

TANZANIA / JUDGMENT

20010404 TZHC Mtwara1

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TZHCDECIDED
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1 IN THE HIGHER COURT OF TANZANIA (MTWARA REGISTRY) PETITION FOR JURISDICTION CRIMINAL APPEAL NO 53 OF 2000 ORIGINAL CRIMINAL CASE NO 260 OF 2000 OF THE DISTRICT COURT OF MASASI AT MASASI BEFORE: J.B.C. MASSITO, ESQO, S. D MAGISTRATE OSCAR M. THAYO..... APPELLANT versus: THE REPUBLIC. OF TANZANIA RESPONDENT UDGNT The appellant OSCAR M. THAYO was charged with arson C/S 319(a) of the Penal Code Cap 16. When the charge was read over to him he pleaded guilty. When the facts were explained to him he accepted them to be true and correct. He was consequently found guilty as charged on his own plea of guilty, and was convicted accordingly. He was sentenced to 5 years imprisonment, his appeal is against conviction and sentence. He is challenging the conviction on two grounds namely: 1. That when he set fire to the complainant's house he was drunk,

2. That he pleaded guilty because he thought if he did so the matter would be referred back home for a possible amicable settlement. In reply the learned State Attorney who represented the Republic at the hearing of this appeal Mr. P. Masaju said the appeal against conviction should not be entertained by virtue of S. 360(1) of the Criminal Procedure Act, 1985 because the appellant had pleaded guilty and his plea was unequivocal. He said this case is not covered by the exceptions prescribed in the case of LENCEINGA V. R983 TLR 166. The learned State Attorney went on replying that intoxication is not a defence in cases of this nature by virtue of S. 14(1) of the Penal Code Cap 16. The learned State Attorney - - a
- 2 - went on replying that if the appellant was really drunk when he committed that offence he shouldn't have failed to say so at his trial because at that time he was not drunk. I have carefully considered the appellant's grounds of appeal and the reply thereto by the learned State Attorney. I have also carefully gone through the record of the trial Court. Indeed the appellant's appeal against conviction cannot succeed. He pleaded guilty. When the facts were explained to him he accepted them to be true and correct. His plea was unequivocal. He was properly convicted. As properly stated by the learned State Attorney, the circumstances of this case do not fall under the exceptions laid down in the case of L. WRENCE cited above. As far as the defence of intoxication is concerned, this is just an afterthought. Had he really been drunk to an extent of not knowing as to what he was doing or what he was doing was wrong, he wouldn't have failed to say so at the trial as by then he was not drunk. Had he done so necessary action should have been taken under S. 14 of the Penal Code Cap 16. His appeal against conviction has no merits and is hereby dismissed. As

far as sentence is concerned, the sentence of 5 years imprisonment is not excessive, especially that the house he set on fire was of a woman who must have suffered a great deal. His appeal against sentence is also dismissed. In all, this appeal has been dismissed in its entirety. I - o . K..JI JTJD GE 4.4.2001 Court: Judgment has been delivered in the presence of Mr. Masaju and. Hezron learned State Attorneys and in the absence of the appellant who does not wish to be present this , th day of 1, April 9 2001. 0 / , '----- 1 s N. KAJI — JUDGE 4.4,2001 B/C:• 1r LaddL,/ R/.. 'N /1 -

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