

TANZANIA / JUDGMENT

19870313 TZHC Mtwara

COURT
TZHCDECIDED
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IN THE HIGH COURT OF TANZANIA HIGH COURT CRD'ill\JAL APl-'tAL NO. 76 ·oF 1986 Original criminal Case No.136 of 1985 of the District court of Mtwara District at Mtwara Before E~Mo Lisso, Esq.; Resident Magistrate RAJ1-BU 110HAMEDI NAMBAYA o Af'l?ELL,\NT Versus 'i'l- lt.: rtSPUBLIC ooo•ooo•o•oo•..... RESPOL\JV~NT

JUDGMENT

RAJAGU 1'JOH/f"itDI NA!l'1Bt,YA was charged with fi \T.~ counts' first, .. one being forg°ery contrary to s~.1=Jiori ' :,. . 333, 335(c)'and 337 of the Penal Codd:~ai1'cf~':teina'ining ·four - couflts ·are; _of ,1s;t·ea·ling contrary td'tbi2tion 265 of· thenP!enfH · Code!' ,The r,ecor:d :spows; , that he hc:\d: · plbaded' 'not'· guil fy" 't:o~:~t.fie , ,fi;rst count 'and: guil.ty ·. 1 to the r2inaining four counts.. He was: convi'cted ·of .t)le off·ences ,. . . , ~' ... he had pL~aded gl.li1tY. arid sent~nced t~ three _years imprisonment in respect o~f each count. ··The:isentteh'Ces were· ordered to run ,. ~ ... : ·. t: , 'i - -,~ ~ \ concurrently~ The charge to which he ·ha:d not pleaded guilty was wi thdrawri by the prosecution· under section 86 (a} of the Criminal .i? rocJciure Code (then in operation) ·and he {the accus12d) was discharged.,- : 4 ~ , · · " # ,) ~ Rajabu· Mdhamedi Nambaya. is~,now ·aJ)p:~eal-in,g stating, · that ·J-p.~ :: plea of guilty fn .respect of ·the four, cdunts ,had not · lbeen:. ,. unequivocaf~:): ltfo\rrt'ai:ntained that .he 'had 'accept:ed ·to ·having J" . withdrawn vdrious sums of. rrio'ri'e·y orf'·-1/aricrusi ,:occasions ·.from Ndanda N. B. c .. bra,'ich2s at _L and Masasi 'us·ing" ·11.;isr · Pas:s~ :Book ,,:ac·count ,. i ,; ' No. 2955 7 but thut the·se withdrawals had not amounteGl.)to. st;ei3,lin.g';l,·.~ · , The prosecution had outlt,ned facts to ~hich the. a_ppe~lant was taken to have pleaded guilty. Briefly the prosecution.had stated that on 12/8/85 the appellant ·,ra.~. . ,a.~..R?-,~::~:~ 2, 400/ = in his. account., 1\t -tha,t till}€! he had. 10oi = ir~· hil account. : °\... , , : · ;~ ·-:/ -~:::~ :: ,:r·

- 2 - Later on the appellant added figure one in the Pass Book infront of the total of shs o2, 400/ = thereby showing the mo_ney deposited on 12/8/85 shso12 1 400/= instead of 2,400/"o On the 20/8/85 the appellant went to the Ndanda branch of No B. c. and \Ji th drew 1, 200/ =o On the 22/8/85 he went to the Masasi Branch N Bo Co and withdrew O 500/ =o On 30/8/85 he (appellant) weht to the Ndanda NoBoC· and withdrew 1,400/ =o On the 10/7/85 he went to the Masasi N.B.C. Branch withdrew 400/ =o The prosecution cbntended on the above outlined.facts that the monies withdrawn by the appellant on the 23rd August, 22nd August, 30th August and 10th July, 1985 had been stolen by the appellant. The appellant contention

however is that he had withdrawn these monies in the four occasions as detailed by the Prosecution but that he was entitled to that money. In view of the plea of not guilty to the first count and because of the facts that up to the second withdrawal of 22/8/85, the appellant had been withdrawing from "his" money, assuming that his deposit had been 2,400/= and not 12,400/= and that even on his third withdrawal on 30/8/85 the appellant went into the red by 500/= only it is clear that the appellant could not have pleaded guilty to the four count of which he was convicted. One cannot steal his own money. Accordingly I hold that the two convictions entered by the trial magistrate were not proper. On hearing the facts, the trial magistrate should have seen through this. One more thing, I fail to see how the appellant was said to have withdrawn 400/= on 10/7/85 when he had at the time just 100/= in his account! Accordingly I quash the four convictions and set aside the imposed terms of imprisonment. The appellant is to be set free at once unless he is being lawfully held on another matter. ~<, Yahya Rubama Judge 13 .. 3.87

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