TANZANIA / JUDGMENT

19771129 TZHC Mwanza

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DECIDED
29 November 1977

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H! ·1.'EE HIGH ·coURT OF TANZi1.NIA :.,.•:: t . . 1:::· .·--.:; /d?1'EL:Li~TE JU.R'.tSDICTION ... ---... .. . . -.--·--- ORIGil:·Jf,L ,CRIMii'JilT, .C/..;E NOo 63 OF 1977' .:. OF' THE D;I:3'.i.,1:{1CT COUtt, OF U)<EhEl.iE. DISTRICT ~T .K/~BINGO . ·: 3efore j ~-1·~0; j,i·j;YUNGE, .·Esqo. DISTRICT_I16~~S'!'AR_g~ 1• iL\FUf~U~o··~ o~.o :~:·.o o o o o o e- o o ~-.·o.-~o _01.0 o~ o C?.. o :o o o o o o _o ,o o o o ~ ., o o o o ~ o ~ o o CJ. o o -~- ~ j'\.PPELLi\J\iT . . ' ··c;:· : . (Origin2l ,\ccu·sed) ~qrsu~ ... : .J> ·. ,·. ,,;.. . - '• ··. .. ~ o,o·o o o ~ oRES~OtJDEN.r 1 Ti-U-1')1~I->t.JBLIC. 0 0 o_o ('lo 0 o•.o 0 0 ~-"! O·O O ,;,_o.o O O O O O? 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 O;~ . , ... (Original . P..tosecutor) . CHARGE:: 1st & 2nd Counts~ FORGERY., contrary to sections 335(n.)_.ilnd 3.37 of th_e P,ena_l Code. _., .. , 3rd Count: . S'.):'Ei,LH,G:. ,by -Public Serva.nt contrarv to sections ··270 and·. 265 of .the Penal Code:: .. : -OoO- JUDGi-iENT Mf'ALILh, J., 1_!.",. The 2.ppellant. j95hun M.r::.furu ,ms charged with t.~t,ei. <;io.:up.ts in the district Court of Uk~rcwc Jistrict at l~abingo two of which were for forgery c/ss 335 and 337 n~d the third count for stealing ns n public servant the sum of Shs. !00/= following the forgeries of the two receipts, the subj cct of th,.=: fir::-;t two counts. He was convicted on c.11 the counts 1.111d S(.;~~b.:mced to 12 months irnpris.:inrnent on each count which sentences were ordered to run C(;ricurr,:;ntly o This appeal is 39:.1.inst thut decisiono l,t the end of the:: hcnrin<J of the anpc,,al on 21st l'.Jovernber und after hcio.ring Mrs o ;,•iQ.tovu who declined to support the convictions, I allowed tho app0al quashed th~ convictions ~nd set aside the scnt~nces nnd ordered the appellant's immec1i3bJ r,_~lcase from prisono I n1serv-2d my reusons which I intend to give in the cou~se of this judgment. 'l'h0 evidence which •·10.s 12d in the trial Court showed that the appel- lant w::is i3. messenger in th2 Weter de;partment .:tt Ukcreweo i,mong his duties was the collection of uG.t(ir clues from consumers by Hhich he collected the monL~s and issued receipts to customers o Lab~r he handed over the money so collcct-2c1 and the duplicG.t,) receipts so issued to the Cl~rk: Gnbunga Abel P.\r.3 who them nrrnngecl. the banking of this money. R,:!ceipt Nos., 075889 and 075526 the subject o:f the charges in the first 2 counts Wt.!re among the receipts issued by th0 upp~llant in the course of his duties. On 26th JQnuary 1977 Edvmrd Rwegasira PoW.1, an Auditor bast~d in the RoD.D .. 's office !'1wanza, audited thC:~ accounts of the Water Departmunt ,::it Ukerewe. In the course of his auJit he discovered that these two receipts were forgedo He discovered t~nt the duplicate of receipt No. 075889 showed that the npp,:;llant had coll--=ctcd Shso 41/60 but when he traced the original from the payee he saw that Shso 91/60 had be8n collected on this same receipto Also he discovered that the duplicate of receipt No. 075526 Shso 73/60 had been collected while th~ original of this receipt showed that Shs .. 123/60 had o.ctually been colh:ctedc The

difference in the two receipts totalled Shs. 100/= whic~ was th~ subject of the chnrge in the 3rd counto In his defence th~ appellant agreed collecting the amounts and issu:L1~/ the receipts ::-.mt he denied forging themo He s,'lid that while the sign~tures on these two receipts were his the handwritings on the body of t.hei,0. r-.:~C<"!ipts were r_~;t]Ij_so 'l'he implication of this statement was that "0 /2 ...

- 2 - th2 forgeries took plnc~ after he had handed ov~r the receipts and the money to the Clerk ,'.bel, so that ht: himself Wi1S not involvcdo But the trinl Iic1.<Jistr,"1te complct,2ly ;:iissed this point :end proceeded to consider unrelated matters o Thei:-'.3 -is of course• a iot of suspicion surrounding the appellant's conduct particularly when he could not risk subjecting his testimony to cross-ex,,·ni;-,at.i,)!1 and elected to give an u .. sworn statemento Howevur even with all these sus~icions around him it is not clear if these duplicate receipts hc::d b(~2:1 hand,;:;d to Clerk /'1.bel Po;Vo3 in the state in which th2y arb, Abel c,)uld not hav2 agreed to accept them ulong with the mon2y. There is ther~fpr2 a likelihoud that these two receipts could have been tmnpereci. with by·-tl='li:?-Gl<2t:k ./rbeL ·. /,s l'irso J\'icitovu ri9htly pointed out, it wns easier and saf2r fur the Clerk ~bel to forg8 the receipts and steal th0 iri',,,_1,:y .. because the ,,~~>n<:!y· and the rL~ceipts had been collected and issued by ·sorn2body elseo Th~rc w:,s c:nother considerution surrounrling the 3rd count. In this count the app~ll2nt wus charged with stealing two different sets of mow)y stolen on two different occasions and on different dccuments o This ~endcr~d this particul~r charge bad for ctuplicityo By laying the charge in. tl~is. f::i.shion · the p;,:-osecution made it.difficult for the u1:)pdlant to ef'fectively' defend himself in respect of each sum of money ~ll:.:!g2dly stol ·. ·· · len on 2 different . occ~si0n .:: •, on a different . . set . of documentso ;• It was for these r~asons that I allowed the appeal, quashed the convictions and made ti1.e .)rders as i_ndic,1tedo As indicated at the beginning of this ·jμdgm<=:nt; the app~l}_a11t 1 ~ convictio~,.'.~i were not supported by th2 He public/ M\'11\NZi'... __29TH._ NPVEMBER,: 1977·,;. JUDGE / .. :,.-- •· ... I.

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