

TANZANIA / JUDGMENT

19931108 TZHC Mwanza

COURT
TZHCDECIDED
8 November 1993

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AT r1i'TA.NZA APPELLATE JURISDICTION: THE HIGH COURT CRIMINAL APPEAL :ii"O. 435 OF 1991 (Origil1aJ. Crirr,inal Case i:Jo~ 400 of 1'7Si of JG:2e Distl'io:~ Court o:f Serengeti ·Distl'ic-i; at Muguimi :Sefo::,·e.: J.B. J.lliAGA:,~A Esq., .9 i)t"" -:----:i.c·i; Magistrate) FB.AL\J"CIS s/o CB:ACIIA t i g g APP:E:LLAWT Versus T::=:E liliTII'ED REPUBLIC g : : g s t c i & i g : : z

RE3PONDERTT .TuDGMENT The dis~riot court of Serengeti a:t I::1[,Ts1u met~d out a s/o Cha.eh~ consequen~i; upon a conVid;iol1 fo:::, Assesso:ry after i4a__fact, contrary to section 387 o2 t:10 Penal Code., .Je was aPqu.itted of Cattle tb.ef't.9 contrary fo sec~:ion 268 of t.lie Penal to section 273(b) of ~he Pe.!'lal Code.,· The appellant, who was the Ohai17.2a,;.1 o1 EbalimbaJ.i village, 1 had been jointly ch3Xged wi_-l;b. his two ool1 leaders, J.farw-a s/o I:I:rango and lfasana s/o Ifarwa9 as ~lie .f.i~ second and t.1.:ird. .. a.ccUGed, respectively, who were a,eqci.~;;;ecl oi: all thJ counts. Feeling aggrieved by bo'ch conviction a.:::C:. sa..-ite.nce.9 tl...e appellant has 110w corrie to this court. The 1 earned advocate for tb.e a;ppcllant,· Mr. Kabangwa_, arcnecl. the appeal before me, in the prcs0:10 0 of the 1 earned J l 3 1 · lioc~1oed cattie dealer.. l1ll~ cattle c'id no~ "Jelong --,Go the MbaliLibaJ.i -Vilk.,ge as alleged. il1 t:ie charge ·sheet, L::: fact, the ovinership also accou.nt for- ·i;he f2..ot -'Gb.a:ii Amosi w;~i,n 11ai~\lor charged nor called. as a witness despite that he w~s i;~1 "&1e village, ·lie had ~, appellait had assisted Amosi to escape pt:i.ua:::iment. It takes evidence which is .legaJJ. ;;r adiJ.is·sibie-in a 001-1.rt o:t law ·i;o convict a p'3I'so:1 of a crime. Si10:1 evid.e:1ce !las to Such eV:idenc e, it would appear, 'Go~i;aJ_J.y lz.a)::ed in this case, a:1cl 3,ppellant of an offence w11ich was noJ.; estaolishecl in evidence,; \ L1 the event, I allow the appeal, quash the conviction~ se~ aside the sentanoe, . and. hereby o:rcle:r-t>::: ilJ;;,edi.ate release oi' ttlo appella,,"It 1 Fra:1cis s/o Cha.cha, unlesc ot:1G1.--,ri.so la.w:fdly \- -r ,Ml"TANZA · August 11th 1993 · For Appellant: Absent For Republic g Mr. Ru:i:ia:isire _ I 2 a,cYooate for the Republic, Mr. Rutaisi2G, w'J_o decli:leo_ to sup:::iorl" lice:1oee,1 oat,tle dealer. In t;w afto;:_--:00:1 o:~ Au.,g,_ist ?7\½. ·;991 ~\i:-~a:ie PW1 was grazing his 20 heads o:i:' ov:::,;10 in tJ1e pastur~s~ .Auosi went there with 41 beads of oattl0 a;1d as]::ed 1~uhab., PW1 a;~r, ella..!t arri vccl there., Re was with -'li;ro sti.:1gusungu co::B,a.i:::de:::s, Jose,~i PW3 and Salim PW4\$ He asked :ii.!.1a~Jo ?r.?'1 where he cot t!.10 41 head:3 of cattle which did not belo:".g ta t'iat villaco .. I.h_i.:1..a,be PW1, replied tha:c tb.e:r were b;~011[.lr;~ °.rJ ~us uncle A.i11osi. ~o t~10 COM Office. On ·[~1e wa;J, t:::e a;~i~H~lJ_a,n-i; c2:a.,...;ed !:!.is Dind., a:1cl_ dir~ted. PW3 anc1 ·nt-4- ;;o \J:i'~::~;{:::~1-0. oQ;':~ie :co ;~,~os. Ar:iosi a:::d. t~10 cattle ·a;re st'_t,ii ii~ t~_~::~_i>=Dage~ _ -· :-· ;;)/\;~_~::~f _; ·1 With respect~~ agree.14-it~to-tll loa:r~1-ed c6m1sels ~11at ~;~1/,~:- eV:i.cla~1ce on record foll short, by :f2~r, o:::' establishing

an off311ce ol~c;ed. undo:r section 387 of th.e PeLaJ. Coc:e., A person :is guilty ~ of a,:1 offence
rulde:r tb.in section who l.'3Ceives or assists a11oil:c:2, ·w:10 is, to .his la.1owlodge, guilty o:f ai.:
oi'fmc,e, in order to . e;:12}.-ils him escape pu..YJ.ishmont. a.11 -i:!.1-e essential 0l0::10,1ts of the
o:'.!fe,:oo o:'.!..arged we~, , .. ;, EJ3J~ablisllect. to the required extent. 1::10111 edgc on th~ 't:10
aypell's.nt that .Amos has stolen ·t:ce ca~tle was not/ It uas not s.b.o.,ii.1 !:lo,;; JL'ilosi uas guilty
o:? a.:i o:ffonco~

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