

TANZANIA / JUDGMENT

19761030 TZHC Tabora

COURT
TZHCDECIDED
30 October 1976

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jj .. /_ IN THE HIGH COURT. CF' TANZANIA

- AT TASORA
- '• APPELLATE JURISDICTION (Tabora Peg.stry) CRThINPL ?PPEAL NO. 104 OF 1976
OPTGINJL CRD'INIL CASE Nt. i14 OF 1976 OF THE DISTRICT COURT CF NZEGA DISTRICT
AT NZEGA
- Before: E. K. Kwilahya, Esq., D/ragistrate: MSALIKA SHABANI •O • 000•••• •...
APPELLANT versus .. THE REPUBLIC .. 0*•••• •. RESPONDENT CHARGE:
1. Atternpt Robbery :c/S 287 of the Penal Code. 21 Obstructing a Police Officer in the due
execution of his duty c/s 243(b) of the Penal Code. ., JUDGr'ENT MAPIGANC, J: The appellant
herein, namely Nsalika Shabani was convicted of attempted robbery contrry to Section 287
of 1he Penal Code and of wilfully qbstructing a Police Officer in the due execu- tion of his
duty, contrary to Section 243(b) of the same code. He was sentenced to seven years
imprisonment on the firs.t count and to one year imprisonment on the second cotmt. The
sentences were directed to run t concurrently. r0 has lodged this appeal from both
convictions and sentences. There was abundant evidence as regards the charge of attempted
robbery. The prosecution cas.e shows that the appellant followed the complainant, one
Madeleka, in a public lavatory where he proceeded to hold him by the necc at the sametime
demanding a Shs.20/= currency note which Madeloka had in his shirt's pocket. Madeleka
resisted and he raised an alarm. His colleague Hassan who was nearby heard the alarm and
rushed into the lavatory. ne found them still engaged in a struggle. He intervened and the
appellant then fled from the latrine. He was pursued by the people who were around and
who included a Police 0 fficer and caught. The appellant agreed before the court that he
entered and found the complainant in the latrine. But he denied tht there was any scuffle
whatever in there. He claimed that he was subsequently picked up at a bar by the Police and
that he did not then know why he was being arrested. The trial court was of the view that
there was no likeljhood of the prosecutien witness having cons.. pired to frame up the
charge of attempted robbery, in th't they were all strangers to the appellant. The court
therefore choce to believe the prose- cution case and to dismiss as a lie the story of the
appellant, It then convicted him of both offences. 0.* 0 . . -2- It seems to me that the trial
court was partly right. As I have observed herein abcvv, there was overwhelming evidence

with regard to the charge of attempted robbery. Once the court believed the prosecution
Itneses, and on the evidence it was justified to do so, it could not have escaped concluding that
the appellant's conduct amounted, in law, to attempted robbery. The appellant cannot, in
my opinion, successfully challenge the conviction on the first count. However, as properly
observed, by both the Judge who admitted this appeal for hearing and the learned Counsel for
the Republic on this appeal, there was no trace of evidence - at all to show that the appellant
obstructed a Police Officer in the due execution of his duty. Although following the
alarm was running away from the scene. Surely that was not an act which can be described
as obstruction. As shown, the crowd gave chase and caught up with him. The Police officer
who arrested him and brought him to the Police Station did not say that the appellant ever
put up a resistance. The trial Court therefore gravely misdirected itself on the facts
in finding that the appellant did obstruct a Police Officer. To conclude, I find that there is no
merit in the appeal from the conviction on the first count, and I will dismiss it. The sentence
thereon is the minimum under the law and cannot be disturbed. There is however merit in
the appeal from the conviction on the second account and I will allow it and set aside the
conviction and the sentence thereon. It is ordered accordingly. - p.-

- , Delivered. Ir. Teemba for the Republic. Appellant in person. Tabora, - - . D..., P..
hAPIGANC', 30th October, 1976 - ' 1 JUDGE. - - ,

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