

TANZANIA / JUDGMENT

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//QoufI7 L THE HIGH C)IJRT OF .PANZNIA AT MWA,NZA "LPPELLATE JJPISDICTION }ITSII COURT u1LINL APPEAL NO 398 OF 1974 ORIGINAL CIMiIAL 'CA&U, N 178 OF'974 OF THE'DISTRIC '•CORT OF SRGETI DIHThICT AT SER:NGHTI - BEFORE V.S. L4GE, Q., BISTRIC MACISTRATE PILISA SABAI,: APPELLANT Versus TJih'. .RH'FUBLIC0' • RESPONDiT CHARGE: Iliail IViarketing of maize c/s '7 and 13 of 1962 O. 486 of N,aticnal' Agricultural Prod icts .Bothd:, Gériera1 Noticè s Nc. III and 11.39. of Government Notice •328 of 1968. . JJDGM.JNT KATITI, AG. J. The ape1lant Musa 8/0 Sabahi, was lound guilty by the District Courb Mugumi, of the offeflce of Illegal Piarketingof 'Maize.'c/s 7' and 13, G.N. 111, 1139 Governernent Notice 328 of 1968a The apiellantas Wit'hut'conviction sentehced to a fine of 20Q/ or 3. months imprisonment. The ape1lant aggrieved has appealepi, this Court, ... The rouñcl' of appeal have been accorded the epproapiate,rCspects and scruiñy. The Couioe1 for the Republic Mrs. Matovu, declined to support conviction, which was neer reached any way, for reasons that will here under be obvious.: To appreciate this Oase, the scanty facts available are that cn.infoz'rnation..rceived, Police Officers— P.W.1 DtisOn Lymo, P.W.2 Mrisho and P.W43.1oth, bumped i.ntc tha apoellant, aid sought t arch the shop. According ta the evidnce, they'went to the'shop whefe the' ippe1lant sold them a bagcf maize at 50/=. ' TliCse"wi -tnesses, told tCà'ii'r, that the appellCñ -t as buying and selling maize without licence. The a 1 pcellant on tho other hand. defended himsoif, denying any o'le of mié to the witnesses. He t1d. the Court that although ho had maize, that 'was his food. He was hpwevr aiested, his five Lags ceased, and taken 'to the Police Station, The trial Maistrte finding him guilty,' aiid seeing h 'need to procoed tc conviction he cncluLoo. thus "The Court whiie simrning up thist case there are two point (a)' Accuseh has 5 bags and. tin at the shop.

- (b) They asked him that they wanted 'to- by '
- maize, and he sold bag Shs. 50/. 5 'in this view I. am convicted the' accused j. '.. guilty as charged." I feel some moral in—hibitions to castigate, the trial magistrate in the way he dealt with this case. It appears that lie did not appreciate the nature of the charge, and the form it should take, and it appears, with due respects) that he did not know what the prosecution was supposed to prove, and it followed that the ciuestion of burden of proof was of no material consequence, just as it was to. him, unnecQssary to convict. Force to partioularise, I cannot make the escape from the fact, that charge idefect.ve one, while'he eectirCns cited exist in the relevant Ordinance Cap. 486 - Agricul5tural Products (Control and Marketing),

and while Government Order No. 328 of 1968 i.e. the National Agricultural Product Board (Control of Marketing) Order 1968 was made thereunder, the general Notices No. III and 1139 also charged do not seem to exist, or, to be relevant to the case in point. Further more, the Order in the above Government Order, was not made under section 7, as the charge seems to suggest, but under section 6 of the Ordinance. The above Order is made under section 6 vide, which the Board established under the Ordinance, can lawfully issue orders, and directions, pertaining to the production and marketing of agricultural products specified in the order. 0•

- 2 - In other words section 6, as an enabling section, giving the relevant Minister, power to make subsidiary legislation in the interest of proper production and marketing of agricultural products. For the appropriate charge therefore, the charge should embody the section under which the relevant subsidiary legislation is made, the rule or paragraph of subsidiary legislation, breached, signified by the relevant Government notice, and the offence or offences or rules. Of course there is some concession to be made that in form and set up. It sometimes happens, that the sections, in the parent statute, are such that the offence, alone, is one, for instance where the section stipulates that whoever contravenes the provisions of this ordinance or provisions made under it, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 11 ... or to imprisonment for a term not exceeding or to both such fine and such imprisonment. In this event as earlier, stated, the charge should contain the definition, the rule or paragraph of subsidiary legislation breached, followed by, the offence and punishment. But where the subsidiary legislation provides, for both for the offence and punishment, the charge should only contain the delegating section, the breached rule or regulation. If the legislation made under it, followed by the offence and punishment rule or order, provided by the subsidiary legislation. It is therefore incorrect improper to apply the parent statute punishment section while the subsidiary legislation is self contained and provides for offence and punishment. The logic of it may be, that at the time when the parent statute and subsidiary legislation may vary, and as subsidiary legislation is subsequent to the parent statute, and meant for certain eventualities and circumstances, and the punishment it provides may be more commensurate with the times, and occasions, for which it is meant, than the punishing section in the parent statute usually differs in circumstances. Consequently to tie the father to the son only was the usual section with, out Iso since the Order (G.N 328) provided for punishment, it was incorrect to charge the punishment section of the parent statute. In the light I shot has been said, the charges are all have been - "Illegal Marketing of Agricultural Produce" s 6, para (2) and (4) of the National Agricultural Products Board Order G.N.328 of the National Agricultural Products (Control and Marketing) Ordinance Cap. 486. The question whether or not this is viable is obviously a must. Considering the defects in the charge, and on the appellant's defence. in mind, it is as clear as day, that the appellant was so prejudiced that it would be a miscarriage of justice to uphold the conviction: that in fact, never was. This is vindicated by the fact that, not only was the trial Magistrate, not sure of the nature of the charge, but also the appellant did not

know exactly the charge he was facing. To him he was being prosecuted. for. trading without licence. . In this event it is not easy to avoid the conclusion that he was prejudiced. Thus the totality of the above is that the conviction is not sound. The appeal is therefore allowed, conviction quashed, and sentence set aside." since it is to be refunded.

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