

TANZANIA / JUDGMENT

19850124 TZHC Dar es Salaam3

COURT
TZHCDECIDED
24 January 1985

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EIG-H COURT CRDENAL APJ:~1~L.L }TC c.r 1 o:~,,

- N _ 1984
- - . . -;~r. --- , KISUTU · OF THE DISTRICT COURT Or: ' ... , ::1~u_-i~ ... DISTRICT AT • • f • I
• vs- Oshen Kiraro was convicted of ' b,;;in,:'; in unlawful possession of bhc.mg contrary to
cc~ctj_on 2 (b) of the Cul ti vat ion of Noxious I'lant:J (Prohibition) OJ',:, inance Cap. 134 of
the LawGo He W,?a:3 ;:3e;:lte:need. to seven months imprisonment. Thia a..JJJJ<:!,s.1 is
f,;,ga:~...:i.1et the sentence. The amount of bha;:lg found in the e,ppellant' s possession was
examined by t}w Government Chemist and it weighed one gram only. The ,c,ppel~_ant is 2c
young man aged twenty four years and he is a stu.da:n:c r Ile ,ms a first Ji)::, offender. •rho
of'ienco of vrhich t~J.v ap::~,c:1lant was convi0ted is punishablo with fin~ or
imprisonmcm~ In J3akar_i sL ~Hamisi · V.R_ 1969 HOD n. 311 the appellant was convicted
of dangerous driving and .s:Jntuncod to_ eighteen months imprisonment:lt •..On appe:al to
th;_;;; court 1 Georges, C.J. (as :ho .then wa.s) · said that whore t~e l,,nr .1.L1.1dGr 'which a
person is convicted lays dovm ·0oth a t:J:... "n cf irnprisonment and a tine as a method of
punishmcm,v thc;i; would b:ldicate that this we.s the type of off enc ::o i..11 wb icJ-; :.-'1_1_
f.ino ,rnulc1 normally be appropriate. In that case the sontonc6 c-£ imprisonment was
altered to a finee ... ~ ./2 2 Similarly, in tl10 -V. - R. 1971 HOD n-. 144; th1~ court reduced the
sent enc) -of
- • imprisonment for unlawful possession of r1oshi to immediate release of the appellant, for
the same reasons as in the ~~ri ca.se. With respect I agree that where the legislature
envisaged that a fine should be the principal mode of punishment, imprisonment should not
normally be •awarded, unless, of course, there are aggravating circumstances. There were
none in the present case. There is a further _point. The appellant was a young
- As Georges C.J. said in Hattan V Ji 1969 first offender. ----- HOD n. 234. "It is generally agreed
that first offenders should not, as a rule, be sent to prison where there is . . . t. --~ '
apportunity to mix with, a1~d lGarn bad habits from, more • se.asonedl criminals 11 • Tr.tat
was also_ the view of :airon, J. in Omari .E.\$J-d,_V...t. g 1969 ECD n •. 42. In the p1~esent
case, the appellant being a young, first offend2r .and a. student, ', . should not have been'
sentenced ., . to . imprisonmant. ... The lea:rned State Attorney declined, to support the
sentence. With re~rect, I agree i-rith both counsel that thG sentence was 1.'_ inappropriate.

This appeal is allowed. The appellant has already served two months imprisonment. That is enough punishment for him. The sentence of the trial court is reduced to such a term of .. imprisonment as will result in the appellant's immediate release. PAR 1_S SALAAM 24th January, 1985 Mr. J. Mwingira for the appellant Mr. Salvi for the Republic.

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Prepared on 13 October 2026 · Esheria