

TANZANIA / JUDGMENT

19710811 TZCA Dar es Salaam

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11 August 1971

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IN TRI HIGH COURT OF TANZANIA AT DAR VS SALAAM CWINAL PPAL NO. 222 of 1971 Original Criminal Case No. 371 of 1970 / y Of the District Court of Morogoro Dstrct at Morogoro Before P. K. O. Shayo Resident Magistrate JUMAs/o SALUU... APPELLINT vs ii aus mutt ,Lt 'J uB U id LlJi%JJJtA!4 H4RG: Stealing goods in transit c/se 269(o) and 265 of the Penal Code. JUD0MbNT MWAKSNPO, g. J. — The appellant, juma s/c Salum, was charged ____ before the Distvit Court Morogoro with stealing goods in transit MW oontrary to sections 269(o) and '265 of the Penal Code. On being found guilty he was sentencedto two' years imprisonment. He has now appealed against the conviction and. sentence. I can hardly find any merit in his appeal against onviction. From the evidence on record it is abundantly clear that the appellant was apprehended within the premises of the Iailway Station Morogoro carrying away one carton containing carrots. The carton according to the evidence of the consignor, One Harji (W 1) was one of two cartons whoh he had handed to a Railway's parcels ciek for consignment to the consignee one F, K. Patel of Kiloa. On acceptance of the parcels by the Railway authority the consignor was duly issued with a consignment note. Subsequently the same day the appellant was seen by a station foreman near some railway wagons 'carrying a carton bearing Railway seals and labels. When the appellant was challenged,as to the oi'nership of the parcel he said that the parcel was hja. Godfrey Kalep (W 4) the parcel's clerk, who accepted the two parcels from the consignor, Haji, identified the parcel as one which he had received that same day for consignment to F. K. Patel of ICilosa. The witness did not know how the parcel was removed from the rack where other parcels including the second carton were placed. When the parcels regIster was checked it was found that the entries therein corresponded exactly with the labels and other mark on the stolen paroeel he appellant when oailed upon to defend himself elected to keep silent and not surprisingly the learned lesIdent Magistrate found him guilty of the offence charged. With the utmost respect, I find that the conviction of the appellant s sound and consistent with the trial court's finding of facts. On these facts I do not believe that any reasonable tribunal properly directing ite1f on the matter would have reached any different conclusion. I would therefore uphold the appellant's conviction and direct that his appeal against conviction be dismissed.. I will now turn to the question of sentence. The appellant who is recorded as havIng eleven similar previoB convictions denied these convictions. The record then ShowB ante by the Magistrate wioh is In one word, I.e. "Proved". I do not know what this actually means for the word "proved" with nothing more does not tell us how the proseou discharged the onus placed upon them to prove the previous convictions to the aatisfaction of the Court. IncIdentially the prosecution purportedly produced a

carbon copy of the appellant's previous convictions in proof 2 of these convictions. I find, the carbon copy a completely worthless mode of proof. There is nothing in the copy of previous convictions to show that the person named therein is one and the same person as the appellant. The appellant's name does not correspond to any of the names appearing in the record of previous conviction. This fact alone should have been sufficient to enable the Magistrate to be hesitant in accepting the record as proof of appellant's previous convictions. In consideration of the matter I am not at all convinced that the appellant's alleged previous convictions were properly proved and I will in the circumstances treat the appellant as a first offender. Before going any further, I should like to draw the attention of the Magistrate and that of the Police to the provisions of section 143 of the Criminal Procedure Code which lays down the procedure to be followed, in proving previous convictions. By virtue of section 143 the prosecution are given the choice of three modes of proof. They may either prove: by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction was had, to be a copy of the sentence or order; or by a certificate signed by the officer in charge of the prison in which the punishment or any part thereof was inflicted; or by production of the warrant of commitment under which the punishment was suffered. Whatever mode of proof the prosecution choose to adopt it will be necessary in each case to prove that the accused person in the dock is one and the same person as the person who is alleged to have been previously convicted. If this latter proof is not forthcoming the Court will have no alternative but to hold that the accused is a first offender. As misdirections on this subject are far too common, Magistrates and prosecutors alike would be well advised to adhere strictly to the procedure laid down in the Criminal Procedure Code. Turning to the question of sentence. One essential factor that a trial Court has to take into consideration in determining the appropriate sentence is the intrinsic gravity of the offence it is dealing with. In the instant case there can be no question of the offence being other than a serious one. Thefts of Railway property and in particular goods in transit has reached alarming proportions, threatening the very economic viability of this public institution and of the country as a whole. The Courts would be failing in their duty if they were to sit idly by and watch while these depredations went on. As Courts of Law, I believe we cannot assist in curbing these crimes by being too lenient and too moralistic in our approach to sentencing. The public interest requires that offences which strike at our economic well-being should be vigorously dealt with and for these reasons. I do not think that the appellant has been unduly punished. He has in fact got his just deserts. I accordingly dismiss his appeal against sentence. In the event his appeal fails in its entirety and it is herewith dismissed. Delivered in Court at Dar es Salaam this 14th day of August, 1971- T. M. N. MWAKAUN ID01G. JUDGE II?

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