

TANZANIA / JUDGMENT

19791129 TZHC Dar es Salaam

COURT
TZHCDECIDED
29 November 1979

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I 1,/C IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM APPELLATE JURISDICTION HIGH COURT CRIMINAL APPEAL NO. 212 OF 1979 ORIGINAL CRIMINAL CASE NO. 1078 OF 1979 OF THE DISTRICT COURT OF DAR ES SALAAM DISTRICT AT KISUTU IN BEFORE E.E. KAZIMOTO, Esq., RESIDENT MAGISTRATE JACKSON ISANGURA WARIOBP • , , , , . o o • . . . APPELLANT versus THE REPUBLIC • ..S.O,oO.OO.O.O.O.*.StOitOO•#O.OG.O.OO RESPONDENT Charge: Forgery c/s 333, 335 (c) and 337 of the Penal Code. Uttering False documents Stealing by Public servant. 4

JUDGEMENT

MNZAVAS, J.K. — In this case the appellant was, on his own unequivocal plea of guilty convicted of 124 counts of forgery, 124 counts of Uttering false documents and 62 counts of stealing by a public servant and sentenced to various terms of imprisonment totalling 9 years. He has no quarrel with the convictions but he is appealing against the sentences. The accused argued before this court that the learned trial magistrate erred in sentencing him to 9 years imprisonment bearing in mind, it was argued, that he had pleaded guilty to the offences. It was also argued by the appellant that in imposing the sentences he did the trial magistrate failed to take into account that the accused was a first offender who should have been entitled to some leniency. On those grounds the appellant asked this court to reduce the sentence of 9 years imprisonment imposed by the lower court. In rebuttal the learned state attorney argued in support of the sentence imposed. It was the Republic submission, 2 that the total sentence of 9 years imprisonment was lawful as, It was argued, the trial magistrate had power to sentence the accused to a maximum of 10 years imprisonment. In support of this argument the Court was referred to the provisions of section 12 of the Cr. Pr. Code. It was also argued on behalf of the Republic that the accused deserved a deterrent sentence taking into account that he stole over shs.42,000/=. I agree with the appellant's argument that his plea of guilty entitled him to some leniency, as it amounted to contrition. The fact that he is a first offender also called for leniency. But as rightly argued by the learned state attorney and in my view rightly so, it would be wrong for this court to look only at the mitigating factors in isolation of the other circumstances of the case. Admittedly as I have already pointed above the appellant was but for these convictions a first offender. He readily pleaded guilty to the offences. These two factors cried in his favour and tended to militate against a severe sentence. However against these mitigating factors it is amply clear from the proceedings in the lower court that accused's acts of forgery, uttering false

documents and stealing were calculated and 11 deliberate. His acts were not a result of sudden temptation but a result of pure dishonesty and calculated theft. He stole the money not as a lump sum (which would have deviated temptation) but did so peace meal. Taking into account these facts and the fact that the accused stole more than shs.42 9 000/ the lower court was, in my view, entitled to treat the offences with the seriousness it did. As regards the learned trial magistrate's order that the sentences on the counts of theft should run consecutively I agree with the Republic that in doing so the lower court erred. As the learned trial magistrate will no doubt agree all the counts of stealing referred to a similar transaction. That being the position consecutive terms of imprisonment should not have been imposed. On the other hand I am far from being persuaded by the appellant's argument that the total sentence of 9 years imprisonment ..4/3 is so manifestly excessive as to call for interference by this court. Stealing by servant is alarmingly on the increase, and as such the courts will be failing in their duty if they did not impose condign and even derrent sentences. To rectify the error in the lower court I hereby set aside the order that the 3 years imprisonment in respect of the three counts of theft run consecutively and in substitution therefore the accused is sentenced to nineyears imprisonment in respect of all the counts of theft; which sentences are to run concurrently. In the event I agree with the learned state attorney's argument (apart from the above variation) that the ppeu. against sentence should be dismissed in its entirety and I so order. I ____ DAR ES SALt.P1M N. S. IVINZAYJLS, 29.11.1979 JAJI - I

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