

TANZANIA / JUDGMENT

19770831 TZHC Arusha

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TZHCDECIDED
31 August 1977

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- Iii T HIGH COURT OF TANZANIA AP ARUSHA LPPELLLTID_JURISDICTIONIT HIGH COURT CRLhIITLL APPEAL NO. 90 OP 1976 ORIGINAL CRININAL CASE NO. 113 OF 1975 OF THE DISTRICT COURT OF HANANG- DITRICT AT BABATI BEPORE G. A. HLSSLVTE, Escj. 9 District Magistrate JOHI\T Oi..RI LiI * . . . , . . APPELLANT (Original Accused) versus THE REPUBLIC RESPONDIT (Original Proioctttor) JUDGE EITIT TZPASJ. The ppeillant (and. apotller person whp was acquitted) was bhargod with anc: convicted of stealin by servant 6/265 and 271 of the Penal Code and sentenced to a total of , five years .imprisonmet. He is appealing against the finding and the sentence. In his prolixnorandtiof aé1 repeated his denial i th lower court that. did not- :coit.. the offence He says th?,t:10 6d to rmit fl the
- rnoii he collected from the sale of petrol to his treasurer tn support of the conviction ;ti learned tate attorney argtec1 :bhat thereias aaple evidence in support. of the eonvictioi-i and referred the court to the evidence of P.W.1 and P.T.3. T1rpwaano di putt in the looi.courtthatat the.. tiLe bhe accused i ai to hvo ebolon s.l3,326/90 he was employed as a dcpo supervisOr by tno Gorowa. Co-operotivo Society and wac stotioneo at Dbati, anng district. His dutics inclided suporvision of e patrol-pump owned by the Cooperative Society in that no used to receive all the proceeds of the sale of potrol and other lDotroleuul products from his pump-attendant one, NohaLlod Gialu, On rcoipt of tho mOnios he remitted It to the Society's treasurer, (P.W.3), who issued an acLiaoiledgema rceip. On 22/5/75 accused's.hooksof account were checked. byan audlGor, who found that some monies received by the ccuscd fro r L procceds of the sell of petrol hed not been accàwied for. The matterwas reported to the police and thoaccusod wasconequoitly arrested and charged with stealin6 by scrvant. •• In a long 2MCI well-argued judgenont the learned triJ magistrate caiiTó to. th:; conclusipn that tho accused was guilty of thq off encc chard. - Itend i on...../2 -2 I CncL, on thc cvinienCc, o agree nh the finong of the trial court tn:L ihe urosecuilon had ijro.vcd the charge against the apuollant beyond all. reasonable doubt.. There was for oxaapls rndiscted ovidonco that the accused hoc1 on 1/7/74 colcctted e tal of i .1,776 vide cash-sales Hós 22725 to 22740 Only dl556/= was remitted to the treaurcr P .W .3), vicle .cash-rQL i itanco. receipt ITo. 982546 of 18/7/7 0 . This means c'2alj 1 2201 was not accounted for On 14/10/74ä total,o s.5793/85 was collected vide receipts Hoe. 3231 3308. The

accused remitted to his treasurer only TShs 5201/85 vide remittance receipt No. 988012. The balance of TShs 192/ was not accounted for. There was also undisputed documentary evidence that on 24/11/74 a total of TShs 8,222/10 was collected by the petrol attendant and paid to the accused in video cash-sale receipts.

- Nos. 4102-4141 He remitted to the treasurer TShs 7,213/10 only. The balance of TShs 1009/ was not accounted for. The documentary evidence which I need not recapitulate simply showed that between the 14th of July 1974 and 11th of July 1975; the accused, received a total of TShs 13,326/90 all of which he failed to remit to the treasurer, P. 177.3. That the petrol attendant, (F.W.5), used to remit the monies to him was fully supported by documentary evidence. Equally there was nothing found by the learned magistrate, water-tight documentary evidence that the accused remitted to the treasurer, (P.73) 9 only part of the monies he received from the petrol-attendant. There was, I agree with the learned state attorney submission, sufficient evidence in support of the charge. The total sentence of 5 years is a minimum. In the event the appeal is dismissed in toto. . ARUSHI: 31/8/77 (N. / S. NIZISI) JUD-- Accused - absent and in arrears. Nguluna for the Republic/Espondeant is in default.

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