

TANZANIA / JUDGMENT

19930209 TZHC Dar es Salaam

COURT
TZHCDECIDED
9 February 1993

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

DI TEIE mar:: COULT OF TJN"/411~ a ~ ES SALA!ttr · ORIGIN.AL ,T"tlRISDICTIONli ECOimMIC
CRn.m no. G OF 1969 REPltJLIC ve:rsas .. ~ l1 GULAMATIDAS FAZ.AL 2 • ITATIMU :MIJLLA
AD.AMJ'E RULIHG \I \ MKI1.1).f,, . J -b \ Tho two a0ousad p&""l:lOns • GULAt1AIIO.IS' .r.AZ.AL
end. ltl!l:' "li faJJ.i,ng beitti8911 1faam a total o:f eighty . _ two, counts ir;v,. · V_~ offences under
the _E:ip:~i,9nur,og C~;ntr-ol ~ o o (~ow ~ a.:i:il , r (~ by th~ . Forf.d.gn ,Ezohenca .Act:, 1992) a>ld
t:ie Foon(ltllo and Org~.l.:i ! -- -'L C:rirae Ccn t:rol !ct, 1964;. In twenty,,seve-n ()ounts the two
aocused. pe:~1 , ,<.:) are o11.a.Tged \ with nakil1G a p~rntent to the ')J:Sd.it of a. persoll
~.dv,r ::.;1 ihe s">had.ulM~ tam.torJ by oJ:<d.e:t' of a. parSdl1, rrosident outside the
ix:ii>, ..flu.1#.,o:r:ri-t;or.r c/s 5(b) ~f t:le E:r.chango Colltrol O:t'd.:i.naneG and ~~ 'J, of Part II
~f :.: the Fifth So!ledule to the Ex:o!ia~e Control Ol'dinan<¼. a. r~ ~og<rthe:t' ~wltli. _ ..
section 59 cf t:W Econooio a>ld ~gani,zod. Crime Contr~l ~.o-t and Paragr:-e,ph / . . l of the fust
S::tb.Gdule t.-l t.:la Eoo:tomi~ and O:rganized ,~;-.i.raa Control .Act~ The pa:r.ilicJ.ua:i:ts et
t~ffonoe in all -the twenty-seven 0~1.:,r:\s a.re that the first and. seo.oud. ac<JU.OOd; both of
t:iem residents of tl16 united. Repu'blio of Tanzania. a~ :Da;:i: es Sal.a.an 1ritllout thci permission
cf iu.e :Jalik of Ta.nzanio.- m~ a Pa.7Jl1811t ill Tanzania sbil~~ to PAMOmE!GrrT I.iJ!D, a oon~e~--
x\ ., in the UniJliod, Ilepubl..i.o of 'I'amcai:d a and therefo~ a, :r.resiclent of the Sohedu.1:ed..'-..
_Te.n1:tarles by order :!f one La..~ton Dc:ilca'\$ who is re-sic1.ant outside the · scoodu.J..2)d.
to:r.Tito:i:~y ~, wi.t, Zn0bia.. The offonces a:r::t alJ.o-ged. to have been '60;:J.Ci t+..ed. bo-
tv!l'OOl'l May 1905 .ntd. '!:r:ray 19&3., s~t of. ~ - i e n counts ~he two .a.ooaoo persons are ~1
~1ct:1.Gl!' · , ch.a.rgad_ vri t:i. ~wg a- C>:!O'PGl1.sallio:1 deal. o/e 7 (1) cf tlla E:mbange Con-
bro~.' Cixclirur.1<.,e__ wd. _ :pa;oo~h..J.. o:e~:tt:_p~t.b&:~ So.hewa o~to - t ~ : ., \ I Control
Ord.b1a;100 read togetha;:; ir.tt:i soct:i.on 59 of tho Eoonoraio and Crga,n;t~d. C:d...:10 C-cntr:il
Avt and Pat'ag:i:aph l of the F:bst Soll.odl.tle to the :&-onomio ai."ld Organ;i..zed Cxioe -Control
J.ot:t:1 rt is alloc;vd in the particulars ;;if offence that t.he two aocus~d pe:rr;-:,ne\$ bot:1 of them
residents o:f t:io soheduled wr.ritoxies in the Ci-;;;r and 'Ro.:;i.011 of Dar . as .Salaam wi:h:lout
the permissio;1 of the Dank of ~- 311zanin.· nado a. pa;ym,ent ,f the sum of om.toy :in
Tah.til'.ltia. S:U.11.ings to PAM(>i'fiEIGIB', a. oompaiiy registei'Gu :i.:1. th.a United. Republ:i.o of
Tanzania and the:rofor-a r. resident of the i;o21ec.lul.od . terri to1'io a as 0011aj_de:ration~.f o:t
~.,r, i::t assooiation 't-tith the aPqu:isi tim1 by Gu.'!ana.bba.s r.aza1, the first ac,;~used, ;;rt a;:1
assortment of go0cls :i.."1 t:io u~li fod IC:ii,gd.o:i.. '!rn tho :.C:L."1.al sot of -h·roli.ty.-oi.ght
counts only the o bnd. a.oused, Ea.tir:J. M.:tllo. AclaoJi, in irr,n.:;1voc1., Ho :i:s charged with
pc. ~Jssi.011 of p:top~r suspootod. of hav~i.ng 1leG11 stolen or unlaw.full.Y f.:. bi.red t oont:r.a;ry

