

TANZANIA / JUDGMENT

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V. IN THE HIGH COURT OF TANZANIA: 1 NIA & T M'2J\T';A, ppT.Lj, JURDICTION S CRIMIN7L iPPE&L NO., 270 OF 1972 Original Criminal Case No. 39 of 1972 of the District Court of Karagwe District at Karagwe - Before F.N. Bu'oorwa sq., District Magistrate. Ka'bendeche s/o igon'go ippellant versus The Republic Respondent. JUDGE K.LNT K.B2NDECHI s/o IOTO was charged with 'd convicted, of corrupt transaction with agents contrary to sections 3(2) of the Prevention of Corruption Act No. 16 of 1971, and he was sentenced to the manner 'mi tern' of imprisonment of three years as provided for in the Indivisi Sentences Act, 1972, being Act No. 1 of 1972. He was ordered that the Shs. 20/— be forfeited to the Government and he appealed against conviction, sentence and order. The appellant was 'het at the hearing of his appeal, as he indicated that he did not wish to attend, but his grounds for appeal were taken into account, and the respondent 'e public as represented by the learned State Attorney Nassawe. The appellant lived in this Igwabionza Division in Karagwe District. His wife s/o Ciaveri (1-7.1) was the Divisional Secretary for the area. On the 19th day of November, 1971, at about 10.30 a.m., Claveri received oral complaint from the inhabitants of Chakafuko village, which was within his jurisdiction. They complained to him that there was, a certain person who was bewitching the rains. It coincided that there were no rains, at all, at that time in that Division. He took up the matter. He called a meeting and the appellant attended it. During that meeting, the appellant claimed that he was capable of making rain and that he 'was not doing it because there was a group of people who opposed him. Following the alleged admission, the people, who were at that meeting, resolved that the appellant should be removed from their village. However, Claveri thought that it was not a reasonable course of action to take against the appellant. Therefore, in an effort to appease the group and to calm their tempers, he took the appellant into his office. He said that he actually wanted to check the legal position - whether there is any legal provision to deal with the appellants allegations. He said that it was part of his duty, as a Divisional Secretary for the area, to deal with public complaints and the appellant followed Claveri into the office and, as they entered the office, appellant asked him to forgive him so that he was not expelled and he begged him to do all he can to dissuade the public not to send him away as he would suffer serious loss, in terms of property, and he offered him Shs. 20/—, in the form of two currency notes, as his reward for dissuading the public from taking the course they resolved to take. Claveri told the appellant that he was not interested in the money, and that he was only interested in the justice, but the appellant did not understand his explanation. He talked to him in Kiawelii and then he changed to Kinyoribo when he realised, that the appellant was not understanding him. /.

