

TANZANIA / JUDGMENT

19820817 TZHC Tanga

COURT
TZHCDECIDED
17 August 1982

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- 'ç' IN THE HIGH COURT dP.TANZANIA 1< AT TAN GA APPEtLA-TE JURISDICTION CRIMINAL ApPEAL NO. 38 CIF :L%8O (original 'brijnjnL1 'Case No. 313 of 1979 oVthe) • (District Court if .Tanga'Distrit Before CJINDI Es Resident Ma.strate o± JUMA4•. ...APPELANT. (Orig' tccused). . Versus HE REP IC...RE8PON!1 Orig. ProSecitor: CHARGEi at Count: Stealing postal tatters c/s 267 of the POnal Code Cap. 16 vol. 1 of he Laws, •.: 2nd Count: Stealing by Servant a/s271 and 265 of the Penal Code Cap. 16 Vol. 1 of the Laws: J U'D G E M E N T
- JJ -, ", I - .,• This appellant was ch-.red in the alte'native with the óffences of :Steling Postal matttr und Stealing by Serant These are offences under the Penal Code On 'he first count of Stealing Postal niatter he was charged jointly with c.iother person who was also charged ,oione in another Count of Simpl theft contrry to section 265 of the Penal Coder The said person wa. acquitted on both counts and he was djscha rged The appellant was p however, convicted as oharged on Count one of Stelaing Postal matte'nd he was sentenced to three years impri sonent, The learned Resident Magistrate refrained and quite correctly toot from entering any verdict in the Stealing byServañt count 3 Dis satisfied the appellant now appeals to this Court The facts of the case as found and acted upon by -the learned Or 2 Resident simple and straightforward. The appellants was, a Iest a the time or his arest in connection with r th.s mattez, an employee o the Taitzctni'i Posts and Teleconmiunica -tions Obrporation and he was at - icked to jbe General Post Office, Tanga He :j * was the person in charge of the sorting sectjon His office was separate' from hë counte where, aiong other persons, PW]. used to work. The±e was howe -v-er, a c.crmeceg door between the appellaxts office and the O Eiiddcsgiven lr pWl to the effect that his duties included selling Postal Orders The procedure was that whenever he sold a PbStaIrdrr he woill s -Ltmp±t with a rubber stamp impression at a Space provided for Such for the issuing o±fice Apart from the date arid other details ihe rLber Stamp which PW1 was then using had the letter "E" inscribed oit On 24/6/79, a Satuiday, P171 had Postal orders valued at Shs' 1,0001= at the ølose of theein a steel drawerwich was in his cubicle at the ccnter He 1 however, did not
- • - lock'thie said drawer The.followjngdaya'5unday and he f .j,Q, PW. ddnot
- report on duty On .he, .:b1ng Monday, i.e. 25/6/79, *hen he reported on duy and checkd his drawer he was siriâ to see only Postal orders v'luec1 at Sh 931=. The 1- est, vajued at Shs. 9091=, were missing He reportd the matter to his een.iors 7 PW3 and PW4 On the same

Sunday, i.e. 25/6/79, the appellants co-accused at the trial and who I shall hereafter call the second accused 1 called at the Ngamani Post office where fifteen Postal orders valued at Shs 1525/=. He presented them to person 2 the Postal clerk who was then on duty, PW2 decided to pay cash to the second accused because 119 knew him personally and in fact, he endorsed to the same effect on each one of the fifteen postal orders which he cashed for him. 119 The postal orders which were taken from person 1's drawer and those which the second accused asked person 119 to take from the post office had their numbers recorded by person 1 and person 2 in the notebook. By sheer coincidence the wife of PW2, who did not give evidence in the case is also an employee of the Tanzania Posts and Telecommunications She witnessed the material time attached to the General Post office. Therefore, when the news spread at the General Post office that some Postal orders had been stolen she too heard, Later when she returned home, she related this to her husband, PW2, who then decided to check the numbers of the Postal orders which were brought to him by the second accused on the previous day. It was discovered that the numbers differed and they were the same. The matter was then reported to the Police not only through the accused's name and only locally, where the second accused lived. He, therefore, went and called the second accused who was subsequently taken to the Police Station. While there the second accused disclosed that he got the Postal orders from the appellant. When contacted about this at the time when he made an appearance as a Justice of the Peace as well as in his statement in his own defence at the trial the appellant conceded that he was the one who gave the fifteen Postal orders, Exhibit P2, to the second accused. According to him he, however, bought them from person 1 at the Post Office. He did so because he did not want to keep any hard cash on him. He preferred to pay later. However, he met the second accused to whom he was indebted to the amount of Shs 600/ He, therefore, gave him the Postal orders under query Since he learned Resien Magate, not surprisingly, disbelieved the appellant's story in defence and proceeded to convict him. Since the appellant is I /

- 4 In his petition of appeal the appellant aits that he bought the Postal orders lawfully from person 1. As aforesaid person 1 himself denied this. His denial was supported by the fact that the said sale was not entered in the Counter Postal Order Balance books Exhibit P.1 2 where 11 Postal orders sold were entered. Secondly, the rubber stamp impression of the issuing office. Exhibit P.2 shows that the sale was effected on 17th June 1979, which was a Sunday when person 1 was not on duty. To this the appellant replied that only members of the public could not buy Postal orders on Sundays. Members of the Postal staff like himself, however, could. If so then the next question that arises is, since these Postal orders disappeared between 24/6/79 and 26/6/79 how come that the date stamp of the issuing office is 17/6/79? Again, how come that the said date stamp impression does not bear person 1's code letter TIED? The answer to these questions are not forthcoming. It must be borne in mind that the appellant was also an employee of the T.P. & T.O. He was head of the sorting section. One would therefore, reasonably have expected him to know how Postal orders were treated at the time of sale. Perhaps the most striking of them all, in his statement in defence the appellant said that he bought the postal orders for safe custody of his father so that a man of the appellant's standing in

society would be so stupid as to buy oet for the safe custody of his money There is a CommiSSion payable on each Postal order and when blank it is as susceptible tO theft as iy pther paper money All in all, on iy evaluation of the evidence I an satisf ied,t as was the learned Resident Jf1agistrate that the only reasonable inference to be drawn from the established facts is that the appellant stole the saidostal orders The conviction therefore sound in law \ C J -:-. ---• .. I 1 5 and it is hereby upheld Turning to sentence s there is nothing which can make this Court feel that the sentence of three years irnprisonment is manifestly excessive in the circumstanOes In the final even this appeal fails and It is hereby dismissed in its entirety ill f (H.E'D. ya) 10 Judge 17/8/82

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