

TANZANIA / JUDGMENT

19771108 TZHC Arusha1

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- .LL1JJ..L .L) J LL1J8J..L\..1 J10N COTJ CR1 LTAL_AP2AI 0 253 0 1976 ORIG[iTA CRI I TAL CA5E 0 89 O 1076 OF PH DISTdICt CODRI or IUJ-I2ZA DISTRICT AT MUREZA BEFORE:.A. N. LLBARUK[J, Escj., District Magistrate PASCAL PETL b •00•0 0 0.000 0 0 0* AF2ELINT (Original Accused.) versus THE REPUBLIC . • PLBSPONDENT (Original osecutor) JUDG-E'iIT On 8/5/76 a - Muhezaistrict Court presided.over by A. N.. Nba Ju, Dietr1ct-L1ag-is.trate one Pascal s/o Peter was found guilty and convcted of two counts, fjrst, burglary contrary to eecion 294(1) and secondly, soaJing contrary to section. 265:, -of the Pena1 -Coe. Upon th.o said oonviction he was sentenced to three ypars in.prisoment on the --irst count and six nontho imrrisonmont on the second- count and both sentences were ordered to run concurrently. Agriovrd by whet decision Lie. no aLJJ ale to this court again both conviàion and. sentence0 In his eenorandua of app-cal the appellt- substantially attacks trial court in its finJins of faot which were, in my asscssme.cit based on the credibility of the witnesses who apwoarod and ostit-i.ed before that co,,), .r.U. f:.. The ovido.cs adduced before the trial court reveals that on 12/3/76 the hoUse of the Complainant one Mrisho s/o Bakari (P.W.i) was broken into• d ur ing the night after they had retired to hod and all the doors had bccn locked. When he woke up oarl - in the :lorilin.g of 13/3/76 ho found. his door opened.. From hie description it would appear that the culprit removed sdmo mud material of which the walls were S made near the lock ;seh then eushod his hand through and unlocked the door :Lron When F.W0l oxaL-lined. the-innid.o of his house he disbovered that his radio and hI mall suitcase baa boon stolon from his lodroom. He iinaodiatoly raised an alarm to which many of his noidiibo rs responded by going to the scene. On 13/3/76 P0\7.l reported the matter to the Police at Muheza Police Stations On 18/3/76 in the company of sono Policemen P.W.1 proceeded to the he-use of the appellant abbut whom he had rocoived some ixuorLiaion that ho was a suspect of that incident. Wh en the . * Then the appellant saw P.Jl mi the Foliccuien he took to his heels but P.Yi.l chas.pd., himrinJ the Policemen followed suit. They cat hhmañd thenalled some civilians to be present during thdsarch in the appellant' a house. In the course of the search FV/0l saw his suitcase on a table in one of the rooms A uhe Jach 02 1 is mouse in a sisal plantation wlore the accused went to hide himself when he had seen and in. Policeriea, ho searcmin party saw a radio ricIi P.J.l recognized and identThod to be his. The appellanu said he had been iven hst radio

by one Shabani who in turn, categorically denied to have done so. In court he appellant charged 115 shillings and said he had never come to where the Prosecution witnesses said he had gone in order to hide. He also said his radio was not recovered from that place. The trial court rejected the appellant's version as bogus and believed the prosecution evidence and in that event that court found it as a fact that within a few days, about 4 days, the appellant was found in possession of articles which had been stolen from the house of the complainant and which house had been burgled. On the application of the doctrine of recent possession the appellant was found guilty as charged and convicted and sentenced as shown above. The court respected the findings and conclusion of the trial court. The appeal in respect of both conviction and sentence has no merit at all. Consequently the same is hereby dismissed in its entirety. Delivered in open court at Arusha this 8th day of November 1977.

... (E.K. LIFTESIUNO) JUDGE. For appellant 13 SHILLINGS each increased for Resoia dnt (Rwubli): Hr. Hsechu, State Attorney. AM/T;1TL.

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