

TANZANIA / JUDGMENT

19770208 TZHC Arusha

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TZHCDECIDED
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IN TIJ: IIC•i COUT OF PLiTZLNiJL in ?piT(r FP1LL'i1B JU1:I3DICTION HIGH COTjT?.T CRII:IITLI FFELL NO. 126 OF 1976 a/p CRIMINLI LP2'IL NO ..127/197 6 ORTGIN.L CRT ff"L C3E NO 39 OF 1975 OF TT DI5TICT COLJI?T 01' v.IB .Y. DI3TR1CI .T T'L.PEfO BEFORE: VT. S.. I. ULENGU, Esci., District LiiiStr5tO L.PPLL/d'TT (Original. 1st Lccusod) versus TNE RET'UTBIIC H FONDEjTT (Original osecutor) • . JUDGIIENT r./ LLlj This ic consolidat ao.oa'l of criannr1 appoalcaso To.' 26 of 1976 anC 127 of' 1976 '..! liliich appellants are Raphael Iigoibigo and I.iain.go Gvioitiko rospeciivoly.. They are bro unrC anc w c cirgcd aacL Coia' ic d lii. die c..is rict court of Kibaya District 'it.. the oL .nce. of Robbery c/ss 285

- and 286 of the Penal Code and each was neicccT to 8 years iinprisonnent and ordered to pay 10 hoaEi. of cattle or 3000/= a' canponsation for loss, of property and .1000/= as co.upensa - ion for bodily inuriqs .suffercd by P.T.2 and P.VJ.3. In. the trial court they appeared as the First accused, and Third accused respoctively. The second acoused in thj. trial was ..aciuittd. They ai now apoain[, toihis court 4gainst coñvic jOfI,;. sentence and. orders.. . . Th f'act of the ceo accoreing tc ç prosecution are tiat on the 14/9/75 11 .7.2 and P.7.3 . woro driving away their cattle when they : attacked by the appellants, and twenty of their cattle v;cr stolen and have. not been recovered. '..PV1.2, a youth of 13 years is a sea of P.7.3 aud.ho was at the nisLerj.a] L' driving ei' i'c'u er'e calc from the roar while P.Vi.3 was leading the way ahead of 'tii cattlo. The way passed through the bush, but it was in broad daylight during ;tiaoorning at about 7.00 .ifl. P.7.3 was attacked by.thrce people, two of whon wore. the apeolJants. He sustained sorioua.injuries and lost consciousness which ho did not rcin until lar iLiil ath'iod in L1opJ a1. P.1 2 '..'beaton. up . with sticks by two assailants, one of whon was the Piist iccuscd. P.7,2 however i rianagcd to oscapo and run away. The dofence.of' each ofthe accused consisted in an alibi • Tie Pirs ccc esod cla1Led r' a ho jimterial tine ho was at the e 01' one ITgiri'ci' (D;i.5), and the iilhird
- accused clainiod fiat he was at the nateria1 tino hcrding the cattle of his family.. Tue First accused called t;e '.;itiiocs to support his alibi. These are D.7.4 and D.7..5.. Llt..iou.gh their. 0/2 -2--- P1though their oicicnco is in agroohOnt with that of First accused in showin that on :ho 14/9/75 the Iirst Iccused was staying at D.VT.51s hone, it does not show the movements of the First accusd during the morning of tieb day. There is therefore a reasonable possibi1itf that First Lccused.. left D .7 5 's hone during the norning and roturnd: there later on the saro day. P.7.2 know the First accused very wall before that day arid there

was no room of mistaking him. Iroocr, P.7.3 testified that he was the man who slashed at him with a sjmll' and was close enough to be seen properly by P.7.3 during the nterel i o of nst iorn1ng. F evidence therefore corroborates P.7.2 1 s testimony which was given without oath, because of his tondor ago. On this evidence, I am of the considered view that the conviction of the First accused was proper. "dith regard to the third accused he as not among the two people, who at ;ackod P.7.2 at the roar of the moving cattle but was seen by P.7.3 among the three soopic who attacked him ahead Of the moving cattle. Taking into .accdiat the evidence wmic i shovus that the s back tooh laco in broad daylight in.tuhc morning, I am satisfied that. P.7,3 had ample opportunity to know the third accusede \7110a. he did not [mow before that day. 110 was properly convicted. 7ith r,ogard to the sentence of 8 years jail, although lu i above uuLory minnuil .0I1LCI1CO and therf ore recluiros the con±irmation of. this court undor S. '7 of: tho Criminal Proc oduro Coda as eiendod by the lfiniinum Sentences (Cônsociuential and Incidental Provisions) ct 1972, I am of the considered view tiet the soittonco was justified by the nature and number o± the property stolen rind tho prevalence of the offence of this 1dm in the countrr. The sentence is therefore confirmed.,, s to the order of compensation, the trial court directed each o' the appellants to pay either 10 head of cattle or 3.3,000/= for the loss of the 20 hoad of cattle. I think this order for payemnt of compensation'. in kind was bad in law since there was nothing on record or in the case to show that tie vsiue o oj group of 10 hoed: of cattle to be' produced by each of the appellants would be equal in value to half o± the complainant's missing, cattle. I will th. rforc rcc b l' e error bw st. ±ing esid t 'in u par'b of the ordor. bui; corn inning the order for payment of t.3000/= by each of tho appellants. Finally, niit:t rgard to the order of peymnt of ie 1000/= as compensation for personal injuries sustained by P.i.2 and .I.3, se; nomein, u0 move unis couni to inorfero with that order which must have boom mado under Section 176(1) of the Criminal Procedure Code. In - ie . . . • •D (if I -P il'i/i'l'L (IrrIVt\ 'i od2 q 9uitsi OU ' CL O OOLTO13 pu AeuJOq4r Oqq pOUJO'I)TA['I COUGJi OLT UT Ijsfl1V IflOQ LU)C1O UT LL6T Jfl3rLIc1o L tp.9 pcJCATIOcL UD(If1f (ITxf\ r i) 'JOJTLTO 8T UT pTSSIUTGTp ET 6 UOT13SUOCTUTOO go JOpJO otq UTLLOOUOO UoTq:oTTpOU xouiW oxji t'ecft pc.q12p[oSUoo STLq. oIOJriq TSJILI TLLTTJ oiq. UI —c--

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