

TANZANIA / JUDGMENT

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TZHCDECIDED
1 January 1976

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IN THE HIGH COURT OF TANZANIA; AT MWANZA APPELLATE JURISDICTION (Tabora Registry) (in) CRIMINAL APPEAL NO. 152 OF 1976 ORIGINAL CRIMINAL CASE NO. 371 OF 1976 OF THE DISTRICT COURT OF SIKILIRI DISTRICT AT SHINYANGA - Before. G.O. Najeri, R. PETER WANBUNGU ... APPELLANT versus THE REPUBLIC ... RESPONDENT
CHARGE: Stealing contrary to Section 265 of the Penal Code. J U D G M E N T MAPIANO, J: The accused was convicted of stealing petrol worth Shs.6G/= contrary to Section 265 of the Penal Code and sentenced to a fine of Shs. 700/= failing that to serve nine months imprisonment. He has appealed from that decision. I am satisfied that the appeal against the conviction has no merit. In the final analysis the matter depended on the credibility of the witnesses and I see no reason to differ with learned trial magistrate on that point. The sentence of Shs.700/= fine cannot be said to be excessive. On the contrary, it seems to me that it was quite lenient. The only error which the learned magistrate committed, most probably through oversight, is with regard to the term of imprisonment he imposed in the event of non-payment of the fine, and this was the only reason for the admission of this appeal. It is obvious that this contravened the provision of Section 29 (iv) of the Penal Code. Under that provision the term of imprisonment a court can order in respect of the non-payment of a Shs.700/= fine is a term not exceeding six months. I will therefore alter the sentence to read Shs.700/= fine or, on default, three months imprisonment - and it is that dismiss the appeal. It is ordered accordingly. L. . -

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