

TANZANIA / JUDGMENT

19730410 TZHC Mwanza

COURT
TZHCDECIDED
10 April 1973

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III T·H: iIci1. X-UfT or THZNIA S P . LL HIGH CC.T CIUIiIL :FL'LL HO. 482 OF 1972 0IGINAL
CRLINAL CESSL IO 0, 354 OF 1972 QF DIT'ICT

- COURT OF TBOih' DILICT IT TBO1A — .BLFofI . L'S:.,, I))THT IGISTL:TL. H LZxdSiJO
yhj. . . . , ! . aa . aa a p •• a p . a . o , a ••a ' FPLL,1:T S . (. ORICITLL ous:D)
- S ' . VLFFJUS - . . r-vrp 'D"TJTTr. .:: .. tDCP'T'i.Trfl •J.J.,LL L .Lts,Jl.J (oRiCIIrL ? 010tJr1J)
Stceiin by ublic c're.n. /z 265 end 270 of- :hc Penal Ccdc / . 16 of the Laws. JUDtT7;liT. - 5- 1—
KIiTDYJ.: Izareno iyala ;yuj chercdtyith and convicted of theft by public eerva:nt cofltr'y to
sections 270 end 265 of bhc Feel Cede Cap. 16. lle tcz s 'i:nc.: d to imprisonment or seven
y:ttra and to cmpensata the .jjfljstr of ` ,Griculttuc and Cooperatives in the sum of she.
14,722/65. Ji:. apia 1 eã a:ainst sentence only. r.i , . Tuken,o \ 1: 1:arnci counsel, apoarod for
the cp-cllont and Hr. Hecic, the learned Senior S'ec Attorney, ppercl for the rcspondenf.
1EI'public, The appellant p1cacci uilty to the ciie.rco. He was rc as Jccount 'S Lsistnt, by the
l'linistr3r cf A-ricul'tuc and, Cooneratives, and ho had been is sc'r -sica for 12 yc.: -re
prccodin, the da'tc of his conviction. He was. stationed 't Tabora with the office of the
eeiployc histry, It was pert of his duty to make paym. nts and. to collect rcvcnuc in the
course of his employment. However, followin d.ccntra- lization erranCements, the
appellant was transferred to Arushe on the 8th Jul-, 1 972. Before hc loft for Arusha his
accounts were checked. end it was clisäovrcd that the e,ppclleit cufIred ë shoradc of ohs.
14,722/65. ' -Jhan the appellant could not account for ehc sl'rôte'c, he was referred to the
police. In court, by way of cx::lonation, after sa.,- ine that he stole. the money he said
amount ho took he avc it to onc Hr. Hzec, who worked with Cornworks. As the moncy was '
not his nd hc -took it without authority, the raasonbale in±ercnc:. ts that the epDcllant
convertcd the money to his ct-in usc. Therefore, hia pl'c was uk-equivocal, Before sentence
was passed on him, the appellant spokc in - mitig ation, as the prosecution did. The
appellant was earninc ohs, 780/— per month. This salary ties not small by standards of this
country. He was a first offender. H: pleaded CLil±37 to the charac. The amount involved, was
large and it has not been recore-rod,. La an Accounts' assistant, the ap:cllan -t was in the
position of trust. It was his duty to look cf ter the money with core • Hnc:, his act of takin
such large amount of money, constituted not only theft but also breach of trust. By any
stretch of mind,, the offencc was serious, The leariccl. trial me.gistratc wee i. •formed t.ot
the-ft by public servant was prcvale:ot in Tabora region. He wee, thorforo, right in taking

into account this matter. Deterrent sentences are called for to curb antisocial and selfish activities such as this one-, I fear 'helence', I-u', Tukunoba argued -can't the sentence was so much that this court ought to interfere with it. He pointed out, rightly, that the minimum sentence for this kind of offence was 5 years, as it is provided for in 'the Minimum Sentences Act, 1972.' He submitted:- that there was nothing abnormal to justify the addition of 2 more years on top of the minimum in all the circumstances of this case. Mr. Koala submitted that the sentence imposed was a quack that the practice should be disallowed. (I. r-c reIL.in, to - is appellants counsel, Lea LiOf CS has said 'Ti bi he', poppy. I can see that the money and give it -s-to kr.; i.izec "out" Of for the problems of air. • 'T. isec 1 his friend - - mcaaiin kr. I.izec - betrayed him by failing to return the money in time. "I jiliitd out to then learned Senior State Counsel -Gorncy, his explanation is specifically rejected by the learned trial magistrate as being: not genuine and 1. arcc with the evidence "cited. A& was, a sufficiently 'intelligent' person who, knew his responsibility. i-ic cannot therefore, expect a court of law to accept his allegation - S er ob'blc one • The amount was too large, and there was a clear risk that such a large amount of money is 'y, i. WWOOK per on e w c in p obi uS It would be -sona 1 lc to cccc'n th-" b c pl-ia O.L n if the appellant had acted as he did, it is a practice which should be discouraged. Friends should have helped in ways other than that of 11 h: 'iT, 'Iy;5i'C'C 'that the sentence is severe, but I do not agree with it, it is so obvious, iC t io cQurt Ought to interfere with it having regard to the prevalence of such offences in Tabora region. , I accordingly dismiss this appeal against sentence. Delivered in Court, at Tawana, on the 10th day of April, 1973. • (z. N. JIL—KII'nJY)' JUDGE F. w2cfi.

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