

TANZANIA / JUDGMENT

20171027 TZHC Dodoma1

COURT
TZHCDECIDED
27 October 2017

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IN THE HIGH COURT OF TANZANIA AT DODOMA (APPELLATE JURISDICTION) DC CRIMINAL
APPEAL NO. 41 OF 2017 (Original Criminal Case No. 149 of 2014 of the District Court of Manyoni
at Manyoni) GEORGE YOHANA ... APPELLANT VERSUS THE
REPUBLIC ... RESPONDENT

JUDGMENT

27/07/2017 & 27/10/2017 A. MOHAMED, J. After. pleading guilty to the offences of malicious damage to property contrary to section 116 and escape from lawful custody contrary to section 326 (1) of the Penal Code Cap 16 RE 2009, the appellant - . was convicted to serve prison sentences of two and seven respectively. Against that decision he now appeals on 3 grounds.

1. That he did not damage the prison trouser and shirt the subject of the 1st count. --2. That the prosecution did not tender in evidence the government property alleged to have been destroyed.
3. That the 7 year sentence is too harsh. 1 According to the prosecution, on 20/4/2014 the appellant escaped from lawful custody from a police officer P6433 called Mwangi at Chikuyu prison within Manyoni District in Singida Region and thereafter damaged a prison uniform he was wearing. At the hearing of the appeal, the appellant submitted he would rely on the grounds in his petition of appeal in support thereof. In reply, on the 1st ground, Ms. Magiri - for the respondent submitted that the appellant had pleaded guilty to the charge of -
- - - Alolicious d_amage_to__prQg_erty_. But ~he pS)iQt~d~ut tho!_ t~er~ was~n irregularity as the uniform the appellant was alleged to have destroyed was tendered in evidence after the facts of the dispute had been determined and read over to him. It was her view this did
- not dffordJhe. appellant with. the opportunity to object or otherwise · comment on the exhibit when it was tendered in evidence. The counsel said this made the appellant's plea to the 2nd count in the charge sheet to be equivocal. -As to the 2nd ground, the counsel said it is related to the 1st and has already been addressed. In reply to the 3rd complaint alleging the 7 year sentence was excessive, she said since it related to the 2nd count of malicious damage to property, the sentence should falter since, as earlier stated, the plea of guilty to the charge of malicious damage to property was equivocal. 2 I have heard the submissions and reviewed with the trial court's record. In regard to the 1st ground, I am satisfied the

appellant's plea of guilty_ to the offence of escaping from lawful custody was unequivocal. He pleaded guilty to the charge ·of es·caping from lawful custody and admitted to the facts in i dispute. He was accordingly convicted and sentenced to two years imprisonment. This ground is devoid of merit and it falls. However, I om in accord with Ms. Magiri' s argument on the 2nd ground that the appellant's plea was equivocal as the damaged uniform was tendered in evidence after the facts in dispute had been read over and admitted by the appellant contrary to law. I agree _he had . no opportunity to object or c_omme_nt on the . admission or otherwise of the exhibit. I therefore find merit in this ground and uphold it. Consequently I quash the conviction in respect of the offence of malicious damage to property contrary section 326 (1) of the Penal Code. In the event the 7 year sentence is set aside. As the appellant has fully served his two year sentence in respect of the 1st offence of escape from lawful custody, he is to be freed firthwith unless held for - another lawful cause. It is so ordered. 3 . .

- {fj(i\$ A. MOHAMED JUDGE 27/10/2017 The right of appeal explained. A. MOHAMED JUDGE 27/10/2017 4

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