

TANZANIA / JUDGMENT

19770305 TZHC Dar es Salaam

COURT
TZHCDECIDED
5 March 1977

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¶ \ NTF?EHIGCJRT OF TANZANIA AT TANGA \SUB-RGISTRY -J JtPPELLATEJURISDICTION NO0 10 OF 1976 104 of 1976 of the District GERnga District at Tanga BEFORE; J. H. MSOFFE, Esq0, Resident Magistrate JUMA MALETA ::::::::::: APPELLANT (Original Accused) versus THE REPUBLIC ::. ;::::::::::::: : RESPONDENT (Original Prosecutor) CHARGE: Corrupt Transaction - contrary to section 3(2) of the Prevention of Corruption Act No0 16/71 JUDGMENT/ORDER BIRON, J0 The appellant was convicted of corruption and he was sentenced to imprisonment for three years0 He is now appealing0 The proceedings are confusing in the extjeme! It would appear that the investigation by the police was casual, that.;the presentation of the case by the prosecution was inept and the magistrate in his judgment appears confused as well 0 The particuulars of the charge as laid in the charge sheet. allege that:- "The person charged on the 20th day of February, 1976 9 at about 09.00 hrs at Labour Off ice, within the. District and Region of Tanga, corruptly solicited and accepted from one MAZHAR G. YAMANI cash ths...00t-note No0 A.771679 as an inducement or reward for doinçj anything in relation to their (sic) principal affairs, to wit forgive the said Nazhar G. Yamani to pay shs. 35,767/-..as.a provident fund to his servant Musa Mohamed 0 t' However, in the correspondence with the employer of Musa Mohamed named in the charge sheet, there is not the sl)g1test mention of any

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- . 3- The appellant denied the charge and threw away a note which when picked up, was found to be the hundred-shilling note the serial number of which had been noted down by the police.- The appellant in his defence denied having even known Yamani let alone having solicited and obtained from him a hundred shillings as a bribe. He asserted that on the material day when he went outside the Labour Office to answer a call of nature, he was followed by the police who arrested and charged him for having received a bribe of a hundred shillings. In fine, the appellant's case is that he has been, to use a colloquial expression, 'framed' by Yamani and the police witnesses 0 However, he could vouchsafe no reason why they should have done so. The issue before the learned magistrate was purely one of fact, as to whether the prosecution witnesses should be believed or not.. The learned magistrate directed himself very fully on the evidence and also on the law, correctly stating that whether or not the appellant had the power to have the case against Yamani dropped, was irrelevant, as the bribe if solicited and taken by the appellant was in the language of the

section under which the appellant was charged, paraphrased, 'for doing or forbearing to do ,,,,,,, anything in relation to his principals affairs or busIness,.'. In his petition of appeal drawn up by counsel, it is alleged that there was no corroboration of the evidence of Yamanj. With all due respect, this is absolute nonsense, as Yamani cannot by any stretch, be regarded as an accomplice. As remarked earlier, the real issue was one of fact. The learned magistrate who saw and heard the witnesses and the appellant, accepted the evidence of the prosecution witnesses, in my view quite rightly, and he convicted the appellant as charged. For, as admitted by the appellant himself, there is no reason/ill why any of the 0 0 0 0 0/4 _4... prosecution witnesses should have lied and perjured themselves in order to 'frame' him. With regard to the sentence, it is the minimum prescribed by law, as laid down in the Minimum Sentences Act, 1972. In the result, the appeal is dismissed. The learned magistrate is requested to write more legibly; as not only has the copy typist in the High Court failed to decipher his handwriting, I, likewise, have repeatedly consulted the manuscript, as some passages in the proceedings are not only incomprehensible, but do not even make English. Delivered, in Court at Dar es Salaam this fifth day of March, 1977. f- ' (PHILIP BIRON)
JUDGE

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