

TANZANIA / JUDGMENT

19750408 TZHC Arusha

COURT
TZHCDECIDED
8 April 1975

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J. IN THE HIGH COURT OF TANZANIA AT M?TTST-IA ATPELLATE JURISDICTION HIGH COURT
CRIMINAL APEAL N0 239 OF 1974 OI.GIN4L CRMINAI .CASE.NO. 508 QF1973 OP THE FIISTFLICT
OURTOF KOIFIGWE ISTR AT KORJGWE BEFORE:-S. H. NDUNGURU, Esq., District Magistrate
RASHIDI ATHtJMANI AITELLANT (Driginal Accused) versus THE
RETUBLICRESP.QNDENT (OrIiginal Prosecutor) CHARGE:- Burglary
and St.ealing c/s 294(1) and 265 of the Ienal Code;

JUDGEMENT

- • k' The appellant was found Guilty of Burglary and St.ealing and sentenced to three years and to six months respectively. He is appealing against that deèision by th District Magistrate, Korogwe. : Things, including a bed, were stolen from the kitchen house of P.W.I NASSORO IBRAHIM sometime during the night of 7/11/73. The same night, at about.11 p.m. according to P.W.2 MWANAISHA ATHUMANI, a bar maid on good terms with the appellant, the latter delivered to the former a bed which P.W.I later identified as. being his and the same one which had been stolen from his kitchen1 When the appellant's house was searched small items like a pillow, a spoon, a bottleful of Kimbo oil, a list of which P.W.I had already given, were found there. The appellant did not dispute the finding of the various things but he contenr d that the bed he admittedly delivered to r.W.2 was his own, having made it in 198. The learned trial magistrate who saw and heard both P.W.I and .the appellant, and considered their rival claims,, was satisfied that 'P.W.I's was the truthful one and I frankly do not feel strongly enough to be able to differ. I have no good reason to disagree that the appellant stole the things as alleged. What I do feel very strongly about, however, is the firding that the appellant burgled the kitchen. While the stealing must have been done at night, going by the evidence, there was absolutely no proof of breakjpgg, not even an assertion that any door or window, if any, had been closed. There was no proof therefore of any burglary. Entering, Contrary to Sestion 295 ofthePeMi;Cdp as etabihe'd if:.ony-by iml.icati3 and so, accordingly, I substitute a conviction for that for the Burglary one recorded. Of cou±'se the offence of Entering does not attract punishment under the Minimum Sentences Act, 1972. I substitute for the sentence of three years on the first Count one of eighteen months and leave the six months 1 concurrent,, on the second count undisturbed.. As the appellant was sentenced on 15th February 1974 he will have served more than the necessary two thirds by now, so he is entitled to immediate release, assuming

of course he has behaved well enough to earn the customary one third remission. . . ,
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