue, when it is allocd t,hat i,ac accud ro civ..d 200/= ±'ron F 2. Thrc peliec officers differ uctterilly on whis issue. P\tl Kisika says LS tkr accueed a d rccivcd the 'money' he put. it in ' his right shirt pocked. The rs sos given by PI2 and P5 as to why the ct arrested immediately on f the 200/= w';re nut c11vincin' 0 •./4• — 4 —. ' 4. WI says. ii., d•d not do so b c ae he W a s uneer impression 1 accused might run faster iri•hit bicycle. Th.ri P 5 sis it was 1DC us tiey wore hiei in LL bLbe3 wir im'oa. Yet i i s diiiicult to unorstueid if at all the ccused ocivd Ho 200hy P 1. 1 mid P 5 did nOt see the accused throwi the 200/ at the

confrontation .rea. fho P2 says die aes ahuat 100 yards a•y from the confronuation are whose
accused was thring something li.o dry hrass.. P72 iobo rt urth3r sLid he went to borrow the
moaoy Robert has not impressed me as -. tcilin. the. truth. 11 was too roluctent t.o answer
questions on cross examination. — Thus clearly showing he had an axe to graid bearing ii'a
mind there is an impending criminal case against him whose. invostiga tor is the eccused..
again I see no valed reasons as to why P\J2 gave accused Shs. 200/=. I f at all we believe him
while

- in effect he had the whole sum of 250/= claimant.
- Ciirili,ns who would have been independent. nitncss,;s in th. case prop.r and — .correbortio itn;cs;s t the pros.cution
- tory, or allegation. On: this ovieLnce it • ' is quite clear th;; Ii we do not know who • threw the 200/= in the glass. For il GIO. observations I have node I Ji Ui o vi bh(tn ft,. (3 110 arrangoneat betwoer R:'bert L11d accused for '5. • tile bribe. The accused never received the 200/= out of 250/=. And ospocieLy thoi inc 4 police oLficcrs who took ctivo pert in 'the trap .aore not seurchioJ,'o ore 'tacy bcbgm 'their task an on. of then could —
- have planted it. there. P ,YT .5 h..s also told he coo t Chat t ice tao rp aid not succed. he did not elaborate.ihis. lam not impressed that the t accused would have aclvontur:d. ia this 'busin os of going .Co take a bribe, while he well knew his ho giamal 1 officer was aoirnd, and tailing .th. C.I.O. bribe in en open at a football field. 0 I so find Ph2 sought a \.ay of oppressing ccUsecl \dlo w a s invos'ti..iing Irli.? case as a0wy of relieving himself. For the a.ovo roc0sens I find, 'the accuso
- act guilty on the count he stands charged as well as on the hltcriativo count which, has not b on proved nor cons.flit to - prosecute cbt:,inod from the Director cf . Public Prosecutions. HLi is acquitted and discharged." Piida o Y_rattorney, who appeared on behalf of . the Director of Public Prose cutiens attached. the judgment of the lea.ied district magistrate on scvraL grounds, amongst thich ware: That the contradictions roferred to by the magistrate i.e. aDOut 'whore the rcspond.ei:t put iho nimoy and why he was ~ jcyj arwostd imnidie,teiy on • iac.oipt 0 f th were not .t au matori' 1 'to 1)o cLarga The iseuc s whether the aa as all,;cd. or not; . /5. '•I. e' • •,,. - - - 5 that it V? S flG -t; iiaossiblel fr the rospncnt. to havo first put tUC 1fC3T :li1 trousir itot and t[iii in uh. sLlirt pCk(t fld h..; 1 liiIO3SOS ObSGV3d. theso incidonts. at difforont . tirnos; thjt th; r'ñs ivn by iio polico W1:flCsS..S for not • arrsi;2nc.. •Li, ruspoiaJ21rt iinmedjtaiy on ret.t • cf he.saony 'oro rcasn:blo .nd sh u1d ün boiivd;; that he rforonco on th d.cmoanour of P72 is nt siippord. by the record of • prOCO3CiiflS Si11CCJ nothing ' f the sort ws rGcorde .. by ;bhe trji:..1 fl1d(1SrtO i2.0 t:i1 Li3tra1:.c sxic1d hcva considori tii rs:,J.jatts rsjls for rOñ'sinyto. 1e socrchec nd that -Ui bsic.e of indp-nt witnoss was not fatorial to 1;1, io c.se . Ho .ciso sulmit b:;d • bh Lngiic . twa1 tho trial magistraio c1 ny t!i.: h ia sl b.ni on acqu'itbing the rosondnt. . Eo bn prycl hc eurt ic' allow the appcai • mcl to su slitito cnvictien for the aoquittl. The rLspcnt, \±10 pp ned in pccscn t GhL. nL1ng of this appeJ submitted th.t the pros cationdid in.fact fail to prove ti.10: charge against him.

