

TANZANIA / JUDGMENT

19770513 TZHC Tabora

COURT
TZHCDECIDED
13 May 1977

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- IN THE HIGH COURT OF TANZANIA AT TABCRA APPELLATE JURISDICTION (Tabora Registry) (i-IC) CRIMINAL iPLbL NO. 357 OF 1976 ORIGINAL CRIMINAL CASE NC. 589 OF 1976 OF THE DISTRICT COURT OF SHINYANGA DISTRICT AT SHINYANGA Before: N. G. C. Kajeri Esq., Resident Magistrate. NAPTIN OIeTOR , . a a . aa : a a a a APPELLANT versus 'T'UT' 4.ILL.I T)t'TT1T Tf .t..SJtLiSJ.LJ..Ls .Ss....e.e...a*:eS.as*.see..Sa RESPONDENT CHARGE: Illegal entry contrary to Section 10 (1) and Sec. 17 of Diamonds Industry Protection and Ordinance Cap. 129 of the Laws 2 JUDGMEN: MI:.PIGANO, J: The appellant was convicted for entering the Mwadui Mines,, a diamond protection area,, without authority. . The charge was laid clown under Sections 10 (1) and 17 of the Diamond Industry Ordinance, Cap. 129. This was wrong. The section which creates the offence is Section 10 (1) of the Subsidiary legislation. However this did not prejudice the appellant and in curable on appeal. The record shows that he pleaded guilty to the charge and it seems that his plea we's unequivocal. He has not acught to challenge the accuracy of the record, but he says tht he was a stranger and knew nothing about the law which required him to have a permit and that he did nt encounter any cbstruction when he was passing through the gate into the Mines, Considering that the area is, according to the prosecution, fenced round with a strong barbed wire and that the gates are constantly under guard, I think, like the learned magistrate, that the appellant's story is extremely doubtful.. And had he been there to look for employment as he explained, he would most probably have been apprehenc'e earlier. I apprehend that the appellant crossed into th area furtively. And. whatever the case., he is precludecl from pleading ignorance of the law. 30 .jc The sentence,has caused the Judge who admitted this appeal Some concern. I agree that it is heavy. The maxiñüm punishment for the offence is imprisonment for 3 years or/and a fine of ,Shs. 20,0001=. 3ut with respect, I am unable to say t.hz-'t it is too heavy to call for interference. There should not be any illusic.n that there are numerous incidents of malafide trespassing into the mines. More ,... . . /2 t - / often than net the purpose is to steal the stoncs. There is always in this type of cases the overriding consideration of .eterrence, There is necessity for exemplary sentences.: I will therefore let the sentence stand. In the result, this appeal is dismissed.- Pronounced in court. Ir. Teemba for the Republic. Appellant absent. Tabora, D. P. l'IAPIGANC, 13th May, 1977 JUDGE.

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