

TANZANIA / JUDGMENT

19790713 TZHC Dodoma

COURT
TZHCDECIDED
13 July 1979

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f... #jç b SM IN THE HIGH COURT OF TANZANIA AT DODOMA •0 ... -• APPELLATE JURISDICTION
HIGH COURT CRIMINAL APPEAL NO0 142 1978 Cf. Cr. Apps. N. 43 144, 145, 14 & 147/78
ORIGINAL CRII4INJCASE NO. 292 OF 1976 'OF}E, DISTRICT; COURT OF DODOMA DISTRICT AT
DODOMA Before Ma. G. C. ICajeriResident Magistrate MESHACKI4AZENGO. and 5
OTHES •• . . .Appellant (Original Accused) S Versus . . . S. THE REPUBLIC... • • , o... ' z' . .
Respondent (Oicjina1 Proseautor) Stealing c/s Z) of the Pena1 Code. S JUDGMENT G JONATHAN,
J. ') Bef ore the District Court of Dodoma wr six

- . appellants, whose petitions of : apPeál have 'bf consolidated in this judgmnt, each charged separately with one count of staling. They were each cõivicted as chrged and sentenced to 3 yrs' imprisonment0 The appeal to trLs outt in each cs is against both the conviction and sentence. At 'the hering of the I appeals,
- as at the . trial, •Nr. Chainbakar.t advocated fo 'WIACK rIAZANGO and STANLEY MTELYA y ,while the other appëllants 'aerd Personally to urge their apals. . The appellants were men:hersof.the'Ujam.aa village of M*akwe. It owned a. shop as we] 1 as raised revenue from among its members. The running . . and supervisoriof the shop and the raising of revenue in thc form of' f'es w:re the responsibility of the appe.1laptS having bien duly elected to do so ?.SHACK was the chairman of that village as well as th treasurer : of its Economic Cmmitte.,, The post of secretary of the committee, on the other hand, had ..b en held variously by LEQNARD NANDEO, CHARLES MANDEO and STANLEY MTELYA- '(the 2nd, '4th and 5th appellants)
- The other appellants, namely,' OMARI MAAM3E and ANTHONY MALIMA had Lthe ben the sa1éen.in that shop., It would seem tha't both/Jakings of the shop and the cálectibns ef revenue in th.- form, of slaughter and brewing fees were receipted, and that, atth'. :2nd 'ach day the money relised or collected would b handed overth IESHACK as the treasurer. According to thprosetution evid..noh' -' was supposed to acciio1ede the recebpt of each remittance. All books of account,,,'Xn'dl'uding a cash look' and' a ledger, wr how±ver being mamntaired and k pt by such appc1lant s happLn 0 O b' the secretary at.'any given:.tim, and the resu.r rrl.s responsibility was only to receive and k'ep the uiony, and' t'oisu out funds to the secretary to buy merchandise. "'•. ' According to e:ujamaa and CoopJratives Officer, in the month of June, 1975 he convened a mcetifig of th. village's Economic Committee

where: t., his checking of the accounts revealed a shortage (of shs. 245640) as compared to the previous one and—a—half years period. FESHACK at that meeting explained, however, that CHARLES MANDAO had failed to remit some revenue which he had collected. The witness said that CHARLES upon being asked with 14 2" admitted he had received shs. 358 and then misappropriated it. He however asked for time to., refund the money. This aspect, of his evidence found, support in the testimony of P.W.2, a committee member, when he said that he had been present at a subsequent meeting when he heard CHARLES confess 'he had misappropriated some money and undertake, to pay up. To that end, the witness added, the appellant had later brought forth on his head of cattle for sale. P.W.1, to go back to his evidence, in his own month previous account of FESHACK's failure to give 'a satisfactory explanation for the remaining part' of the shortage against another inspection of the accounts, this apparently in the absence, of any.. of the appellants. It however discloses nothing new;'. He subsequently made yet another inspection, again without the assistance of the appellants, whereupon he arrived at a total shortage of shs. 3335.20. It also appeared to him, he said, that each of the; second to the sixth appellants, inclusive, had failed at one time or another to remit the first appellant MESHACK revenue collected by them. He had come to such conclusion not only because MESHACK had claimed so but also on account of the absence of any acknowledgment by him 'he had received 'there', levied, sums. ~ LEONARD, he said, had not remitted shs. 251 OMARI shs. '1, CHARLES shs. 577; STANLEY shs. 952 and ANTHONY shs.' 20. to say, therefore 'MESHACK was personally' responsible for the shortage of shs. 124.20. It will be noted that the losses attributed to the second to the sixth appellants are in respect of collections of revenue only. As regards the shop fund, the witness said, MESHACK alleged and CHARLES admitted that on one occasion the latter had failed to account to 'the form: the balance, of shop money he had been handed to buy mechanics. No figure was however spelled out while no official record appears to have been kept of monies paid out by MESHACK to the secretary for that purpose. However, according to P.W.1 MESHACK had maintained a note book of his own. It may be presumed that he had recorded therein all monies he had paid, out of the shop fund. Unfortunately, however, that note book was not produced, nor an extract made out of it to show what amount CHARLES or any other appellant had not accounted for. ' . . . ' .