lie stated that this is because none of the witnesses saw the money being handed to him nor was the money used in the trap found in his possession. He then repeated the contradictions referred to by the trial magistrate and submitted that the trial magistrate was right in disbelieving the prosecution witnesses. Horcuustodthi cL, u_(t to dismiss.. this appeal I must say that I have had considerable difficulty in understanding the judgment of the trial court. And the respondents' piece in this case issues and is based on the trial magistrate himself. If one is to go by the issues decided by the trial magistrate one would be excused to say that he deliberately refrained from coming to specific conclusions on the issues he raised. Because that is, it may I shall now proceed to consider the grounds raised in this appeal. .. Well it would, I think, be more appropriate to state the first ground of appeal which the Director of Public Prosecutions complains about, but the contradictions relied on by the trial magistrate in disbelieving the prosecution witnesses. The contradictions referred to by the learned magistrate relate to the circumstances in which the respondent said he had received the money and where he put the money after receiving it. Robert (P2) stated that he had ended the relationship with the respondent in an open place on a road and he was "supported in this, by his [Pbi] who stated that the money was handed at a cross - road. Charles (P5) who was at the time hiding in a banana plantation with his sister stated that the handing over of the money to the respondent.. it took place at the road end of the field. These were the only prosecution witnesses; he claimed to have witnessed the respondent receiving the money, and according to Kisika the respondent put the money in his right shirt pocket while according to Robert he put the money in his trouser pocket. The respondent also stated that the respondent put the money in his right trouser pocket. The main issue in this case was whether the respondent received the money as alleged by the witnesses. Here he put the money in his right trouser pocket and very minor issue which had to be dealt with only after answering the main issue. The trial magistrate had to address himself to the issue of receipt of the money by the respondent and the question of where the respondent put the money, which was a matter of credibility of the witnesses, had to be related to the main issue. This he totally failed to do. It is therefore incumbent upon this court, as first appeal, to consider this issue on the basis of the evidence and come to a conclusion on it. This is, however, also concerned with the 3rd and 4th grounds of appeal wherein the Director of Public Prosecutions complains of the magistrate's findings on the credibility of P172 and his overall evaluation of the prosecution case. I state that the respondent's evidence, relating to the facts, is: 3.10.4 in April..... 1 case, 3rd. 00... L/ 'oo_i'cc .. -rn - q - 'OL 0 11 I -nO ' - 0 I 1 LJ' - OLfU.00LTIO sriL Io0IT:D. T -Ta Ytq f' - : -cA CLfI T.IJqIM LT)L)UOEIS\I Oiq •oq UOA OA RO ' 0Li. U fIf OU .03j LII 01 1JJ °O0LT2IAO UO ' r TTTLIT(IO U\ .0112 ItO OS?C Lt" Tq4JO';q1) u ooput 0T0 SILT TT)M OL 00 LICt LV 'q .T1.JU10H os LTsflo paxnqo OAL2T W[IIOPA p0CY1012. OL 00L pOSE 0.I(LII L 9L1fI q.U0LI1!o0 '?i212tt 'OLTI jLTT -n1JT; GI11q qiocic-ns E4 I20I OL9 r 011 'pLIt [8t11I LT{P TTOJ t0 Rm. qttouos0 Lt (IS0.1 :tfl XLCIO 0 LTTh:S OA'OLT . 2000 CTfThI• cL[q12Lq P4"1- 00112 011 •UOJr1[ou 0q oJ'q. o oct qsno 1 U0I12AIOSCtO OIT,q.. p.i000i t[0fIs o O0LTS0(: LII iriy.o Ln In0LrSetaop S EII00LD1 tIO •0 xqsiihu OLTOr .ROL O121TT 0L J0j0X S12A sThTp'c)oo3xT t_fI UI OJOL{MOU OOUTS S11p' OO"JcT JC [I000J OLfE JC poqJodIns .4011 H qJJ 'IS SITL 10112LTF9 .X0 - 0ST)IO 1_IC'

