

TANZANIA / JUDGMENT

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, HI IN TH1 I'1IG' CCUT OF TANZANIA AT .ARU3i-L4 APLT. 9 JURIDITION HIGH COURT
CRININAI L'NO,161 OF 1976 (Original Criminal case No. 50 of 1975 of the District Court of Hanarg
District at Babati.) . . BEFORE. J. N. NIMICAZA Esq., District P1a gi t r a i e
JOSEPHQUAYMOJAW(2ndaccused),.....o., AFTTLLMT versus THE REPUBLIC .*. RPONDENP
JUDGUJLIP 1

- MNZAVAS,J. - In this case the ap'- p-ellant Joseph Jawi,. and another person who has not appealed were joiitly... . charged with two counts of stealing by person.rnployed in public service c/ss 265 and 270 of the Pencl..o:d:e.and,. on being convicted he was sentenced to five years çimpr.isonment on the first count and three years inrir.onment on the second count. The sent.rces were made to run.cumUltive'iy' making a total of 'eight years' imprisonment. The appellant. is appealing aciainst both 'the,. convictons".t4Le sentences, In his memorandum of appeal to this.,court, the. ap.eellant argues that he was a'nere committee meneTThf •Kateshi ... - Co-opei'at-ive Socè€yand that he did not: handle cash.,:. He also says'that he ws'not the oneho kept the'keyto the., store in Which produce was keDt' The appellant a' co says in his memorandum of appeal thof the senteñbes ifl1p.psed are,, manifestly excessive. In support of the convictions the iened-tte'•Attorney argued that there was suf:icierit evidenceconrecti-ng the accused with the offences of sten1in. and referred the court to the evidence of JamOs, (TW025,and thst. :pf Emmanuel, (w.ii), the secretary0 There was no ispute., in this case that the first aecved.who 'has no tz appealed, was the brantc secretary of Katcsh Co-oper'itive ociety at the material time. The aopellit was a con'rnittee rnen'ber and, as the evidence amply do' -mon-strated, th right hand an of the first accused in the running of the Co-operativeociety0 The two were the ones who used to receive pro;duce,,fxom ' farmers and they' were'the ones who used to pay ,the. farers. for their produce. When the books of, account were checked it was foudit that there 'was p, s'h r'tag•e of produce, mainly wheat and beans as' well a's shortage of cash. T.here.was,. as rightly found bythe le'rnd trial magistrate a shortage.. of 10'800 Kgns df'produce worth about Shs,73,825,89, As :bo;th accused kept the keys to 'the store they were •irectly. responsible for the shortage. There was fulminating evidence in support of the charges. To mention but a few examples there was evidence that the accused used to sell wheat añd dther'.roduce to private individuals in Mbulu,nd lso used to transport beais tend. sold them in Singida. .he.proceeds from such irregula±ie's were not credited to th""account's of the

society. The L., being the position the only reasonable presumption is that the accused pocketed the money. ..2 And what is - -2- And what is more true was undisputed evidence that both accused approached the chairman of the co-operative society (pwi) and the secretary," (PW01), and offered to them money as a bribe so that they withdrew the case.. from police hands. Such conduct was clearly, inconsistent with Innocence. I, with respect agree with the learned State Attorney's submission that there was ample evidence connecting both - accused with the offences charged. On the evidence it is no wonder that the branch-secretary of the society (1st accused), decided not to appeal against the conviction. As for the sentences of 5 years and 3 years imprisonment which, were made to run consecutively, the Appellate decided to leave the question to the courts. As rightly commented by the learned trial magistrate, the accused abused the responsibility entrusted to them by their fellow villagers, the humble peasants. The amount of produce stolen is worth thousands of shillings. This being the position, a condign sentence was indicated. The first accused was extremely lucky that his age removed him from the ambit of the 'minimum' sentences Act, 1972. However the order that the sentences of 3 and 5 years imprisonment imposed on the appellant, (2nd accused), should run consecutively was bad in law. From the evidence there could be no doubt that the offences were committed out of the same transaction albeit on different occasions. It is an established principle of law that 'where' crimes arise out of the, same transaction the sentences imposed must be made to run concurrently. See the decisions of this Court in *RECENTIN, ATO 3/0/JAMISTO v 1* (1968) - *HOOD 154k DANIEL MTUNZE 68 1M0D0 321 and JAYANT LAL KARA SHAH* v R (1968) - to mention but a few of the decisions on this point. On the facts the learned trial magistrate erred in holding that the sentences should run consecutively. The order is accordingly varied to the effect that the sentences of 5 and 3 years imprisonment are to run concurrently; This is to say that the appellant is to suffer a total of 5 years imprisonment only. The order regarding commensuration remains undisturbed. In the event this appeal is, but for the variation in the sentence, dismissed in its entirety. ARUSHA, 22/12/1977

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