• (1J) of the First Schedule to the Eooa, ~ to and Organiz.ed to pa,Tc3t,<7'l'a.ph [l (1) Crio
 Cont;J;tol Act.. J:t :ts allGGod in the pa:rtioula:rs of') t'onoe that the accused 1fr{,D.i11 tb.e
 RGgi-:,n b:f Dal' os Salaam was fot.ui.d i.1 p, · !Session ('r · C. ha.v"iltg 0011-m.ol of si...us of
 mone3r in Tanzania.. shillings~ p!"c,1o:t"ty whioh · having regard I'- to all the citOtr1st~1cos . is
 reasonably 1:J,..1.Speot.ed of hav.i.ng beon stolen or ~Ji;:1erw-iso tutla.i-rfu.lly aPquiJ:'od~
 Shaidi,- loa;rnod. 1?rii.toipal Sta.te Atto:rney1 cal.led f"ive pl'()seoution M:;;,. witnesses. SJ1d.·
 Olosod the case for the prosecution. M; t~rl.s stag-a both M:r,. Ra.itha;'~ lea.Tn.~d counsel fo-r
 Ji;lle first accused :-..o.1d 1,~. Isna.il ioa:rned 0ow.1.sel fo:r the second. atl0used1 su.br:tl t-ted
 that t~o:re is no ca.a~ to on~ and \liJgoo. the oourt to d.isoiss the o:lu>.:rge u:..1d.8J: tho
 provisions· of sectio11 39 o:f tho Economic and O;r,gru.tln-::-d Cr...na Control .Ao-t and, _ acquit
 tho aocusod... \$cation 39 p:r-oV'i.d.8s as followsa "39~ At any st~~ o:Z tie p:noooed.ings the
 Co-;o:t n&Y, . if SD.tis.f'iod that tb.o accusod person has 110 case . to answer 3 disais.a fuo
 oha;rge and acquit tha aoouead l)G:L' sono tr , The bn.sii of M.1•,-: R2.itha:'c,~--:, -1a su.bni.ssion
 on behalf of ilio first aocused, ~u.lamal:>1Jo.s ~-:J., is that, thei.,a is 110 eV:i.denoe whatsoovar
 ag\$st hi.mo Accordinc -to P~ 'vr .. l on'3 l'<usht&::aJ.i _Gulanar.1:-;as, 1 t was him, tho witness,_
 who receivad a. te:'X3phona oaU. w}lonevor his br-other Nohdi so:..1-l; or ims ' . about to send
 G'O<)ds to Dc:t: os Sala.a.'J., instructing hio to 'l.:ooc:i.1ro. aJ.1d. seLl the goods attd thun pny all
 Jli:..10 proooed.s to PtJilOF.REIG::7.:1 :JJ:::-" Mehdi is a, bu.sine~~- based_ in ":1:it'rJ:i
 n;~~_Eng.:G.n.d.,..... ~ good,g P., WJ :roceived. ~rG oominG" .fxor:i different oot111trios abroad
 and the wi t:tless testified that ha did not l;::..101r llow P!ruOli'.ftEIGIT::1 Ili1D waa involved with
 the coods,. Ile t,nly · al)tad on insirt.-<ttotions from his 1,:rothar. Mr. Ra.i thatha s-...1.br.tltad
 that tM first accused, w:..io is the :tatller of P.'W~1 toolc no pa:rt ili the telephon~ · oonVet:satio11s
 between P;w.1 and Mahdi and there is 110 cvide.--ioe to eh.ow . that ho was i.11 o;-cyway
 im.r.,lwd. il1 -'.;he :roooiV':i1lg of ;;ha eood.s Moh.di sent ("):t' in pB;l/'illg tJ.io proooods to
 PAJfil1EIGill1. Tlie seoo11d. accused was an o.11plovee of PAMOFR.F..."t 'l!!' ~ -wllioh had i to
 Ma.dquar'te::s in Zanibia-. Tho aoc ttsed worked uidlor i: rt:ruo1~tons f:rom o. perso11 oall~d
 Daka, the lbnag:i.lig ~eotor of PJMOFFJ.:;:am.. P.1r.1 testified that he dealt with the second
 ~cusod when ha was paj'il~ , :sG :prtio'3ads of sale of tho c;oods he :rocoived fJiom Mehdi but the
 proaodut.:l. i:. i teolf Palled P.lf,5 r.no Yasi:u illy .il'bu.allah., li:10 testi.fied that PJ.UOFIU:- :tLT
 LTD had authority :f'ror.i' "i;:i.e Dai-1k of Tm1zonla to oparll.te an ord.ina;r:~ ~~~8Jlt aoc"unt ,
 into whio1l uonoy in both local and :foroign cu:rronoy ooula. · .. : 1oposi ted.. , ' T1..1ere is 11.0
 avid.mi.ce~to--sb.ow:tl.u.t t1lero was ary ooopollsc;i,j1. ~- :...oal between ' . P.l.MOFREIGIT
 and. the first aPCusod or D1tyon0 olet, Evon i? ~~, t~ was S1l.Y I .ch deaJ. ~hore is 110 evidence to
 s!low~t1tat tho second a>><n::: l wn.e a. party to it.. As 1•0.:;a.rd.s tho offence of 1)eing in
 possession or htc:-G control \ -. ---. .of property i<aasonably f;u,c;1pooted of having boon
 stolon o:;; ,)?:.,, mse unl-a-w- fully acqu.il'od l,k., .Lsm;J.'t. sttbni t~tod. that the evidenc<i slu;rs
 c.w.t the money PoVol paid bolongod to P!MolffiEIGJT IJrD and was paid into ·L.:~0 company' S
 aPcount. Thus t.:1.0 second aocu.sed is nl')~ in MYWDY i11 poJ ,~3s-sion o:r control of it~ Not
 su:rJD::i..singly, Mr, Shaidi, loo.mod Prjncipal State AttoJ:'lley, had . nothing to ~, :i.n reply
 when~l.less:t'a Rai thath.:i. tirid I.soa.il oonoludod their subnissions1- Tia aio.p'cy ecJ.idt U:(~ve
 nothing to sey in roply, I leavo it to t:1.0 .cou:rt to dooid.8, 11 t is appa;rmrl; f'rora the
 oVid.enoo a.d.d.uood in this case that tb.a prcsooution I has failed to ostn.blish ovon t~.10 1Jasic