SUOI.SOUTJ JOMOLTI? 0q qu12qo!r[ot O'O SJiC 2 J 29 0C Iocra JC Lt0I\.'I'7 OouOpTAO 0tT4
POAOTTOCIJ2TP T q-Tq P- oii:P p0LLI12Y[o 1 TI" 'LT3CI\$J OLTq oTr ,t' d000 O14 J2 212SEY U?
I2 OLq O: JOTT tOA/912M 0JOLT- 3 U' 140TPLIOr T12JO L[OrlS O"?J icLT SLF'T0Tp12.Jfl12'0
0L fl01Ti?L[oviq o SOr LITOd J1OJOJT'P 12 J0 LI OL1 1121TL OJtId823-.2TJ{qUO08
OA'OLT .LI12 8LTi' OOLJ otq. J Lj0120 212Lq U 1JJC[fIS s.1 cmuIa 'x LT3Ti 001P12' I LOU "LI0I
qio LI 'CISOJI OLi.4. Jq, Ro LILI a

- qcli000,i JO OfloOT c"qq ITO pOOJi312 8n8SOLt0IN 00I OLTO qdioOoJ '0/O1Tu 0Lfl IOqJ12
iO1TOti Ot[9. qfld qJropTncisox 0L OLf 'UO . p1112 '1 SI JO 0012 TAO OL.q 1.11
tToTqoTpI1_Iquoo 9121A OIDLf LifiOtfIT 1 'p If[12q p1112 qou.: ilo R:'q LTOTTPA
VJOOU'.dSO.X oLq'-=/oo lj pU'2T qI'co toLqrL ST OJOTOJc'Lfl. LIoTqoonb pC0U oT .
q.0C1,O'j oq P{T'- LT" qOL 2L' fIXOLTi:\ . 12OJ OLj. 1_TO 00'Y[di 13 oq po1oIo qJxopu: cTo'Lit
otq qi12TJ[q poAO.21d: MOTP. ,&U LIT 'poanp12 00U3'TAO 0L • D G -n LT, S 1 Trj3S0[OJ oq
qr(ThXq8 01T 'i7 aAo' o P0111310 OLJ T47fL[I? O111i2LT plm'J12 U.DT-'S ooiTOCI 0L JO1
OA'SLI oq pO4IT12pI? JTOSITELI qJT LTOCISO2 Otf U0A 'pOA'"(T,IO 2 CL OA2OLT •q011
PTUCLIS qo13Q'[q13 fT4M T13T34. 0L4 q, 1) 1 0U12Ap12 U '9120J TI 012M 0J0tJ
'SGOUqTM .qUopUOdOpUT 1112 S 12NL 0111k 'TSTIJL2I-1 Ic,,,CT Rq poq.ioclins oxo. &-
OLT pIII? "TJ12LTO puI.:0CSrT Ro, U0 OOSOC{O:p 811. oq4':uJ SITT• 1 13 O'O1 XL' ct 2 q12 J2p
12TLtoq13LI OL[1_IC qT""qo?j LTq' p.C12Ti121 p1_tI? 'OF OtT 0J21k 00121d.UOdO UI? O' p't"hi
12 110 Lt0Tq"8 ooIIOcl 0L. t'10IJ ioico quopu'ctsoJ 0L 12Lq 'p-2A0.'cd 1 1T TtiT0T41AI0AO
81111 fl 3ftITLJ. I ec)Tq3fl5j OLJq icq p.0P0T112 812 OctTJOL 12 912 =/oo si 0A120'I q07 1 J UT
