

TANZANIA / JUDGMENT

19761208 TZHC Tabora

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IN THE HIGH COURT OF TANZANIA L AT TABORA. APPELLATE JURISDICTION ----- r t . . . 0 •
• . ; . . . HIGH COURT CRIMINAL APPEAL NO.43 OF 1976

- S (Original Case No.677 of 1975 the District Court of Tabora before A.Bahati, R.M. ; Ikr (. 3 oMARI: APPELLAT (Original Accused) . . . 1 - versus PH REL"UBLIIC RESPONDENT (Original Prosecutor) LCHARGE. Stealing by person employed in public service c/ss.
- - .. 270 and 265 of the Penal Code Cap.16 V01.1 of the laws. t

JUDGMENT

The appellant and another man called Abdu Moamed Sanga were tried at the District Court of Tabora on a charge which contained two counts. The first count charged both accused with stealing by public service c/ss. 265 and 270 of the Penal Code. The second count charged only the second accused Sanga, also with an offence under the same section. Sanga was acquitted but the appellant was convicted of the offence and sentenced to three years imprisonment. He has lodged an appeal to this court from the conviction and the sentence. The articles which were the subject matter of the charge were 300 ks. of roofing nails valued at shs. 2 , 25 0/= and were the property of, the Government. It was alleged that the appellant stole the goods in question after they had come into his possession by virtue of his employment as Stores Assistant at the Government Stores Tabora, between 21/12/74 and 7/1/75. The evidence revealed, and it is believable, that there was a loss of such quantity and it strongly suggested that by 31/12/76 the goods had disappeared from the Government Stores. The circumstances in which they disappeared reasonably give rise to an inference, that they were fraudulently taken from there. That was not IP serious denied, as such at his trial. A -. The evidence presented against the appellant was circumstantial and pertains to his conduct at the material time. In the first place, there was incident concerning a combined Receipt and Issue Note tJ8.358763, exhibit P.3, which had been dealt with at the 'Government Stores' sometime in December, 1974. This document concerned diaries. They had been duly supplied to the indentor. HY/2 : Hwve" 4 This procedure was not adhered to and, it appears, deliberately so. Sng-wasquizzed about the steel bars He agreed that he

- hadn't intended to order for the steel bars in the first-

- instance. He stated that it was after he had learned that 300 kgs of roofing nail 's were not available.: that he orally.:-. ordered for the steelba-37's. He did that;" he said, because he did not want to ttdjs€urb the commitment he had put in his vote book. -- •:" ' .7, The ohér 'point t whici. the learned rnagistrate dircted • his attention was a passaginjtheiappei'iant!..s extra -judicial , statement which refers to the ,circUmstances in which-he-passed --exhibit,P,2 without indicating 'that p300- kgs. of rOofing ,nails were not issued. It seems that he did not implicate P.W.II - sesero on!tatocasiqn. The implication theren.is'that he had personali'y'ked for the requisition from the-,office of) .
- . the District Engifler in an endeavpurto.,coerup the loss.- He added that it was possible to ask for'such, favours from,i 1 , friendly inentors. •a In the. light of this body of,evidence, the learned
- - magistrate diredted himself w}}ether-i'. was reasonably conceivble that the appellant would wtingly:have count,enanced in "such - dishonest cOurse of conduct. in-other ordsether it was
- . plausible that 'the appellant was arn.ere instrumenti of P.W.II
- Msesero in all.,thes'e attempts to coveup.the loss. The learned magistrate did: not see such a, possiility.. Teje -waI-thihkr, ~ guffient evidence to support Ithat finding. But the evidenceA to a consderable extent, to suggest that therewas an identity of purpose between the appellant and - ...Sanga •:'And a, •-I- Will try to shohcreinafter Sanga came dangerOusly. near being an accomplice. in the' crime. . It is to be observed that cthe appellant has on this appeal shifted:and said -€hat the roofing nails in qi'estion were, taken
- .by :Pw,3, 'Kondo,L and 7 that the. burden was.Sanga, who wasrKondols
-supeio'r,' to account for them0T.his ininuatip'gainst Kondb. is •.....clearly baseless; The whole, contention is dire c tly.Lat variance with •••.,,, •. .2,the'appellànt's, testimony. He •s,onrecord'as telUhg thecourt that:— •,- , •• 1. "" , .
- *I certified that I had isUe.hings out. By this. . - signature of mine it was Tnent all the goods were issuedr,out. .Roofing nails.were4 not issued.' but. The,' rest,were issued.out .: . '!' •: •
- Thus, 4 •• - -'
- '4 * J 1•_ ' IL
- -_1 ii. , .
- I . . ' - - : , " • • ' . • • ' , - . .
- ' • • , - ' . • ' , • • . I ' ! . •

- 5 -- Thus, it seems to me that the Whole allegation against Kondo is incredible and can only be an afterthought, and must be dismissed. I would agree with the finding that there was no cause for thinking that the appellant so actively took all those steps to: civer—up the less :at 'P.W.II .Nses,ero!..s bdding. . ':. The,,question tht::;folloWs'ls,.whether on this evidence the
- ,appell.ant could.. properly be adjudged the thief .as the ourt did. The learned magistrate was of the opinion that the surreptitions and urwarraritable ertry in the ledger book and the 'marner exhibit P.2 was dealt with by the appellant, was more than a conciderice. He was of the impression that the appellant had.throughout shown considerable concern and prominentLy engaged himself .in several invalid acts in an attempt to. covr up the 'lossof thenails. He was of the view that all these futile efforts were fraudulent and served to betray hifn 'as the thief, especially considering also that he.had access to te goods and sufficient opportunity to steal them. My:oinion is that, the larned magistrate was quite justified to hold sp. What is striking is that the appellant was all along the only person at the Government Stores who demonstrably actively tried.: - to cover'up the loss. He started byaking a misleading entry in the l6ger book on 31/12/74. When that was discovered, he hit on a new plan which involved even more incredible 'irregularities, That subterfuge was also exploded. - All these efforts were, it seems, desperate but sustained and calculated. It seems that he anticipated detection in the long run and that he wanted to obviate the consequences thereof., There was, I think sufficient, evidence on which the learned magistrate cou1.d reasonably infer that the appellant had committed the offence.' I find no reason to interfere with the conviction and accordingly dismiss the appeal from it.- The sentence. is the minimum laid down by law and cannot be disturbed and the whole appeal therefore fails. Now,,:coming back to Sanga, I think questions must still be raised abithis probity in the matter. I would agree with the learned magistrate that the evidence was incoclusive of his being 3slyt in the theft.' But the evidence strongly shows that there was at one stage an evil understanding between him and the appellant in the designs to cover—up the loss. It strongly suggested that at least he was an accessory after the fact to the offence of theft, within the meaning of section 387 of •the Penal Code, .../6 But

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