

TANZANIA / JUDGMENT

19830221 TZHC Dar es Salaam

COURT
TZHCDECIDED
21 February 1983

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IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM. J.M. HIGH COURT CRB HAL APPEAL NO.9 /79 ORIGINAL CRIMINAL CASE NO. 658178 OF THE DISTRICT COURT OF DAR ES SALAAM DISTRICT AT MOROGORO PETER BUSHOKE & ANOTHER , APPELLANT vs. JUDGE IN CHIEF MNZAITAS, J.K. In this appeal the two appellants, Peter Bushoke and Mithael Icuti, 1st and 2nd appellants respectively, were jointly charged with stealing, conspiracy to defraud and stealing by clerks c/s 265 2 271 and 306 of the Penal Code. The 1st appellant was also charged with fraudulent false accounting c/s 317(c) of the Penal Code. They were acquitted on the fourth count of stealing but convicted of stealing by clerks and conspiracy to defraud. On the count of stealing by clerks the 1st appellant was sentenced to 4 years imprisonment while the 2nd appellant was sentenced to 3 years imprisonment. As for the count of conspiracy to defraud the 1st appellant was sent to jail for two years imprisonment while the 2nd appellant was sentenced to one year imprisonment. In their long memoranda of appeal the appellants argued that they were victims of circumstances as, they argued that the trial magistrate misdirected himself on the evidence and on the law. In support of the convictions Miss Ngolo argued that there was ample evidence in support of the charges. On my perusal of the evidence tendered in Court and the learned trial magistrate's well considered judgement I agree with the Republic argument that the evidence was clearly against the appellants. There was evidence, (Exhibit P1), which showed that the accused overcharged freight charges. "Exhibit P1" showed that the charges were shs.985/- which money was paid by the Ministry of Home Affairs but in "Exhibit P3" they showed to the Railway's Corporation that they had received shs.374/30 only. They misappropriated the difference, the subject matter of the charge of stealing by clerk. There was also undisputed evidence that the contents of "Exhibit P1" were not entered in the cash-book register-Exhibit P5. This evidence supported the charge of false accounting with intent to defraud. The evidence of two prosecution witnesses (W1 and W4) supported the case for the prosecution. In respect of this charge all the more, the 2nd appellant with other irregularities it was a very gross error which I need not go into amply proved the guilt of the appellants beyond reasonable doubt. At the sentences imposed failed to mention the sentence imposed by the Resident Magistrate in the 1st appeal. The 1st appellant was sentenced to 4 years imprisonment while the 2nd appellant was sentenced to 3 years imprisonment only. The evidence showed that both accused were, but for the first offender, the law as set down by this Court in B _ _ Is 1196i) (D 21, Q is that where one accused one first tenders evidence the other must be of the same level. That being the case the sentence of 4 years imprisonment imposed on the 1st appellant is to 3 years imprisonment only so as to be in with the principle of parity. 2nd

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