EI) 01_I .X "1401_pA ST rJOJ'0IOLfl 01208.1 qXOU OT p0POTI12 812i 912 q.I000[UOIJ oq,'cJq,
12 C110T[OS q.OI3 UT TP iT0pL1_ d9E)J 0L[q, EIj14 T2rpLrTJ OTJtOfICIS 12 O?['2U
snouqotnio.Jio fl1T UI PTn ,) hk I •qI . riT RCI P ctTJ080P S0OL{13qSt1fl0ITO 014 UT ic-OUOTJ
J TIJGi UTOC'pXOI 1? tI0'EI'S PIP qJT0t12d8OJ CL't, 81 '1_4 p1112 'O 01100 po 1.T'fletT 1 t '1
(L121108 '12 OI 12 11011111 U T812T0TT'0 0TCTpOJ0 01_I') 1L10 ST 0.101_i; .11 TLq 'SOTIOCI
ntj; ot, qocIo.i S TLT J 0011" TAO :0L4 '
- UT Ul-, 6 OCtI.IQ 12 8113 (jJ1O011,dSOJ 014 113 Ao '2111 UTAT JOJ SLIM ;UOUtOU12LIo oufq
q12t[q SIOM 00U0 1: TA:" S I oracqoE 0 0 UT 112T,1012Lit 014 ..U0 'pU:)LSO.I .aqq 0t
\$U11J401IT0S JOAO)14'12Lf 0t, pIOC" .X"J i"cpj p1_TI? 0)111(3150.1 oU; 1T0'3I40 qUn
OP'1_fl".Jt1T3 UI? 8 .11 ;" 'om o.xot ;1214 1112 12 ;qnop 011 SUTLIULOJ O1t0L4 PIIAOTTOQ
1101111)1T12 POAOTTOQ oq 3q .J0,0t01O. p121_I OQLTO(TAO 13TH 0 pOiU0II12U0
O0TT0TITAU SIT; 81211 J.'T1 0;1?JqSTl2LI 1T?T:4 OLfl. .icq p.;C['0p ; '2" 91211 88014111 9 T
1T1I J I.T1TCLTPOJO 'tSOJ.1t12 S 9,111'p11'ldleo.1 014 .11,) 0214 2121? 121211 II J,T JO4C21 J
12 S.001100 'Ot, ;.I('CC oq OOIMq 12TL qJl"S 1L0pU0d8'LI 014 q11LTfl. p14'40 9LA (1'a)
oqtrl'2T3; TGTtrC'H 43 20110 TA' nLT; .Rq poqoddns
- oq, 3t. \$11009 UOIOJ089LI sq.xcq,n,j ;n (4TIfI :.UodSr).1 014. IcOL . p0TU9)
- 51111 TJ[OILTI:k T"Cl, j J'i OOUiIpTAT 2LT, JTIT' SI OJ.O1Tt. 8114 UO 0fl134 821311
q111OCIOJ OpIL. JOI40LTA CT 031110110121?, UOTqS"rOb OL • .0p2311 TIOOC q01'j 1,11
'31211 qJ0dO.I 1_Tolls OU II ci12n O1_1 "" .11121213 O12LT 11U P1fl010 00110Cf °IW •O8l'20 .
214 LET 1IITLI q'T""0 IT"? 1L1114 •OSTOIOJd 93 L1;TIA 1111_I 2112JJ O0,TJC 21? POPLT"t'IOp

