

TANZANIA / JUDGMENT

19771101 TZHC Arusha1

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TZHCDECIDED
1 November 1977

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C_ IN THE HIGH COURT OF TANZANIA AT ARUSHA PPLITLJURISDICTION HI H C QURT
'CR11 :IJAL APPEIL NO. 263 OF 1976 HIGH COURT?T CRIMII'TLL APP.itL NO 264 OF 1976
ORIGINAL CRIMINAL CASE NO. 19 OF 1976 OF THE DISTRICT COURT .OF KOROGWE,JE DISTRICT
AT KOROGWE ,..'BORE: "B.S. HOZA, Es., District Magistrate' •. HARIDI - JUP/
IA LPPEILA.NT (Original 3rd. Accused.) vesus THE.
•REPUTBLIC ., '•, ... RESPONDENT

- . (Original 'osecutor) S. ' JG'IiETT MWESIUJ'iO J. Hardi sb Jua and Yasin Juma @ Hassaii were found guilty by B.. S. Hoza, District Magistrate (now no longer with .Judic5i.ary) of house breaking co-ntray to section 294 (1)and stealing contrary to section 265 of the Penal Code. Upon the resultant convictions each of themwas sentenced to three years .imnrisonmen on..the first countin accordance 'with the proisione of the Minimua Sentences Act 1 of 1972 and 18 mQnth's imprisonment on the second. count. . The said sentences were ordered to run ooncurrently. Aggrieved)y'tIlat decision of KorogviDistrict,Court both of them have appealed to this CoUrt, Vide Criminal Appeals. Nos. 263 and 264 of 1976, againet 'both éonviction 'and sentence. S Because the convictiona .appealod against emihated from the same- set of facts I'woi4cl.like to deal with both appeals -' in a-consolidated.'for.ii. Facts at can ho gat.'-lercd f roL the ro-corci of the trial :court±uh as follows. On.the 19th'Janiary 1976 icilnngazi (-P.W.i) locked'the door of his house with a padlock and he and.his wife (P.W.2) proceeded to their shamba. It would appear from the record of thd' trial court that the, wife went back to the house first from the shcnba. On hr arrival at home she saw the padlock broken, and" ; a 1hndbag' and a suit case' were missing from inside. 'WhOil the 'huband came back from the shainba. he was told by his wife aboi.t what ,she had found at their-house. Later on on the, same day his flowvillag's informed him (P.W;l) that the culprits who htd. ine?sed' 4' wiilh' his ,. property had been arrested. Tho foll.*ing. day- he,, P,W.1, cal'-ed at Korogwo Police Station where he recognized and identified a number of articles to be among those stolen from his house. . . . They included...../2 * They included pairs of lchan oi;htgónws'of his children, a pair of trouser,asuIt .cà s.e and a'tbrch Llithose items were identified bj both P W.1 anc P\1 2 and they were bendored b.foro the Court a 'hioits A It was P J.3, a neighbour of, P /.1, who saw the 1st accused (n the rjal court) who bias not heir fellow villager at the house of P0W,l. That man had, other. c'oJnasion wh vbb already ihcio the hOüe of •P.W.1.. Then P.W.3 raised an alarm and the three people who were in the house

of P.VI.1 took to their heels In response to that P.W.4 and P W05 inrioaiabely ran to the scene where they saw the accused 'persolis running away, one of than carrying a handbag and the other a suitcase. They were arrested at Korogwe Railway Station0 P.17.4 and P.VT.5 testif 1Yd. to the saieue effect that the three accused persons whom they were chaslg.a'..aresult of the alarm were caught at the Korogwe Railváy Station with the help of some other people who wer,e .ab' that .Rilway Station. Soon'thercafter the Police arrived atd, .they wéré hfided over the accused ancl t.u. suitcase and handbag. In his testimony a Police Officer (P. 11.6) supported the .vars'i'ons of P\1.4 and P.W.5.. ' . " . •. In their defence the accused persons now the appellants barely denid any connection with those.offenccs•. The let

- accused.. absconded and therefore he was not present to explain, his part. •• in the light 'of that overwhelming evidence when the appellants wore caught running away with the.st'o:len goods no reasonable tribunal could arrive at a conclusion which could be at variance with vihat the learned trial District Magistra did in the instant cased
- In the evon the appeals aganst convictions must fail and since the 50iJOfiCO awarded on the let count is the minifiurn under the provisions of the Minimum Sentences Act No. I of 1972. and that on th'2nd count being reasonable, in my view, the ap:oals stand dismissed in their entireties. Delivered in oi5eI, cou't at Arusha. this 1st day' of. November, 1977. . 0 • -frL (E. A. . iiSIUMO) JUDGE. For 4ppcllants Absent and unrepresented. For RCspondent '(RopubIic)) Mr. Msechu, 'State '.L.tto±ney. EI.M/MTPL'i.

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