

TANZANIA / JUDGMENT

19710526 TZCA Dar es Salaam

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26 May 1971

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IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM Criminal Appeal No. 119 of 1971
Original Criminal Case No. 204 of 1970 of the District Court of Songea District at Songea Before:
P. B. Npozi, Esq., District Judge MIBROZI MVULA & PPELLAMT Versus THE
REPUBLIC • BPONDNT CHARGES: 3 (stealing by agent o/s 2730) of the Penal
Code, PART I, AG. 3. - The appellant was convicted of stealing by an agent in the District Court of
Songea and he is now appealing against the conviction and sentence. Mr. Pardhan, counsel for
the appellant, submitted that the trial magistrate misdirected himself as to the issue before
him. From the evidence it is clear that this is a contractual relationship between the original
complainant and the appellant. Whereas the learned trial magistrate misdirected himself
completely on this point. At the most it could be a matter of fact establishing contractual
liabilities and duties between the parties. Whereas on the strength of the evidence this is quite
contrary to the conclusions drawn by the trial magistrate. After considering certain facts the
trial magistrate has come to a wrong conclusion. Mr. Pardhan submits that this appeal be
allowed and the sentence set aside. He further submits that in the event the Court holding that
this is not a contractual responsibility and if the conviction is correctly established, then the
sentence is excessive. The trial magistrate sentenced the appellant to twelve months
imprisonment and Mr. Pardhan quoted authority in which the former Chief Justice, Mr. Georges,
held that appellant being a first offender and no other mitigating factors imprisonment
should not be granted at all. Mr. Pardhan further submitted that the appellant is already in
remand for the last four months and that this is enough punishment in itself. Learned State
Attorney contested the submissions of Mr. Pardhan by saying that the facts and the evidence on
record prove conclusively that the appellant stole the money and urged that the appeal be
dismissed. Going through the record of the case and the evidence it becomes clear that the
learned trial magistrate has indeed misdirected himself. Basically, on the evidence before him it
was clearly established that the liabilities and responsibilities between the appellant and the
original complainant were of a civil nature. The appellant admitted of having collected 83 pieces
of timber and agreed to sell them to the Co-operative Union. He agreed that he still owed certain
sum which he wanted to offer to the plaintiff and the only point that would determine the issue
was the payment for the remaining pieces of timber and price thereof. This evidence cannot
establish any offence of criminal 2

- nature on the part of the appellant. The learned trial magistrate weighed the evidence inoqrreotly and it was not proved beyond reaesonable doubt that the appellant did in fact steal the amount an charged.
- I think, on the evidence as it i, it 19 most unsafe to convict the appellant. Accordingly, I allow this appeal, quash
- the conviction and set aside the sentence. The appellant ekculd be released forthwith unless he is otherwise legally beldo elivered in Court at Par es Balaam this 26th day of May, 1 97 1 -
 - (r B. PA!L) AG. JUDGE

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