

TANZANIA / JUDGMENT

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IN THE HIGH COURT OF TANZANIA AT 1111T7AUZA. APPROPRIATE JURISDICTION UNDER (Mwanza Registry) CRIMINAL APPEAL NO. 434 OF 1972. ORIGINAL CASE NO. 848 OF 1971 OF THE DISTRICT COURT OF BUKOBA DISTRICT AT BUKOBA - BEFORE: \R. LLRANBA ESQ., RESIDENT MAGISTRATE. EMITAIJI EL KAI. AIA ORIGINAL ACCUSED. VERSUS: THE REPUBLIC ORIGINAL PROSECUTOR. * CHARGE: 1st Count: Making false document c/s 335(d) of the

- Penal Code Cap. 16 of the laws. 2nd Count: Uttering false document c/s 342 and 337 of the Penal Code Cap. 16 of the laws. 3rd Count: Attempt to obtain goods by false pretences c/s 302 and 380 of the Penal Code Cap. 16 of the laws. **THE DEFENDANT**, J. MANUEL /O KAHWA was charged with and convicted of making false document, uttering false document, and attempt to obtain goods by false pretences-contrary to sections 335(d), 342, 337 and 302 of the Penal Code Cap. 16 on the first, second and third counts respectively. He was sentenced to concurrent terms of imprisonment of nine months on each count. He appealed against convictions and sentences. The learned State Attorney, Mr. Mbilinyi, 'appeared' for the respondent Republic. The appellant was absent at the hearing of his appeal, as he indicated, in the petition for appeal, that he, did not wish to attend but his grounds for appeal were taken into account. The appellant was employed, as a Senior Laboratory Supervisor, by the Tanganyika Instant Coffee Company Limited, Bukoba, - hereinafter referred to as TANICA - at the time of the alleged commission of these offences. Although his work was confined to laboratory analysis of quality of coffee, the appellant could go to the general office, where the storekeeper worked, as the general office was accessible to anybody although instructions were issued to the effect that employees of TANICA, not concerned with the general office work, should not go there. Mr. Clerk (PU5), the Manager of TANICA, said that these instructions were often disobeyed. The appellant employed Ernest Kanyankole (PV4) as a house servant. It appears that the appellant worked in two sessions: the first, one lasting to 12.30 p.m. and the second one from 2 p.m. to 4.30 p.m., and the appellant usually returned home for lunch. On the 15th day of December, 1971, the appellant returned for lunch as usual. Besides his servant, one Simon Francis (J7) was at his house, "Francis claimed that the appellant was his brother; Soon after lunch the appellant returned to work, and after his work, Kanyankole proceeded to the centre of the town to buy some items specified in the order, which he brought with him. **THE DEFENDANT** VOL 1 of 3

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- As a result Y Kanyankole and Francis were arrested. And, acting on information received, police constable Masawe, who was accompanied by the two suspects and Munyagira, proceeded to the house of the appellant for the purposes of conducting a search. They were armed with a search order, (Exh. A) and the appellant was present when the search was conducted.
- The said police officers recovered 10 torn pieces of papers (Exh. D). The torn pieces of papers were found on the outside sill of the window of the room of the appellant and/or on the ground immediately below the said window. The examination of these pieces showed that some one had been practicing to sign in similar manner as the signature Exh. B against the words Factory Manager. Two letters addressed or copied to the appellant, and a sick sheet, issued in the name of the appellant, were recovered from the box of the appellant. These contained a genuine signature of Mr. Clerk, and Mr. Clerk, subsequently, handed over letters (Exh. L - E5), to the police officers after he had received them from the appellant. There was no dispute that the letters were addressed, written and signed by the appellant after he had been arrested for then changes. The appellant was asking for financial assistance following his suspension from duty, and pending the determination of the criminal case which was then pending in the District Court of Bukoba. In his judgment, the learned trial magistrate found that (a) the appellant was the one who wrote and signed on Exh. B without the authority of Mr. Clerk thereby committing the offence of making a false document contrary to section 335 (d) of the Penal Code, (b) the appellant, through his domestic servant, uttered Exh. B to Gulamali, thereby committing an offence contrary to section 342 and 337 of the Penal Code, and (c) the appellant, in presenting the document in the manner he did, attempted to obtain goods by a false representation. The trial court found that it was of no legal importance that the appellant was not physically, the one who presented the document to Gulamali for the sole purpose of obtaining goods specified therein. In other words, the appellant was found guilty on all the three counts. The circumstances of this case demand that I should begin considering this appeal by the examination of the handwriting evidence led in this case. That the appellant made issue of this, and is still making an issue of it, is beyond shadow of doubt although he was not specific in his language. And the main point was the alleged Exh. B itself. On this document there are at least two matters which fall for consideration: one the writing in biro pen in the body itself and two, the signature following the words 'Factory Manager' appearing at the bottom of the document. And the question was whether there was any proof that there were written and/or signed by the appellant. On this point, Mr. Clerk said that although the signature appeared to be similar to his, it was in fact not his signature, and that he did not sign it. This is conclusive proof that it was not signed by Mr. Clerk, who is the one authorised to sign orders on behalf of TAICA, and, therefore, since he had not authorised such document, whoever made it, did so without his authority. Mr. Clerk said that he did not know who signed the said orders. As for the handwriting in the body of the letter, he said that he was not certain if the appellant was the one who wrote it. On the other hand, inter alia, Munyagira said that the handwriting on Exh. B was similar to that of the

appellant • It was obvious to me that the evidence of Munyaira ought to have been taken with great care because he admitted that he had not been in good terms with the appellant although he claimed that this did not affect his impartiality in his evidence. This may be so, but a court of law cannot be certain of this. A human mind is capable of strange feats. Unlike

- the learned trial magistrate, I would need corroboration before I could accept his word on his mere assurance that he was being fair nevertheless.
- I find this corroboration in the letters which were admitted in court and which were accepted as having been written by the appellant after he had been suspended from duty following the allegations of this case. The 5 letters showed that the handwriting on them is so similar with the handwriting in the body of Exh. B so as to make the said handwritings indistinguishable. This confirms the evidence of Munyagira when he said that the handwriting on Exh. B is similar to that of the appellant. He was familiar with appellant as he had seen him write on several occasions during the two years period they had worked in the same company. Kanyikolo too said that the handwriting on Exh. B was that of the appellant although he had, worked for the appellant for a short period of six months only. I find, therefore, that in the circumstances, the trial court was entitled to hold that it was the appellant who wrote the order Exh. B. As to the signature, Kanyankole, like other witnesses, was not able to tell who signed it, but he testified that one, day, prior to the date of the arrest of the appellant, he had seen the appellant practicing signing on pieces of paper which he, thereafter, threw them out of the window and he identified those pieces which were recovered by police constable Macawe. This evidence once showed that the appellant had been practicing hard to sign as a Clerk would, and this would not have been without a purpose. It goes to add to the evidence led by the prosecution. Kanyankole was the one who was found in possession of Exh. B and who was the one who presented it to the shopkeeper (Th73). The learned trial magistrate took this matter into account when weighing the evidence of Kanyankole as there was a possibility that Kanyankole could have been a person with his own interest to serve. Nevertheless, I agree with the learned trial magistrate that Kanyankole was a truthful witness and his evidence ought to be accepted and, even if one felt that he could have his own interest to serve, there was sufficient corroboration on his evidence in the form of handwriting evidence. He said that the document was given to him, by the appellant, already written and signed as he presented it to Gulamali, with instructions that he should collect the named goods from the said shop. He said that Francis (i7) was with him, but Francis denied this. However, the trial court found that Francis was a junior
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