

TANZANIA / JUDGMENT

19770614 TZHC Arusha

COURT
TZHCDECIDED
14 June 1977

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IN THE HIGH COURT OF TANZANIA AT ARUSHA APPELLATE JURISDICTION HIGH COURT
CRIMINAL AS/L NO0 381/1974 ORIGINAL CRIMINAL C'SE NO 460 OF 1973 OF THE DISTRICT
COURT OF ARUSHA DISTRICT AT ARUSHA Before J.10 Mrosso -----Senior Resident
Magistrate JOSEPH SARONGA ----- APPELLANT (Original Accused)
versus. THE REPUBLIC ----- RESPONDENT (Original prosecutor) JU
DG M E NT Jonathan, J0 The appellant was convicted of obstructing electricity c/s 283 of the Penal
Code and sentenced to 12 months' imprisonment0 There was another accused charged jointly
with him0 He was however acquitted Both accused were employees of the East African
Community at Tang.rU, Arusha where the appellant was allocated a living unit in house where
POW 1 and another employee of the Community also had a unit each0 it seems that between the
months of April and June, 1973 the appellant invited the second accused to stay with him in his
unit while awaiting allocation of accommodation0 All the three units were installed with
electricity and for each of them a main switch and a meter were provided0 Initially, the flow of
electricity was designed so that in each unit the electricity flowed from the main switch through
the meter to the various appliances needing electricity. The power consumption would be recorded on
the meter0 That had been the normal practice and POW 4 the Community's electrician in his
evidence said that was the lay-out of the installations in 1969 when they first occupied those
houses0. In the month of June 1973 the appellant was transferred to another station and the other
accused succeeded him as the tenant of that unit0 It had for sometime dawned on POW 1 that his
electricity bill had of late risen sharply0 The reason for this, as was to be discovered in or about
the month of August that year, was that a wire had been connected to the main switch of POW 1,
conducting electricity to the appellant's main switch by-passing his meter0 The result was
electricity being consumed in the appellant's unit was not being recorded on that unit's meter; it
was instead being recorded on the meter for the unit of POW 1 who was accordingly bearing the
bill which would have gone to the appellant for payment0 On the basis of the foregoing it was
urged by the prosecution that the appellant was responsible for the wire device so as to avoid
payment for the electricity he had consumed0 It was his defence on the other hand that he had in
the month of January, 1973 moved in to find the unit had electricity0 Later, in the month of April he
received a letter from his employer informing him that, commencing from the following month
electricity charges would be deducted from his salary0 At the end of May a transfer order came
and in June he moved to another station leaving the second accused in occupation of his unit. It is
relevant to note that he did not produce the meter with respect to payment of electricity charges,

while neither the prosecution nor the court sought its production. However, the appellant while the judgment was pending seems to have seen the learned trial magistrate to hand him 0 0 0/2 0 -2- the letter. He would not however receive it at that stage and in the absence...of the prosecutor. ' in his evidence he expressed a desire to be present at the hearing of this appeal to tender the letter and other correspondence. Unfortunately however, despite repeated efforts being made it has not been possible to trace him for service of the notice of hearing. The testimony of the second accused was broadly in agreement. He, too, he said, did not "pay for the electricity he consumed after the appellant's departure, this because the appellant had told him of the letter referred to. He expected therefore, that a similar letter would be forthcoming to him as well. He had however not received it when the device was discovered. There was a dispute as to the time the appellant moved into that unit. PW 1 said by the month of November 1971 he had already moved in. The appellant on the other hand stressed all along that he had moved there in the month of January, 1973. The employer's letter of allocation might have decisively resolved the matter but, like the letter regarding electricity charges the appellant claimed to have received from his employer, the letter of allocation was, neither produced nor sought to be produced. It appears to be among the documents the appellant in his petition has expressed the desire to produce at the hearing of this appeal. It would, be speculative to say what the 'correct' letters would in fact have shown had they been produced, but I think an adverse inference, should be drawn against the prosecution for not demanding production of the letter of allocation or itself producing the true copy of such letter. That as I have said) would have been decisive of the matter whether he was allocated that unit in the month of January, 1973 as he claimed. It is not under the circumstances possible to say definitively that he was in occupation as early as November, 1971 and I think his version should be given the benefit of doubt. That it could well be true, in the event, the chances were. That the device might have been installed, previously to the occupation of the appellant, of which he, like PW 1 and the other witnesses, might have had no knowledge. As regards the other letter, I cannot say, as I have stated, what it would have shown had the appellant appeared and produced it at the hearing, but I should give him the benefit of doubt that it could have been a "genuine letter. He is to be made to pay for the electricity charges. In the result, the conviction is set aside together with the sentence delivered in open court this 14th day of June, 1977. read (myT' rfl1J i

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