p121_I qUopuOdoOJt "tr; 'ILT; OOTTOd 'i; .01). po;.x"clllx q;EOC[0a 1)11?LT ;çnop "LI 081 2 1? T 011'Lç IC)OIJO 00110(31 12' 812 R;IOI3dI?O 811_I UT •q,u: '110(18 2,1 0111', XC) P I'PU14 LTTO.0 81211 T3TI? .08120 12 T2LJ q 012 J UT j q,"?L4 poA311d XT (1r.t12 013/.1 1)T qooc1so.1 STL4 U] pDThTII' r'12fk 812 lTtO.JJ 2C[t-Ict 113 pi4lOT[:S qJT0fUO(1S211 1).12T.4 T,,)SAO11CT 8312/A OT I'L401,TM \$' OEJU'O 0 1 14 UT 1312', 81 ;S111J ot xq

- 9 -

- 7 Rohert's assertion of the pro = arranged ncoting with the espen er.t ws c>rru' rLYLd 1r the tetin. ny of nsiachiar±i (P/3), nis. evidence sh...ulci have ben believed as his credibility was nt.t successfully inpecind to any dogJ:uo.. Thoro 1 c tan t s qa bi f hc circun t no s uar \ hich the She. 200/= eas tpickedf frc.ja th. vicinity of Cl.;ctin's -hcuse. It was ccrinen gr wad that, 12.'71 and ?J2Lv.rhdn taey t..lcun ef CO his 11avill received a and th.t ho enly SubLiittd. to a se rch after beign so oreor.d. cy . illS suJ.acicr Tidclis (P\T4) :.... stated. that the fight took place horo there ISB tli..t the grass was ..h ut 1* fact tall. That is where at s.id ho picked the incy wnen h, at cut .:F S rOOLI to search ar.und the builaing. That :Ls what tho.cthur natrial pcsecutien witncss.s also st:.ted alth ugh hnc of then actually sa.' hire pick tho FICIICy. The iaunb.rs .:L the two eu.rroiicy net...s u picked talli;d with the nuiib.rs ci'tho.. .piice of paper in poss..siLn of Kisia. Since the si10 notes were hncL;d t.. RThert by Jisika at the ti.ia. cf la•ing the trap and the sane voro feund ct the place where the rcsrneent f ugh the two policonoii, only (.110 inference could be drawn and thai; is tht it ws the rsp.ndqñta. who throw it there in th course cf the fight. The fabt that Pideli I s was nt search..cl bof crc he wont cut or that the other two police officers were Llsc nt s arched would act change th. eituetien enco their credibility is £J.Ot ..d : ITht0 In fact ib uld ii ye ..n pr c ic 1 a. iosoi nility . { r tn.c rasp J.I to scorch to polioc ci'.icors a10 ccnir itan hir. since ho im..diately jurp...d an thoLl vhon they tld hiLl of their sUGlDiCiOf... a ceuld conuctLdnly be interpreted s knvcil..dgo oi his part that what ho had (-1 no h.ed bon dsccvorcJ. It cLL.rLy a reaction of a p.rs..n with a gixilty c.ncienco On tins evidence, I an setisfid bh rce)t .L the S 200/= by bIIC rcsplucLLnt frn Roberb was proved buycncl roesonibl.. doubt and that it was rcspenT:ent who .uring the fight throw the two urracy notes .. whore Pideli's picked SanG. Reb e rtts oxplanatich as to w.Iy. ho 1a,.dcd to the rspohdnt. only Shs. 200/=. and not the whoLo Shs. 200/= given to hire did nct affect. the evidence of .±ecc-pt of the Shs i 200/=* it wao in any case not an unreasonable explanation. The only questi on rciaaining thorcfcr; is who thor Land he corruptly sulicitedLroceivd the aeney. Having accepted Robcrtts .evidc.ric.a. of the.....rcunstances leading to the giving of the n .noy, thero rename no doubt at all th...t the rospc'ncLit corruptly solicited and rucciv.d the

