

TANZANIA / JUDGMENT

19710722 TZHC Mwanza

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0: -.*- IP T}L HIGH COURT OP TiZANIL AT iJJZA Appellate Jurisdiction CR:uaNAL APEAL NO. 647
OP 1970 (Criminal Case No. 301 of 1970 of the district court of Kionga before P. A. Munyora
Esq., resident magistrate) JOint LITASHIMt....., .APPELLANT (oIzIc-il.i ACCUSED) versus Ti
REPIJBLC * RESPONDENT (o:IGIHJr PRC3ECTJTOP) CHALCE:-. Steal in c/s 265 of
the Penal Code, JuGr:EIT EL-Kilmy, J. The appellant, John So Batashuka, was charged with and
convicted of stealing contrary to section 265 of the Penal Code, Cap.16. He was sentenced to
eighteen (18) months imprisonment. He is appealing against his conviction and sentence. The
Republic was represented by the learned State Attorney, Mr. Butambala. The appellant did not
wish to be present at the hearing. It was alleged that on the 11th of June, 1970, at about 5 p.m.,
Hassan Eajobu (hereinafter referred to as "the complainant") was at the railway station at Kigoma.
He was due to travel to Tabora, and he obtained first class accommodation in the
train. He left his basket and bag in his compartment and went to see the railway ticket examiner
on some matter. When he went back to his compartment, he noticed that his handbag was
missing. He decided to discontinue his safari and he reported the alleged theft to railway police
at Kigoma. Later on he received information that a person was seen walking towards Gungu,
some three miles from Kigoma, with a handbag which fitted with the description of his own
handbag. It appears that he did not care to follow the alleged person. At about 7.30 P.M., on the
same day and while still at the railway station, the appellant passed him and he was holding a
handbag which was similar to his handbag. After following the appellant for some distance, he
was satisfied that it was his own handbag. He called that he requested the appellant to hand over
the bag to him, but the appellant refused. He alleged that the appellant asked him to name the
contents of the bag and he did so, but the appellant told him that none of the things he mentioned
were in the bag. The complainant asked the appellant to open the bag but he refused. He insisted
that the bag was his property. This argument went on for some time until they agreed to go to the
shop of John Chengo (P.7.2) so that a person can verify the contents. At that shop, and in the
presence of John Chengo, the handbag was opened. A pair of trousers and a towel were taken out.
The complainant claimed that both items were his property. On the pair of trousers he was able to
show that the replaced buttons were lined by moans

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- - - (- PF !- o white thread, and on the lianclbai he pointed out ia black line of colour on the outside which he allcecl was caused by black substance- fron his ...2 bicycle. Ohenie (P\;.2) confiruei the cuplainnnt's evidenco. In his sworn defence, the appellant said that he boul -it these items from a peddlo: at his house, and that when he was passin; with than the complainant confronted him, He alleded that he could not find this man s and that he di not Irnow that the items wore stolen property, and that he did not suspect them either. He said that he did not cniro from the person who sold thou to him if he had obtained thou lawfully. It would have been strar:a if he did as thn normal circumstances a buyer does not ask the vendor there or how he cern to be in possession of such foods unless ho suspected thcei In this case, the appellant said that he did not suspect thei On this evidence, the trial nistrate bold that -the items found in possession of -the appelent were those of -the couplctinnat With clue respect, the subsequent findinfo of the trial mafistrote cannot be summarised, and I auote them in full, He held:- 11 The accused's (appellant' s) defence is that he boujht the coods from the traveller and did not ivaovi that they were atolen foods. Por-that reason I find that the accused (appellant) was in possession of stolen propetk a few hours of its thcft and he has riven a reasonable explanation as to how he cane by the sane1 In this connection the acoused (appellant) stated that lie boucjht the hoods from a -traveller and no one waspresont then ho bouht then i cm unable to accept such a story I find thc accused (appellant) has not 'ivon a reasonable explcmation He then concluded that the "presumption to folli is that the accused (appellant) v;as the thief not a receiver" With duo respect to the learned urf;istratc, in this passae 1 exhibited confusion in his mind, and it cannot be said that.. the learned uciistrate properly directed hiusblf on the issues involved. In my vic-w at least, three issues wore involved and the learned uaf,istrcte oih to have directed his mind clearly. There was tho question of innocent possession which, if accepted, would hcwe been a Lood defence to theft and to receivini; stolen property The second issue was whether, on the facts and circumstances, the appellant WCS C thief as charc;od. and similarly on the third issue vthetiier the appellant was a fuilty reQeiver. At the start of (above underlininf-) it would suL;fcst that the leQrned rirristrate vies satisfied that the appellant cave an explanation which could probably be true and therefore ho was inclined to acquittinL bin. But when he turned to rejectinf pert of the / appellant's expl:-nstion, it becomes unclear as to what he meant by the 7 words- The has a;iven a reasonable explanation as to how he cane by thc l , ,-' sane u. The matter is not further crified by the use of the last -pbcs the accused (appelL nt) has not fivon a reasonable oxplanat'. 's it was said by the Court of Appeal in the case of IM V. ViB/ (1942) 9 E.A.C.J_ p42, in order to justify quashinf- a conction iaisdecOn as to evidence must be of such a nature ad the circumstances of Ghc case must be such that it is reasonably probable that thebrial court would not have . . .3 convicted hod -there been no nisdirection.. The case of REX v. COIIEEk

- (1938) 5 E,i.C.ii., p.128 is also re1evt. It is clear that the exlcucace of i:.iisdirection does not necessarily lead to a quashi of a conviction, as that would depend on the nature of the evidence on record and the circumstances of thi2 The test app ois to be whether the appellate court on the particular case could still say that the ieaxned magistrate could still

come to the same conclusion had he not misdirected himself. The Court of Appeal thought that, in CORREAT 5 cases that OVCI 0. 50110US misdirection would not necessarily lead to quashing a conviction. In this case, apart from these misdirections I have underlined, the learned trial magistrate also misdirected himself when he said that the appellant VanS required to give a reasonable explanation. The law does not require him to do anything of this sort in the course of his defence. He is simply required to give an explanation which could probably be reasonably true. Therefore, taking into account these misdirections on the evidence together

- With the facts of this case and the surrounding circumstances - the appellant's conduct from the time he was seen in possession of the handbag to the time when the handbag was opened in the presence of Chengo is consistent with the conduct of a person who was on guard - it cannot be said that the learned magistrate could have come to the same conclusion. If at one instance he was inclined to the view that the appellant's explanation was probably reasonable, and then he thought otherwise, this court is unable to say which was the final assessment of defence which was taken by the trial court. For the stated reasons, the appeal is allowed.
- ORDER:- The conviction is quashed and the sentence imposed set aside. The appellant should be released forthwith unless he is held on some other lawful purpose - Delivered in Court on the 22nd day of July, 1971. (Z. I. El-Hady) JUDGE. Appellant: absent, - Respondent Mr. Eutanbala.

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