ingredients o:E' t:1.0 · offeltoos ,,-hargodl and so it would be unjust to call upon the
o.ccused :porso11s to defond thensclve-;;, For the offences of nald.ng a, pcynent to the orodit of
a. person re.aide;.rt; in. the schodulod torr~ tory by order of a l'.lC:t'son resident outside tl:o_
soh.odulod.. tor.ti tory· t.:io "prosoou-tion hc-,d to· a!o1r t:hat tho ~ pcrson.s did oaloo the
pcynonts ;(Qr tho oou:rt to- ,)a.J.1.; upon t!iom to_ def'end thoosalvos by a:ioll'ing that t.:io:r did
so with pomissio1t of t:10 Dame of Tanzania.. As i·b hn.!)ponGc1. i;:1 ,G:1is .)n,so it wn.s Po1i'j}l
w:!O actod on instructions from his broJi;1.i.or i11. Dil'D:i.nahao c111d not ~ :;f tho accusad
parsons. Si:--:iilc.rly, for tha of'foaoo of a. coopcnaatio:n doal 01100 it is shmm tlu>..t
t:10· :;i,0cusod had not:mter to do with tho payno11t of nonay i1:1Jd the account cf PAl1OFREIGilT
the:ro is no wey they oa11 be acid ~ :lavo boen involved :i.11. "who oor:iponsati011 doa.l, 'μ1
this· co.so ev,~n t!le rcd.stonoo of tho doal has not boon csti:.blis11od sinoa P,Wo-1 -who
would :1c:rv'o tl-i;ro·wn light 011 it t<wtifiod that ho did not know what P.A.F0:·.1.REIGTIT IJrD
had - ~ in :roturn. Sootion 7(1) of t~~ Ez.o 1.1nngo Cont:rol ora~1nai-,oo provides M follows, 7....
(1) E.&Popt with ~ pornission of the 'ITo:i.su:r:,·, ne 11 poxson shn.11 ill tho Torrirory, and no
l)Gl.'SOL'l. l'6ddont i:~1 tho tor:r:i.:to:ry a.l'.Jll outsi.de the TorrHor.r, nol:::o on; pa.;rr.10-yt to or
for Ji;:10 orod.it of a per son 1'e-!~li~1011 t in if:o. ccl1odulcd to:i:T1:iiorlas J¥3 consid.orati9;.1.
for-2;~ _::,ctF1ooivJ,ion wiJi;h - .