s. Thorc is c W. ubt at ll n t wnLn h... d d frou Robert ho was so .Jcixig 'ad.vanago' within, the . Leaning of . section 3 (1) of the Prvention of Corruption At and that the denand. was raad.e as an induce':.cnt to lore aQa' prosecuting him. This'. moans that the charge laid against hiri under scct.ion 3 .(l) of tho Prevention of Oorru.pticn Act was prevod. beyond roas'. noble doubt. I therefore .greo with the cLo.pl...iilt by the Diroctu of Public Prosecution that the lanrned district L1c.) iStTL.tJe erred in holding that the presoc. tion had fail ni to prove its

c.50 beyond roas enable d ulat. I find tho pr9eCutien .eas. to i -r ye been so xcovod and I accordi... gly sot cesiOe the r'pono.ent's acquital en that charge and substitute :thore'en C. cr. nrictc.n The rosp. iieunt thuroiorc . stan.s ccnvictod f ti ffanc.. ccrru.pt ransctin ith gent ccntr..ry to s...ctien 3 (1) cf the Provantidn of Corruption Act. I would. cnJ.y rj.n,rk tht tac inclusion :f the ..lternativo chergo in th.. chrgc shet en which the was triad, was chrgc inpropor since c. nent to proceed \iith 'GJeo.tLas provici. d by section 18 of the Act was never obtained. In any cas. there was no evidence to support tho oh. .rge on the alternative count. i\\) .

- f. 'j3 • JUDGE. . • ,/• Dc1ivrod in c t tai 5th to of uly 1976 in the prscnce of Mr. FinJa State Attorney but in the obbsnco of the respondent. Mr. Pinda: I rust tha a warrant of arr, si io issad s. tht the rospc.n ; . out can 100 brought lce thi cL;ut for sentence. Order: arrant. of nrrest to issue against respond.nt* th i-i should cnon, Ba orught cot ore his c.sii i or sieonco .iJL10 C!.iatoly on arrest. F (JUJC1L. 15/10/75. Corara: R. B. Ma.nga. - Judge-. Mr. Pinaa sr the Repabic aiDi)ellDOit. R-csp. ndent presonc unuor arrest. Mr. Pinda: Respondent has coon br:ught to OWt under arrst as. was ordered by this c;urt on 6th July 9 1976. Curt Bsp ud rt ii r of the subs nec of th jt Jg nt which was delivered en 6/7/76 and is asked if he has anything to say Before sentence. RospenJnt I a ia a, young p CL)1 e ira f L aly 'f thr. My parents are very . -old. :ed they were dopncient i l ne. I hav a young o y hc iS eepacLiit on iy sun, crt f I e acati on in a p1Vu Sc ry I i iarrid with t o cnildren. I rquist tic c n 1 uc - Le ii t is into ace unt since if I an sent to prison ny •iaoily is B und t; suffer. I do nt intend to appeal. S E h T IS ii C IS Athcugh the rcspondbnt is a first offenJor and a •young person with heavy fenily rspaasibility this court has no discretion to; •iuposu -. santo-nec lss tilCfl the ;einis:oun provided. By Lie Tji ani S Laces act 9 1972. The rL spnoent is acordinly sontehccd ta ;3 years inprisinmaont which is the n±iinaa sa t.eico under - the Mininun bcnt•-;ncos Act. M;ANZA. R B. B. IaCN 15TFI-0CiOB-R- 9 1976 JUD(E.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/350025/source_file/713478d2f2b63a20/19761015_TZHC_Mwanza.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/director-of-public-prosecutions-v-pc-lilavi-corrupttransactionwithagent-tzhc-1976>

Prepared on 14 October 2026 · Esheria