

TANZANIA / JUDGMENT

19981027 TZHC Mbeya

COURT
TZHCDECIDED
27 October 1998

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IN THE HIGH COURT OF TANZANIA, Mbeya District. Criminal Case No. 632/97) VERSUS ALEX NGETWA. Respondent.

RULING

1. This court called for revision of the judgment of the District Court, which convicted the respondent i.s/o Ngetwa for stealing by, age 30, 90 bags (bunches) of round (Insh) potatoes valued at Shs.1,356,000/=- and sentenced him to 18 months imprisonment, ordering for restitution of Tshs.1,356,000/= to the victim of the crime one Petro s/o Mtisyo who testified as PW1 was justified. When called upon to show cause why the order of compensation should not be made against him the respondent answered that he was not guilty of stealing by agent at all. Before any order of refund of Shs.1,350,000/= the conviction must be looked into if it was sound. The learned Mr. Njmgela (Sii.) supported conviction, sentence and the proposed order of restitution of the stolen property; value in Tshs, 1,350,000/=-. From the testimony of PW1 the accused and the victim of the crime; k...w... other for many years both in DSM, and Mbeya. At the time of the theft the accused was staying with victim of the crime as his guest. May trusted another and FW1 bought between 90 - 100 bunches of round potatoes from PW2 Enock s/o Kaporo out of which 90 bunches were entrusted to the accused to go and sell them for him in DSM. Despite having sold them, the accused never returned the proceeds thereof to PW1 until over 6 months elapsed. On being traced in Kihasa Iringa, the accused was found selling tomatoes and he confessed to have sold the 90 bunches of round potatoes at a loss the proceeds of which he failed to remit to the PW1 for even a single cent until he was convicted in court and the excuse that he was still looking for the money to refund to PW1.

- 2 - This was not a civil question of the respondent for merely looking for money for him at to refund to PW1. It was a criminal question of the respondent having sold the potatoes as agent of PW1 all the proceeds of which he stole them by using them fraudulently against the wishes of its owner and to permanently deprive the owner thereof of the same proceeds. This is single theft by agent for which the respondent was properly connected and sentenced to 18 months imprisonment. At the same time, the respondent cannot be left to benefit and enjoy the illegal fruits of his crime.

He should have been ordered to refund the entire shs.1,350,000/= value of the 90 bags of potatoes to the D.F.H mark to where he sold them for all the transport of the 90 bags of potatoes was arranged and paid for by the victim of the crime" I hereby order the accused to refund s/o Ngetwa to refund shs.1,350,000/= to s/o Petro s/o. Mtisyo with immediate effect. E.L.K. Ko MWI?OPO JUDGE 27/10/1998 Date: 27/10/1998 Coram: Hon. B.L.Ko Mwipopo, Jo For the Republic Mro Mulokozi learned State Attorney,

- For Respondent - Alex Ngetwa present in person. B/C Mrs. H. Kambadu. Court: Ruling delivered in the presence of the respondent. E.L.K. Mwipopo, JUDGE

27/10/1998 I certify that this is a true and correct copy of the original Judgement. ... ;)/ i
DISTRICT REGISTRAR, MBeya

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