- That was practically all the prosecution evidence and aid to the defence. The gist of that of MESHACK was that he would receive remittances of revenue without recording. As regards the shop, he said, he would give out money for buying goods in the presence of a committee member and record the payment in an exercise book. The secretary or 'whomsoever the money paid to would later account for it in a payment voucher. He tendered a copy of the financial report of P.14.16 I am not clear why "such report was tendered" but I build on, that it accepted in the case of CHARLES who was said to have 'admitted to misappropriation of P.W.1 had been unable to say which appellants had been directly responsible for the loss. The defence of each of the other appellants was to the same effect, that is to say, that they had, without fail, remitted revenue received by them to MESHACK who would neither see the receipt nor acknowledge in writing the receipt of such remittances. They also said that

P.W.1 at the times he checked found no shortage. In the case of CHARLES this would seem significant. The learned resident Magistrate after reviewing the evidence at length at Len, and I may say accurately, had this to observe: ... The procedure said by P.14,1 to have been obtained in handing over to the first accused from the rest of the accused persons is - a commonly adopted one in 2. ... 1 - "daily dealings with money even by the most laymanly individuals. I don't agree that it was possible that handing over could be done without either checking the books or making writings like a signature in acknowledgment of receipt of the money. The money was the property of the village and there was every reason to take precaution He then came to the conclusion that each of them was guilty as charged. The learned advocate as well as the learned senior state attorney submit on the other hand. that the evidence is too vague and confused to ground any conviction. I have a lot of sympathy for the reasoning of the learned magistrate. It is public knowledge that transactions involving public funds or other property have to be properly documented in order to be clear at any moment of checking that they have been properly kept and/or applied. Transactions between one individual and another are often based on - and are not necessarily reduced to writing, but a public accounting there must be record of practically every transaction involving public property. For, to do otherwise would result in abysmal chaos in public accounting and an attendant of the already disquieting incidence of misappropriation of public property.

- In the present case, however it is a question of fact whether revenue would be remitted to MESHACK without any acknowledgment of the receipt by him as the appellants stressed in their evidence. If that is what actually happened, then they had defied not only the generally accepted procedure but also that stated by P.W.1 in his evidence. As however pointed out by Mr. Aliriwike the system of accounting at that village was deplorable, to suggest that the appellant especially MESHACK had had no instructions on how to keep the accounts in order. P.W.1, it may be noted only talked of the accounting system as it ought to have been but he made no suggestion that he had told the appellants precisely what was expected of them in that behalf. It is inconceivable, then, that the collectors may have remitted only the revenue to MESHACK without putting the receipt book before him and without the latter issuing receipts to them? In the particular circumstances of the case I would think not. They had been elected, as distinct from being appointed on merits, to run the economic activities of the village. They did this on a part-time basis, presumably for no reward as such, each of them being otherwise occupied, in the case of STANLEY, for instance, as the headteacher of the local primary school. There seems to have existed a notable element of trust among them in their day-to-day dealings. Now, it has not been shown there were any remittances for which MESHACK had issued receipts as to show that the instance giving rise to the changes introduced in the procedure for the usual operation. All considered therefore, I would think that the appellants should be given the benefit of doubt that the collectors would hand-over to MESHACK only the revenue and that the latter would not give them any receipts. The case against MESHACK may be disposed of first. He is convicted of the theft of shs. 140.2. At the trial he failed to account for such sum. He had however told P.W.1 that CHARLES

had failed to return the balance of some money he had ... given him to his goods for the shop, whereupon CHARLES had admitted the allegation. That, then accounted for at least part of the loss, A already stated however, the size of such ... balance was, not stated in the evidence and it cannot possibly ... now be determined. In such circumstances, MESHAK should be given

- the benefit of doubt that the loss discovered by P.W.1 represented the balance that CHARLES had failed to return to him. -4- , Putting aside, for the moment, the case::: against CHARLES, it was the claim of all the other appellants that they had remitted the revenue to ?SHAKIC who had however refused to acknowledge the receipt in writing. At no stage did MESHAK dispute the claim that he would not issue receipts to them. In the circumstances therefore the possibility that they may have handed over the money to him cannot be excluded. They, too, should be given the benefit of doubt. Turning, finally, to CHARLES, the evidence against him is on a stronger foundation. He had candidly admitted he had misappropriated funds of the village amounting to shs. 358 and he went so far as to offer to value one of his head of cattle to pay back the money. He does not appear to have repudiated or retracted such confession and as in the circumstances of this case it could not but be true, I am satisfied he was rightly convicted, at any rate not of the theft of shs. 365 but that of shs. 358. Accordingly his appeal against the conviction is hereby dismissed. The sentence of 3 years is severe but it is not so excessive as to call for interference by this court and as it requires its confirmation, it is hereby confirmed. The appeal of each of the other appellants allowed, their convictions quashed together with the sentences and an order being hereby made to release them from custody if they are not otherwise lawfully held. 1 P. M. JONATHAN JUDGE Delivered in court this 13th day of July, 1979. / / P. M. JONATHAN JUDGE

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