

TANZANIA / JUDGMENT

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COURT
TZHCDECIDED
5 August 1972

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IN THE HIGH COURT OF TANZANIA I I AT DODOMA APPELLATE JURISDICTION HIGH COURT
CRIMINAL APPEAL NO. 30/73 ORIGINAL CRIMINAL CASE NO. 483 OF 1972 OF THE DISTRICT
COURT OF IRINGA DISTRICT AT IINGA Before T. N. I. Ngitami District Judge, Iringa
MAYASA S/O CHORIBI a.o.a. appellant (Original Accused) versus THE REPUBLIC .
a a a a a a a e . . a a 000000 . . a Respondent . (Original Prosecutor) Charge: Stealing by finding
under sections 258 (4) and 265 of the Penal Code Cap. 16 of the laws. J U D G E N T 1 KWIKIMA. AG . J. The
appellant was at first charged with stealing the starter motor the property of the East African
Railways Corporation. In due course the court learned, through the appellant himself, that he
had come by the motor spare (Component) by finding. The charge was redrawn at the court's
behest. The appellant then stood charged with theft by finding to which charge the court took his
reply to be an admission of the charge. When the charge of stealing by finding was read to the
appellant, he replied: "It is true." Such reply has been consistently held to be equivocal (e.g. R. v.
RAJAB AYIJB 1972 HCD 172) The facts which the prosecutor adduced in support of the charge,
even though certified as correct by the appellant, did not remedy the equivocal nature of the plea.
They did not reveal the offence of theft by finding in all its ingredients. They went thus: Between
the months of December, 1971 and March, 1972 two self-starters were reported by Railway
Authority (sic) to have been stolen by an unknown person. Investigations were carried out but
nothing was recovered. Sometime in March 1972 the accused found a motor vehicle self-starter of
Leyland somewhere in Ifunda within the district of Iringa. He picked up the self-starter and kept
it to himself. It was until 5th August 1972 when the self-starter was found in
Kilimanjaro store, Iringa by Detective Constable Bukuku and Detective Sergeant Saidi. The Starter
was marked E.A. OROCO The owner of the Kilimanjaro store was asked about the starter and he
said that the starter was brought to him by the accused The accused was arrested..... (He)
was asked as to how he came to the possession of the starter and he said that he found it in
Ifunda sometime in March 1972. The accused was asked if he knew that the starter belonged to
E.A. OROCO. Iringa but he said nothing in reply. So the accused was charged
accordingly" The learned counsel for the appellant assailed the conviction on two
grounds. Firstly the learned counsel very rightly pointed out that the appellant's words "It is true"
did not constitute an unequivocal plea, and secondly, that the appellant was neither shown to
have converted the self-starter to his use nor to have been literate enough to identify the mark
E.A. OROCO. On this limb of his argument the learned counsel relied on the case of DUTT v R 1959
E.A. 325 decided by the East African Court of Appeal and therefore bringing upon the Tan z

ania High Court. The decision in that case is concisely summarised in the head note which reads: "The appellant was charged with stealing a gold bracelet and in answer to the charge he said "I found it and sold it" The trial magistrate without any explanation of the nature of the charge or of the circumstances in which a person finding an object and disposing of it is guilty of stealing, recorded a plea of guilty and convicted the appellant. The appellant's appeal .to the Supreme Court (.f Kenya) was dismissed on the ground that it was not incumbent upon the tial magistrate to explain to the appellant the effect of

- s. 263(4) of the Penal code (of Kenya) or to ask him whether he knew the owner was and whether he believed that the owner could be found. Held (1) in view of the provisions s.263(4) of the Penal Code the appellant's words...0 were not an unrequiv.cal plea .f' . guilty and it was incumbent upon the trial magistrate to explain to the appellant the effects of s,263L4) or to ask him whether he knew who the owner was and whether he ielieved that the owner would be found.
- (11) the effect of s.263(4) is that a person finding and selling lost article does not necessarily convert it fraudulently and, therefore, des not necessarily steal it, unless at the time of zonvei.ion he either knows who its owner is or has no reasonable ground for believing that the owner cannot be discovered". The appeal was in that case allowed. The facts of that case are not altogether dissimilar to the facts in the present case was not apprised of the circumstances which would render his finding culpable and these were firstly that he knew the self-starter to belong to the East African Railways Corporation or that he had reasonable ground to believe that the owner could be discovered. It is a sad fact, judici- ally noticeable, that Tanzanians as a whole are illiterate and even with the current adult literacy drive, it is sanguine to expect a "Kisomo Chenye Manufaa graduate to tell what EOAOR.C, stands for. The Piosecution did not even attempt to show that the appellant converted the self-starter. It is thus impossible for a court of law to say with any degree of certainty that the appellant kept the self- starter animus furandl. In his submission the learned counsel for the republic seemed to be aware of the weakness in the appellant's conviction when he urged for a retrial.. It is feared however,.. that in view of the very long time that has ensut'ed since the appellant was gaoled on 29th 12/72, such order would be manifestly unjUst. to him. The ten manths he has
- been in jail cannot be said to be his due desert. One only wishes the appellant could be compensanted for being gaoled in a manner inconsistent with justice and without his case beeing inquired into carefully. Accord- ingly the appeal succeeds and it is allowed in its entirety. The appellant is to be released forthwith unles on some lawful consideration he is being otherwise held. M.H.A. KWIKIMA AG. JUDGE

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