

TANZANIA / JUDGMENT

19770716 TZHC Dodoma1

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TZHCDECIDED
16 July 1977

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IN THE HIGH COURT OF TANZANIA

- -- , 1 NC\ 1977 t'--,, ----. ·-----·,·-· AX DODOMA l O,,,; F'; S l\ LAP. M -,,,;:-,.,~---.....C...:---
~-----·- - - .APPELLATE JURISDICTION ' CRIEINAL APPEAL No. 93 OF 1977 ORIGINAL
CRHIIN.AL Ci.. SE No. 125 OF 1977 OF THE f DISTRICT COURT OF KO~l)OA DISTRICT AT
KONDOA BEFORE: M.A~ UPAGA . ······ DISTRICT MAGISTRATE IDDI SBFtJ ··.
APPELLANT
- • . versus THE REPUBLIC • R:ISPONDENT • CHARGE: Burglary c/s 294(1) of .~he .Peml
Code • . J U.D GM ENT The appellant was charged with and convicted ·of . burglar: c/s 294
(1) of the Penal Code. He was thereafter senteriq,E_3d to: 3 years imprisonment~ He hn.s
appealed against both tht3 : · . .1 • conviction and sentence. ~i The pe,rticulars of the offence
alleged that the appellant on the 16th day of March, 1977 2..t a bout 1 .oo a.m. at linara street
within Kondoa district - Dodoma region broke iQ.to a dwellincs house of one Hassnn s/ o
Waziri with intent to car.unit a felony therein. The 01,,mer of the house (Pw. 1) inforied the
court that he was awakened from his sleep by what ar1:iJeared to be a· bang at the door of
his house. He lit a larap and hurried out of his bedroom only to :find appellent inside the
house. He asked arpells.nt as to what he wan-i.; ed :=.md that appellant replied t:11 t he had
gone there to help hinrnelf - whereupon t': c: wi.+nr>:-ir.J ro..iscd an alarm. - Several
pe::>ple who allegedly included one Hohaned Sudi - the 10 cell leader went to the . = scene.
In the presence of the 10 cell le2der appellant was allegedly asked again as to what h2.d
brought him there • .Appellant is said to hc.ve replied that he tho-(ight that the house li·ras a
pombo shop. It is noted, howsver, that the 1 o· ' · cell leader did not give evidence. There is
no explanation · on record as to why hG was not called as a witness. One I1wanal1:-1misi
Yusuf (Pw.2) the only other prosecution witness sim1;ly said that when she heard the alarm
raised by P-w .1 she woke up and got out of her room - in the same house - and saw Pw.1
with the a:'lpellant. Appellant's defence was that he had gone to the house with a girl relative
of P.t-1.1 who lodged in the same house, fo:::~ a love affair. Pw. 1 heard them push the do or
open. When ' Pw. 1 woke up he mistook appellant for a thief. The lower court convicted
ap1)ellant on 1he basis that adppeldl~ndt 1 'kticked "thetdoor ~pen" antd. tlmt th~ kicking of
the oor 1 no represen an 11 1.nnocen ingress. fi In the first place, no one specifically stated
that appellant kicked the door open. Secondly, the trial court >'~ ,iiJ' made no reference to
the alleged explarntions by the appellant as to why he was inside th0 house 3.t the

particul2.1 tirl.

- ... 2 2_ ,. And, in th8.t respect, ,MwanaharJisi Yusuf (:fi>w_.2) did not' champion Pw. 1 's star y ,.as/..to. what appellan-~ is alJ:ege·si~ t_o have said in the preso±).ce. o'f the 1 O_ .cell lead.er. It is further not underst,Oof· why· the 1 o· cell iead·er ·c·ould. not b,c. c·alled ,;3;s a witness,. It is even· :more anazing that no investigating off'ic;er,' gave· evidenc~ . . Qlearly, tp.ere was no basis for assuming· ~hfy.t _a:ppellant' s ~:ipianatio:n>·as to his . raiss:ton:~:tn thE1.t·house and at that part,icular .hour was false. Indeed, there was no good basis for the conviction. Accordingly I am would allow the a1,jsal._ - quash both the conviction am.· sontenc.e. and order rnniediate' release from prison - of the aPlJellant - unless otherwise lawfully held for . some other matter. · I, Delivered in Court at Dodona this 16th day of July, . 1 977 ·. ,T>: M. J .· MWAKIBETE. 'J1JDGE _!, .. ·\': .. I, , I r f,,
- I, I ; I, ' , ' t, · · · · · ; .

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