

TANZANIA / JUDGMENT

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TZHCDECIDED
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. . . . IN. THE HIGH CuURT OF TANZi,NIA ' . . AT Mi,Ji,NZA ...~ :
-ll.PPELLATE JURISDICTION. . . r. . . . ,HiqI:J COURT CRIMIN·hL APPEAL. NO. 328 QF:
1917 ... (Original Crirni.nal Case Noo 40 OF 1977 of the District Court of Bukobu District :
°St :·Bukob·a: ~ Befqfe :!Qi~: !Ray.agcl., Esq D;·i-st+ict, Magi·s-t;i;a1~0) 0~ (>: .:-... ti":.; ;;;s -
~::~;~;>'\./.. . . . ~-... < :.;,;- > v.:... :!':~;;:~... .. :.: " THE ON. EST RUTAA. ;;;~: o • . , ~-
ii::~!':!-P_i>,u •.;, ~. ~-~ " ••• 0 ~ ~ ~ • :.,,, ~ ••• ., ••• J ,~_-. "!!• : ~: 4- •• ,iPPELL:NT . <~-~.,
•:~:~;,, .. ~-!versus 1; ' -i. !'~-. THE~ REPµ BL~IC ~ O Q O o o. 4? .o O O O O O O O O O O C O O O O
O ~ 0, ~0 O O O O • o O O r, ~ O o ~ O O o O O O O RESPOJ,JDEI'JT' ~ • . -' -, • I 1 •• ' ' ' , •• , " , •
• , , , :Cst". Count: 0 CHAl~GE: ' . . • ' F~rgery\c/s ' . -;~ " 333 .: and • 337 :of \$\ the Penal . ; C~dc..
3rd Count: ' -Stealing •by servant :c;,)s.i; •271 and -265- of ., _tho hmo.1- _ _ _ ,Code. , • : _ - .
\ : .. , /;:~: ; - • . . . ; _ . • _ . • } - ' ~ } . . i . . ~ { ~ .. _ :~-~: - : .. JUDGEMENT; _ .. LUGAKINGIRA
1 .,J... : ,; , _ ~- , , . ' 1, _ , . ; :~: - _ x~Thc a:pr:reIlan_t, was ·on th~·f:i!L'S't courtit
co·n·victed. of :·forg~.;~y..~...nnd/. on ·foe ·, ·third- ·c·0urit(o't s·teaI'ing ·'b'y 'servant. · 'The:
sec·ond: and fburt-h-' · · · _ - c~urits, concerned :oth-e-r person\$'o ' H¢ 'was a ·cash±e:ir::wifh the -
Regional 0 Trading Company· at Btikb·ha anci'as ·such used ·to·~reced·ve tnoney's pcIid ·in by
cu·stome:r"s; , : 1 O"r!l--1J· ·Janua·ry, !'1911 Sa:luin :Mo~am.Jdali. Jinah; {P141) S~nt- his ·
employee 0V~dasto. Mwa·longe· (PW4) wi th7 ·a. h\$1nk cheque Nb~444845 .(exh.A)--to buy,·rice
'frorr\ th'e·comp·a·ny'o: ·ve·dasto ·was glven·-6ne liag- o-f rice \lori::h' Shso :272/=: ahd· a;;dash
-::sale receipt No~,7471- {exh.B) for that nmount Two 0 days later 'Salum discover-ed at the Bank
that his, cheque .had been filled in :for Shso 816/=, the price of ttiree bags, instead _of• Shs.,
272/;;:.' He . contacted the· company. He was informed that later on th(~ Si"l.me du.y the
appell~nt collected tw6 mdre ~igs of rice on a receipt Noo 7615 (exhoC) for Shs~ 544/= in his
(Salum'~narne. Thii rice never reach~d Su.lum 0 The appell~ant was accordtngly charged with
forging ..the cheque by filling _in 3 ns~ 816/= instead ·of 272/= ·and stealing the twb l:S·ags of rice.
The oth·ers charged· with- him ·were racquitted 0 ' . Forgery is the making of a false document,
that is, the document must· pi..i.rport to be wha·t in fact it is not The question as regards tho 0
first. count was therefore wheth(sr the cheque purported to be whut in fu.ct i_t WiJ.S_. noto.
Salum issued a blank chequeo He expected th...: compnny to "fill frr ·the· ·amount depending on
the ·quantity of sugar it was wiJ.lir1g to sello Th~cornpany in fact sold him three bags of rice,
although on t~o ·~receipts. aild: .alt'hough he ·never rEiceived two of the 'bags. · · I,ssuming,
therefo.i;-i:h: tp:3_t. :-t.he .chequ!== was f-ill-,d in -by the appellant } :lirns'3lf, I do not see whc1t -
lie this .cheque to_l~. . It was made ~ut ·for. the lJricc of three bags actually sold" To· put i t

differently, the cheque was concerned with what the company sold and not what was delivered to the customer. It was, therefore, a genuine cheque and not a forged one. In the result, there was no offence committed in the first count and I will quash the conviction. Sentence, therefore, is as follows: The appellant was convicted of stealing by servant. I have no reason to doubt the evidence of Wilson Kaindowu. (PW3). Verified that after the Sarni day the appellant took up the two bags; it was not disputed that the receipt was in the name of Salull and the accused was the owner of the bags. The appellant could be guilty of stealing by servant. The company received the two bags in my opinion what

- '... , J > ; o o , o o ; was s, t len w, 9 s) ~ μurn's ric. ~ o ; - Si ~ c ~ t l ~ ~ rc ~ s, np 1 q. q μ l : ? t .. that. the sugar was j, ~ ~ su-ed. to -th0: appel-ial), t apd th ~ latter d ~ ni, ~ d t. his . f: ac ~ , thC= only reason- able conc_lusio~ is that J: l-e. ~ tol.e the snrn~. I find, therefore, . that, the appellant. was; guilty of stealing by agent accordingly, I will set aside the conviction under ss 271 and 265 of the Penal Code and substitute a conviction under ss. 273 (b) and 2~5 of the same. I will re-arrange the 3, ___ y! = ar. sent_enc.e. imr, os ~ d conside; ing th_q. t; _ this j? r1. lach of trust . wa. ~ committee} b.Y , a pers_on - in a pt; J. bli ~ o, = 9 anisat ~ qno ~ u !. . . ' ~ ; , . . . \go o o o o o o o ~ _ o o/2.

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