- 2 - The appellant was a 75inza but he appeared to be familiar with the local language of the people. Claveri called in his messenger, Julius s/c Gaspar P1T 2), and asked him to help him to explain to the appellant his stand in the situation and Caspar did so, again in the local vernacular. The appellant was still holding the money in his hand. But the appellant insisted that, nevertheless, Claveri should receive the reward for his efforts. Claveri received the money, in the presence of his messenger, and he proceeded, forthwith, to arrest the appellant, for giving him a bribe. This was filed in the District Court of Karagwe. In his affidavit, the appellant admitted that there was a meeting, and that the villagers blamed him for withholding the rain, but he said that it was not true that he was doing so. Nevertheless, he said, the villagers resolved that he should be removed from the village. He said that the Divisional Secretary took him to his office and then released him. However, he said, when he went back to his house, he found many people had gathered at his house. He said that he took the alleged money, and handed it over to the Divisional Secretary as fees for suing those people who were at his house and who kept on blaming him for the non falling of rain. He said that he talked to the Divisional Secretary in Kinyanjio and he thought that the said officer did not understand him, so he was not certain whether he was a Kinyanjio as well as he said that he did not understand Kiswahili well and that that was the language of the Divisional Secretary. The Divisional Secretary said that he was a Kinyanjio and that he understood his father tongue very well. and, in cross examination, he said that it was not true that the appellant told him that the money was for opening a civil suit. The learned trial magistrate, after taking into consideration all the points raised by the prosecution and the defence case, held that the correct and the true version was as explained, by Claveri. He said that Claveri's version was substantially supported by that of Gaspar. He rejected the defence explanation, He found that the money as given was a reward intended to induce Claveri to act in his favour in the alleged corrupt transaction, and, therefore, the appellant was guilty of the charge. In his petition of appeal, he contended that the trial magistrate erred in accepting the affidavit of Claveri and Gaspar. He said, that the evidence was false and fabricated. He said, that it was part of Claveri's malicious plan when he took him into his Office so that he could have the opportunity of framing up allegation of corruption when he paid that money as fees for a civil suit. He said that Claveri hated him. These matters, which the appellant raised on appeal, were not raised at the trial. There was no allegation of conspiracy between Claveri and Gaspar; and there was no allegation - not even a mention of it - that Claveri hated him. In all probability the appellant is just fishing for excuses, in an effort to discredit Claveri and Gaspar. The evidence, as narrated above, was given fairly. If they, or any of them, hated him, it would have been quite convenient for them to accept the resolution of the villagers immediately and proceed, in their administrative capacity, whether legal or otherwise, to remove him from the village, as resolved, but they did not do so. Secondly, the amount of effort, Claveri and Gaspar, spent in explaining to the appellant the position of Claveri in the situation, in total disregard of what the appellant intended to do, showed clearly that they had no personal grudge, or hatred, or malice, of any kind towards the appellant. If they had, they would early have

accepted the money without further delay, and proceeded to prosecute him for corruption. 3 - Thirdly, I am satisfied, like the learned trial magistrate, that there was no misunderstanding. Claveri and the appellant understood Kinyambo which was the language used, after Claveri had realised, that the appellant did not understand Kiseahili very well. In all circumstances, I am satisfied that the learned trial magistrate was entitled to accept the evidence of Claveri and to act on it. The essential point, in this case, was whether the money was given with corrupt intent. Claveri was an official in charge of the Division. Whether he had the power to remove him or not is not material (see *KORBA v. R* 1967 HCD No. 92) ,, as long as the money was given. In his official capacity, he could have had effect, one way or the other, on the resolution of the villagers. This the appellant understood very well. Hence, the offer of the money, in the form of a reward, was intended to influence Claveri to act in his favour and to do so, in my view, is to corrupt him, whether he could or could not remove him legally. As it was held, in the case of *ALLY KdStM v. R* (1972) HCD No.186, it is wrong to compromise a public officer, such as Claveri in this case, in his honest and impartial discharge of his official duty. In this case, Claveri was attempting to deal with the delicate situation in an impartial way.. It was unfair and wrong for the appellant to try to influence his mind, in the manner he did. I find, therefore, the learned trial magistrate was right in finding the appellant guilty of the charge.. The sentence imposed was one of three years. The amount offered was Shs.20/1 , but the evil effect of corruption is great, whether the amount offered is negligible or huge. He was a first offender. However, in terms of Section 6(3) of the Minimum Sentences Act, 1972, set No.1 of 1972, special circumstances did not apply in this case. The trial court ordered that the money, which the appellant gave, be forfeited to the Government. The trial Court did not indicate under that provision of law: this order was made, however, it was possible to make such an order under the provisions of section 3(3)

(c) of the Prevention of Corruption Act 1971, but those provisions

- refer to the accused who received bribe. In this case, the appellant was the giver of bribe. It was not, therefore, applicable to him. The positions discussed in the cases of *KORBA v. R* (196) H.C.D. No. 92 and *R v NC-OBILI s/c IVPULILA* 11968) H.C.D. No. 231 is still valid. In the circumstances, the trial court had no legal power to make the order. It is accordingly set aside. ORDER: Otherwise this appeal is dismissed. Delivered in Court at Bukoba on the 12th day of February, 1973.. : 12th February, 1973 Z.N. dL—Kindy JUDC-E Appellant - absent Mr.P.Ntabaye, State Attorney for the Republic. , ..

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