

TANZANIA / JUDGMENT

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- p. IN THE HIGH COURT OF TANZANIA, AT KINZJ APPELLATE JURISDICTION HIGH COURT
CRIMINAL PPEIL NO. 131 OF - 1977 (original Criminal Case No. 234 of 1976 before the District Court
of Geita District at Geita - Before F. N. Buberwa, Esq., Senior Magistrate) FRJNCIS
LUNY.MJ. Versus
- THE REPUBLIC. 0 " RESPONDENT CHARGE:
1st Count: Conspiracy to commit a felony c/s 384 of the Penal Code Cap 16. 2nd. Count: Store
breaking. and Stealing c/s 296(1) of the Penal Code Cap 16. J U D G M E N T KITITI, J.: The
appellant, Francis Lunyarna and another, were cut of the fourteen people originally
charged, found guilty as charged, convicted, and sentenced to three years on first count, and
seven years on second count, sentences to run concurrently. The appellant, has appealed
'against both conviction and sentences. The appellant does challenge, that the evidence,
was insufficient, to lead to his convictions on the offence, charged, and that the confession
that was alleged to have been made by him, leading to the surrender of Shs. 2387/25, was
never made by him, and that he surrendered the said amount, because of torture, that he
was subjected to, for prolonged periods. Describing the tortures, he experienced, the
appellant said that, he was violently beaten up, pins, driven into his rectum, pepper
powder inserted, or, driven into his rectum, rendering him to surrender his savings, that he
had laboriously saved for, for a long time, to avoid further torture.: 'I shall start with
the 2nd count. The undisputable facts, rightly found by the trial magistrate, were that on
23/7/1976, Katoma Co-operative Society Ltd in Geita District, was stormed, broken into by
an army of thieves who with the help of explosives, stole, and left with Shs. 881 000/=.
Persons Nos. 11213, 4, 5 and 6th, were convicted on their own pleas of guilty, and . . .
sentenced accordingly. Accused No 7, the appellant, and accused No 8, pleaded not guilty,
and hence, the trial, The appellant was arraigned by PW5 14 7288 Cpl. William, on
information received. There is no running away from the fact, that the first search that the
appellant went through, revealed only / Shs. 47/65. It was PW5's evidence, that out of the
47/65.1 was a 05 cent piece, that appeared to have been damaged by explosives, the device
that enabled the stealing gang, to have access into the Katoma Co-operative Society's safe.
On the 27/7/1976, PW5 testified, that he was led by the appellant, to where part of the stolen
money was, and as what transpired between the appellant, and PW5 may best be gathered
from PW5's testimony, part of which I quote hereunder:— "On the 27/7/1976, I went back to

the accuseds home. !e' said, he wanted to show me, where he had hidden his share of the stolen money, so ' that I could finish the matter'. I weit to the , accused's house with him, and he pointed at a place he had burned, a tin. ' We dug it out, and found it containing Shs. 2 339/60 1 which I now produce together with Shs.,47/ 6 5.. Jccused told me, tEat all this money, he stole from Katoma Co—operative Society. I brought th'accused No 7 back to the Police Statibn,,. apart from the above, the appellant had been found in possession of MWLDECO Bus tickets, to and from G.eita, the latter being dated 24/7/1 976 .1 a day'after the,:thft. Llthough the appellant did say, that the said tickets were plan- tea on him, I am, like the District Court convinvecl 1 'that that is not the case. 'Ib'elieve, as did the D'istrict Court', that::'the same

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