- (a) 'ti:::o receipt by ro.r; person of a p~cnt uado (~_ttsido t:10 schodul.cd tc:rri.,roriosi o:r tho
a.oquisi tion by til'IY ·. po:i:son of propc:rtiy ,l::iob. is outside tho sohodu1..:id t-!l:l'i,~ o:tt
(1J) tho tranGfor ·to aJ-'IY person, or tho croa.tim. in favour of' o,;:iy person;, of a :rie;l1t (w!
lcther J)l'osc11t or futttt'o, aml whether vctoc1. '!.J.' contil.1£,·ont) to rccoiwo a p~r;icnt >
out.s:Ld.0 -\hr. z,;hcd1.u.0d tor.l'i:itorios or to a.c<rili'o pro party / 1r~tlcll is c:r1.t1ddo ~:10
sollodulod to.'!i toztias." (:Ebpb.n.sis su.ppliod)f, As rog_~s t:10 possession cJ.ia;rGo I
Dg.roo with ~1:r b Isnail, lo-arnod counco1 f'o:r tho scoond. oPcuaodj -tho.t tl1oro is no
cvid.onco to sllow ~:~k.,,t tho B()O(fflO. a.ccusod wo.s in possession or 0011.tr-ol of t!10
money po.id :i.;,1to ·i;ho· aocunt held by. PJuiOrn:EIGJJT LT'.D~ iTo11.o d~ t~10 wi tnossos
to.st:ii'iod. -tl'l[l,t ho found tho second a.oousod \rl. th ~1Y of t:10 uonice ro.1d as tlwro is 110
ovid.onoo th<t he w<1s a. di:roc·!i:,r or ov_o11 s101.2·t-0zy of tho account o,r1od i . , y - , , _
p ~ LTD tho clccoat of· cont·rol is totally o.bscent. I11 Ji;ho :rcsL11 t I uphold bo-tb.
subr:lissions of no oaso to .:m.swor and' I acquit tho o.eonsca f:'Grsons o:t t:::is stngc,.
JU'DGE 9/2/92 __, "I 5 9/2/93 Cor1)P I NIW:OE' J. Mr. IWITU LAY r,mu~m Mr. RA.!TTT.ATITJ.
f~ first nooused. i1lr. ISJJ\IL for 2nd o.ocaaod ·Mr, Si""IAIDI Principal Sta;oo Attorney for the
Ro;n.1.1)lio c.c, Hr. KASSIM· COURT Ruling doli ~~ . wrod. in opo11 oourt, L· MKUDE
JUOOE 9/2/93

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/342436/
source_file/99de5ca86df5bbbd/19930209_TZHC_Dar_es_Salaam.pdf](https://media.tanzlii.org/media/judgment/342436/source_file/99de5ca86df5bbbd/19930209_TZHC_Dar_es_Salaam.pdf)

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/exchangecontrol-tzhc-1993>

Prepared on 14 October 2026 · Esheria