

TANZANIA / JUDGMENT

19770923 TZHC Arusha

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TZHCDECIDED
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IN THE HIGH COURT OF TANZANIA AT ARUSHA APPELLATE JURISDICTION HIGH COURT
CRIMINAL APPEAL NO0 63 OF 1976 ORIGINAL CRIMINAL CASE NO0 632 OF 1973 OF THE
DISTRICT COURT OF ARUSHA DISTRICT AT ARUSHA to Before J.S. Nnguto (Miss) -----
Resident Magistrate JAPHET SWIRE -----.....- APPELLANT (Original Accused)
versus THE REPUBLIC ----- -- RESPONDENT (Original Prosecutor) JUDGMENT
T MNZAVAS, .r. The appellant, Japhet Bwire chamganda, was convicted of uttering a false
document and stealing postal matter c/ss 342 and 267 of the Penal Code and sentenced to two
years imprisonment on the charge of uttering and three years on the charge of theft. The
sentences were made to run concurrently. He is appealing against both the conviction and the
sentences. In support of the conviction the learned state attorney argued that there was ample
evidence in support of the charge of uttering and stealing postal matter and referred the Court to
the evidence of the postal clerk (PW 10) and that of Joseph Ngowi (PW 4). In his memorandum
of appeal the accused argued that the postal clerk, (PW 10), and Ngowi, (PW 4) told lies against
him. In short the following were the facts that preceded the arraignment of the appellant. At the
material time the accused was employed as a clerk in the District C.I.D office in Arusha. He also
used to work as a personal secretary to the Regional Police. Commander Also at the material time
one Samwel Niloti (PW 5) was an employee in the Tanzania Police Force and was attached to the
S.T.P.O at Maswa His family remained in Arusha. it was an undisputed fact that Samwel used to
post money to his family in Arusha monthly for their maintenance. Apparently he used to send
such monies through his friend, one Logole Sikorei (PW 6) who was at the time working as a
cleaner in Arusha police station. Towards the end of January 1972 the complainant sent shs.
120/- by telegraph money order to his wife Mama Sekiti (PW 7) through his friend (PW6).
Apparently the money did not reach the addressee. Postal investigations were instituted and it
was discovered that the telegraph money order had in fact reached Arusha post office and the
money delivered to one, J. Chamganda. The complainant reported the matter to the police and
investigations were set afoot. The accused was eventually arrested and charged with forgery,
uttering and stealing postal matter. He was acquitted of the offence of forgery but, as already
mentioned above, convicted of uttering and stealing and sentenced to concurrent sentences of
two and three years imprisonment respectively. With respect to the learned state attorney I agree
that the evidence was clearly against the appellant. The evidence of the accused's co-worker, one,
Ngowi, (PW 4), was to the effect that soon after the accused had been charged he approached
him, (PW 4), with a request that he, (PW 4), approach the Regional C.I.D. Officer, (PW 1, and

4: aTc him to drop the case against the accused as he (accused) was ready to refund the shs. 1201/- to the complainant, (PW 5). Indeed the accused handed shs, 1201/- to Ngowi to take to the Regional C.I.D. Officer. . . . /2 -2- According to the evidence of the Chief Crime Officer, (PW 1) he received a telephone call on 13/6/73 from Ngowi (PW 4), who told him that the accused was asking for help. The witness further told the court that, on the very, day one, Swai brought him shs. 1201/- which he said was from, N.gowi. A postclerk, (PV 10), gave evidence to the effect that she had known the used 'for' a long time before he was charged with the offences of uttering and stealing, indeed she testified to the Court that, accused's wife is her personal friend. According to her evidence was: on duty at the postal counter on 5/2/72. On that day, according to her testimony, the accused, came to her with telegraph money order No.. 2035864 and claimed shs .;1120/- the value of the order. She told the court that as she knew him she had no hesitation regarding his identity and that she believed that he would hand the money to the actual addressee, Bihi Samweji Jitoi. The postal clerk asked the accused to sign the telegraph money order at the back and his address. This apparently the appellant did in the presence of the clerk. The telegraph money order (Exh. B) is apparently signed 3. Chamganda, Box 3011, Arusha. From the evidence of Ngowi., (PW 4), that of the Chief Crime Officer (PW 1) and the testimony of the postal clerk, which evidence the learned resident magistrate accepted as truthful, it was crystal clear that it is the accused who collected the shs. 120/- from the post office. There was no reason, why the accused 'should' have attempted to refund the money if he had nothing to lose with its appearance. Nor was there any reason why his co-workers (PW 1 and PW 4) should have decided to concoct a false story against him. And what is more there was no suggestion, leave alone evidence that the humble, Postal clerk had any reason to tell lies so, as to cause accused's undoing. On the contrary the postal clerk, (PJ 10), told the court that accused's wife was her personal friend. The accused did not dispute this. On the evidence tendered before the lower court I see no valid reason to interfere with the learned trial magistrate's finding, indeed the accused should thank his stars that he was not convicted of forgery as well as there was, in the opinion of this court, sufficient evidence to find him guilty of forgery as charged in Count one AS for the sentences imposed 1 cm far from being persuaded that they are so manifestly excessive as to call for reduction by this Court. In the event I agree with the public submission that this appeal should be dismissed in its entirety and I so order. MNZL-, JUDGE RUSHA . 23/9/77 Appellant - Absent and unrepresented Msechu for the Republic/Respondent. NSM/KK

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