

TANZANIA / JUDGMENT

19840910 TZCA Dar es Salaam

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10 September 1984

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IN THE COURT OF APPEAL OF TANZANIA AT ES SALAM (CORAM: Mustafa, J0Ao, Makame, J.A. and Kisanga, J.A. CRIMINAL APPEAL NO0 61 OF 1983 BETWEEN JUMA s/o CHAMOTTO c 00000000000 . APPELLAIT UUMN THE REPUBLIC • • o 0 0 0 0 0 0 0 0 0 RESPONDENT (Appeal from the judgment of the High Court of Tanzania at Mbeya) (Nunyera, J.) dated the 29th day of August, 1983 in Criminal Appeal No 0 33 of 1983 JUDGMENT OF THE COURT NUSTAFA, J0A0: The appellant was convicted of making a false document contrary to section 148(a) of the Customs and Transfer Tax Management Act in the District Court and was sentenced to eighteen months' imprisonment0 He appealed his conviction and sentence to the High Court 0 The conviction was affirmed, but the sentence of imprisonment was reduced to twelve months. He is now appealing to this Court 0 The appellant, at the material time, was a Customs Officer0 He had arranged with one Jensen, who was POW.1 at the trial, to order a radio cassette for him from overseas0 Jensen was an expatriate working at that time at Nbeya0 Jeisen ordered that along with other items and these goods eventually arrived at Mbeya by air post0 Jensen had stated that he had shown the appellant the catalogue and the invoice in respect of the goods being ordered, and if Jensen was believed the appellant knew exactly what the cost of the radio cassette and the other items wasp *0 0 ./2

- 2 - When the parcels arrived at Nbeya in the neme of Jensen, the appellant came to know of the arrival, and by virtue of his office, obtained possession of the parcels, took them home, and opened the one, according to him, which contained the radio cassette. According to Jensen both the parcels were opened bythe appellant in Jensen's absence0 The appellant assessed customs and sales tax on the radio cassette at T.shs. 369/-; a gross undervaluation. Later when a proper assessment was made of the contents of the parcels, a sum of over Thse 4,000/- was made. The appellant had alleged that one parcel. contained the radio cassette and the other parcel contained only books and mag a zines, for which no customs or sales tax was leviable. However, the customs declarations on the parcels, according to which the appellant alleged he had based his assessment, were not available. The appellant had alleged that those forms were torn off by the Police, who had conspired with Jensen to frame him. Beth the courts below believed Jensen as a truthful witness. The trialcourt was prepared to treat Jensen as an accomplice However, there were corroborative circumstahces. The appellant himself, in the absence of Jensen, collected the parels, knowing that they wer addressed to Jensen. The appellant 1 himself paid the customs and sales tax. The customs

declaration forms have mysteriously disappeared, the allegation that the Police had deliberately destroyed them being completely incredible in the circumstances. We are satisfied that the appellant was properly convicted on the evidence adduced at the trials. We are also satisfied that the provisions of section 196(1) of the Criminal Procedure Code apply in this case, and the appeal is dismissed. I certify that this is a true copy of the original. - B. P. MOSHI) SENIOR. DEPUTY. REGISTRAR

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