

TANZANIA / JUDGMENT

19710924 TZCA Dar es Salaam2

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IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM, Criminal Appeal No. 354 of 1971 (Original Criminal Case No. 698 of 1971 of the District Court of Dar es Salaam District at Dar es Salaam RASHIDI ISSAMWAIPOPOW...SIW.... APPELLANT (Original Accused) versus THE REPUBLIC RESPONDENT (Original Prosecution) charge: Uttering a false document contrary to section 342 of the Penal Code, Cap. 16, Vol. I of the Laws of Tanzania. This is an appeal against sentence. — The appellant pleaded guilty to a charge of uttering a false document contrary to section 342 of the Penal Code. The particulars of offence were that on the 5th of May 1971 he fraudulently uttered false driving licence No. 86026 to a revenue official. The facts of the case which were admitted by the appellant were that the appellant, a fisherman, who had no knowledge of how to drive a vehicle, went on the 5th of May 1971 to the Revenue Office and presented to the Revenue Officer a driving licence he wanted renewed. The driving licence was in his name. The Revenue Officer became suspicious and 'phoned the police. The licence was shown to be a fake and a forgery and the appellant knew it to be so. The learned magistrate convicted the appellant on his own plea and sentenced him to eighteen months' imprisonment. In assessing sentence the learned magistrate said as follows : — This is an offence of an outrageous kind, by its very nature as a forgery and also in view of the intense danger it constitutes to the public. I agree with the prosecution that a man unlawfully in possession of a rifle poses less threat to the public than a person who could attempt to drive without any prior knowledge of moving a gear. I have to discard the mitigation of the probation Officer in view of the seriousness of the offence and sentence the accused to 18 months imprisonment. 7 Ab 2. Who knows the accused may learn some / skills of driving in prison which he is anxious to substitute for his work of fishing. Mr. Tjzanda, learned counsel for the appellant, has attacked these observations as amounting to a misdirection and has submitted that a sentence imposed as a result cannot be sustained. The use of the word 'outrageous' may be inappropriate, but I am not persuaded that the use of that word or the analogy with the possession of a rifle amounted to a misdirection. It was dangerous for the appellant who did not know how to drive a vehicle to be in possession of a driving licence. This licence put him in a position to drive a vehicle without hindrance whenever he felt like it. It was very daring of him to attempt to renew a false licence. He was trying to secure an official stamp to a fake driving licence and to make it legal. I think the learned magistrate was entitled to consider the appellant's conduct and the probable consequences of the appellant's action. In assessing sentence. The havoc the appellant could cause the public had he succeeded in securing official

renewal of his fake driving licence and attempted to drive a vehicle could be incalculable. 1r. Uzanda further contended that there were mitigating circumstances in this case, namely, (1) that the appellant had not attempted to drive a vehicle in spite of the fact that he was in possession of the driving licence, albeit forged; (2) that he was not apprehended attempting to drive a vehicle; (3) he was a first offender. I can hardly appreciate the logic in grounds (1) and (2) above, it is the possession of the licence that constitutes the mischief. The public is left completely at the mercy of the appellant. The mere fact that he had not yet dared to drive can hardly constitute a mitigating circumstance. I take into consideration, however, that the appellant was a first offender and that he has pleaded guilty to the charge. These are mitigating circumstances. I will therefore reduce the sentence to twelve months' imprisonment. ORDER: Sentence reduced to twelve months' imprisonment. Delivered in Court at Dar es Salaam this 24th day of September 1971. (Sgd.) G. C. M. OIYIJIKE. JUDGE.

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