

TANZANIA / JUDGMENT

## 19750000 TZHC Arusha 1

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TZHCDECIDED  
4 August 1973

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'V /4 IN THE HIGH COURT OF TANZANIA AT ARUSHA APPELLATE JURISDICTION HIGH COURT CRIMINAL APPEAL NO. 148. OF 1974 ORIGINIL CRIMIHL Ci SE O 420 OF 1973 OF THE DISTRICT COURT OF ARUSHA DISTRICT AT ARU.SHA BEFORE - J. S. IGUTO, Esq , Resident Magistrate JOACHIM EDRD APPELLANT (Original 2,ccusod) versus THE REPUBLIC ..... RESPONDENT (Original Prosecutor) CHARGE:- 1 s t Count:- Breaking Into Court building with intent to steal contrary to Section 297 of the Penal Code. 2nd Count:- Destroying evidence,,'contrary to Section 109 of the Penal Code. .TTTTa.1VrT\Tm MAPAME, J. JOACHIM EDWARD and two other persons, PETERAPDREW and NANGORISHO MEMIRIYAGI, were convicted, for Breaking into ' :. Building with intent to commit a felony, and for Dest±'oying evidence. Each was sentenced to 'two and a half years and o six months respectively. Edward has appealed to this court and a Notice of Enhancement was ordered to be served on all of them. . Edva'd was at the ate.ial time a court clerk at mcoi Primary Court On 4/8/73 P. vT I IL SSI' I MJdChE, a magistrate at Emaoi ws at. work and at the •rid of the day e left some files on the 'table and went off to Moshi. When he came back on 6/8/73 he heard that. the court house had been broken into and that files'were• burnt. He found ... that the ;indow was broien and that some. sixty files, Criminal as well as Civil were nissing One of them was a criminal cse in which the thud accused, Meniriagi, was the accused P.w 2 LENYThGI KIBIR , who descriees himself as a court attendant nnd is piobabl' a court messenger, also told the court that he found the door still closed but the window broken The learned trial mat7istrate accepted as,worthy, of belief the testimony. of PW.'3T1,LAL 1 1I SILIM, a 50 y.er ol'dl nan whose heuac. is quite close to tIne court house and who bold the court he was familiar, with all the three accused ersons During the night of 4th August 1973 he wont out o look for his bull end while there ho SaW five peole, only four of whom he recognized These verc the three iccused and a fourth person celled Goodluc1 who has since aseaa ai ay They were creed with a torch, a panga and some other weapons and he was able to recognize then because there was a clear noon light Hc saw them going co the court house whorL. Edward wont into the building through a window, and then he waS able to, see the ot.h'drs, eceiving things from within /2 A few minutes later the witness saw a fire er the main road but he eontinihd to conceal himself because heWas scared. When the magistrate returned i 'told him what he had seen There ws also well supported evicnce tht'w.hn the house of a rrocution witnOss, P.W.7 J3E2 THOMAS LIMOK'O, was searched there were found in a room rented by Edward and in which Andrew, the second accused, was foudatht time, things identified as having been removed from the court premises. Thase included Civil Case No. 132/73 which

had some of its papers missing, a tin of 'piwa' in a bag which was identified as having been tendered as an exhibit in Court, a piece of hard board and some mats. There was also evidence by Kibira, as well as by P.W.10 SANARE NAVERE, a court mess'ei'gor'4 that when told that the court had been broken into the appellant refused to go and see the place and went on drinking.

- In his defence the appellant denied ever knowing the second accused, whereas there was evidence to the contrary. He is a pathetic liar who denied even having rented a room in F.W.47's house and then unblushingly said that he did stay in the house, but only for a day. I am convinced, as was the learned trial magistrate, that the room in which we found the things was at that time being rented by him and I am satisfied that the case file was found in his box as alleged by the Police constable James Langali. The witnesses the appellant called proved to be even more pathetic liars. They told, so many transparent lies that they succeeded only in strengthening further the Prosecution case against the appellant. They would not agree as to where the appellant was when he was told about the break-in, when they were seeking to buttress the appellant's denial that he refused to go and visit the court house after hearing the news. They would not agree as to which one among them shared a bed with the appellant at some other house, when they were trying to show that the appellant did not have a room in P.W.7's house and to try to persuade the trial court that the appellant could not have taken part in the alleged break-in. The finding of the things in the room lent support to P.W.3's testimony, and where there had been a fire were found the remains of at least Criminal cases Nos. 124, 129 and 175, all of 1973. The two offences were in my opinion sufficiently proved and the appeal against convictions for them is accordingly dismissed. There was an impression, which was erroneous, that the first of the two offences attracts punishment under the Miniwun Sentences Act 1972. It does not and I would leave the sentence of two and a half years for it undisturbed. I would however respectfully agree with Mr. Mwipupo, learned State Attorney, that the sentence for the second offence, that of Destroying evidence, should be enhanced considering the particular circumstances, especially, I would add, for the first of the three accused, the appellant, who is an official of the court. On the second count, for each of the three accused I therefore enhance the sentence from the six months, imposed to one year. The learned trial magistrate failed to indicate whether the two terms should be served consecutively or concurrently. . . . /3 -3- She should not have left things like that. I order that the sentences should run concurrently so that in effect there is no effective increase. Accused 2 present. The other accused persons absent. Mr. MWIIOPO for the Republic. (L. M. MAKAME) JUDGE. Delivered in Court at Arusha this day of 1975. /MTrivr. I

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