

TANZANIA / JUDGMENT

Michael John v

COURT
TANZLIIDECIDED
21 November 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MANYARA AT BABATI CRIMINAL APPEAL NO. 22195 OF 2024 (Arising from Criminal Case No.
16615 of 2024 of Mbulu District Court at Mbulu) MICHAEL s/o
JOHN.....APPELLANT VERSUS THE
REPUBLIC.....RESPONDENT

JUDGMENT

7th October and 21st November 2024 MIRINDO, J.: Agama Lotto and Mining Limited operated a bonanza machine, the Mateora model at Bargish Ants Daudi Village in Mbulu District within Manyara Region. Fabian Chiwachiwa employed some people to run the machine including Sadikiel Joseph and Festo Joseph. On 9 May 2024 Sadikiel Joseph reached Fabian by phone and informed him that the machine stopped working. Fabian consulted a technician one Sebastian Yakobo alias Presha who promised to come between 10 and 11 May 2024. On 11 May 2024 the machine was taken at eleven in the night for repair and was never returned. On 31 May 2024, Sadikiel complained that the machine had not been returned. It turned out that Sebastian was busy with other assignments and did not take the machine for repair. Sadikiel Joseph pointed the finger at Michael John and Michael was 1 arrested, charged with and convicted of theft contrary to section 258 (1) and 265 of the Penal Code [Cap. 16 R.E. 2022] by Mbulu District Court. Michael John has now appealed to the High Court at Babati on six grounds of appeal. These six grounds of appeal challenge the weight of evidence. At the hearing of the appeal, the respondent Republic was represented by Ms. Grace Christopher and Mr. Johnson Ndibalema, learned State Attorneys. The appellant appeared in person and argued that the trial court's decision was unfair. He complained that no exhibit was tendered in court and said that it was impossible for a machine worth of 12 million Tanzanian Shillings to be taken by unknown person at night. In opposition of the appeal. Ms. Christopher maintained that the charge was proved beyond reasonable doubt and the evidence was evaluated properly by the trial court. This is a first appeal and I am duty bound to re-evaluate the evidence adduced before the trial Mbulu District Court and arrive at my own conclusions. Was the charge of theft proved beyond reasonable doubt? The key prosecution evidence linking the appellant, Michael John with theft is that of Sadikiel Joseph who was the fourth prosecution witness. His testimony is that on 11 May 2024 at eleven in the night he was awakened by a knock at the door. Upon enquiring as to who was knocking, the person knocking replied that he was "Presha." On opening the door Michael John came in and told him that he had

been sent by Presha to repair the machine. He was unable to repair the machine there and decided to take the machine to town. He asked Sadikiel to assist him to put the machine on the motor cycle so that Michael could take the machine to town. Sadikiel then went back to sleep. From that date the machine was never returned and it was until 31 May 2024 that Sadikiel communicated with Fabian about the whereabouts of the machine. As stated earlier, Sebastian did not send anyone to repair the machine. Sebastian Yakobo alias Presha, the second prosecution witness denied knowing the appellant. Was Sadikiel Joseph a reliable witness? This is a question of credibility. In determining his credibility, I will examine the plausibility of his story as echoed in Mathias Bundala v Republic (Criminal Appeal 62 of 2004) [2007] TZCA 16: "The trial judge was in the best position to assess the witnesses. In our considered judgment if a witness is not an infant and has normal mental capacity...the primary measure of his/her credibility is whether his or her testimony is probable or improbable when judged by the common experience of mankind. The assumption will always be that the testimony is true unless the witness's character for veracity has been assailed by some motive on his or her part to misrepresent the facts has been established, his or her bias or prejudice has been demonstrated and he or she has given fundamentally contradictory or improbable evidence or has been irreconcilably contradicted by another witness or witnesses." Three questions fall for consideration from the way Sadikiel gave the machine. First why did Sadikiel give the machine to Michael John after he had lied to him that he was Presha? There is no clear answer to this question. Secondly, Sadikiel said that he helped the appellant to put the machine on the motorcycle but in cross examination he denied seeing the motorcycle as the light was not strong. The third question relates to the identification of Michael John. Sadikiel said that the appellant was their regular customer who was present when he informed the 3 customers on 9 May 2024 that the machine would be repaired by Sebastian Yakobo alias Presha on either 10 or 11 May 2024. While it may have been necessary to inform the customers that the machine would be repaired on these dates, it is unclear to me why Sadikiel told the customers that the machine would be repaired by Sebastian. Coming as it did during the recalling of Sadikiel Joseph to testify, this explanation was a belated attempt to cure the crumbling prosecution's case. For the same reason, I accord no weight to the evidence of description of the appellant given during the recalling of Sadikiel. I do not doubt the prosecution's right to recall a witness for examination -in- chief but the circumstances of this case indicates that it was a misconceived attempt to cure the prosecution's case. For these reasons, I allow the appeal; quash the conviction and sentence imposed on the appellant, Michael John. It is ordered that Michael John be immediately released from custody unless he is otherwise lawfully withheld. DATED at BABATI this 21st day of November 2024 F.M. MIRINDO JUDGE 4 COURT: Judgment delivered in chambers this 21st day of November 2024 in the presence of the appellant in person and in the presence of Mr. Johnson Ndibalema, State Attorney for the respondent Republic. Ms. Anna Mathayo (RMA) present. Right of appeal explained. F.M. MIRINDO JUDGE 5

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