

TANZANIA / JUDGMENT

19780519 TZHC Mbeya

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I !: 40 A]IPEILATM ;UithUiOTJ(Jl HIGH COURT CRIMIWcL AA;PlbcL NO. 61 OF 1978 ORIGINAL CRIMINAL CASR NO 134 OF 1978 OF THE DISThICT COURT OF NDEYA DISTRICT AT MI31Yic BRE E.P. MTUI ESQ..DISThICT MaGISTRATE S]IdMSHI PUNJA APPELLANT ver sue TILCREPUI3LIC RESPONDENT CitiRGE- ist c/ss 22(a) IyVinn L.' (U.p1Fi.y pc.iees and 26 of Regulation of price control Act No 19 of 1973 2nd count- Selling euuiLrollecl goods above the maxinun price fixed. o/s 20 and 26 of the Regulation of Price nonLo1 Act I009 of 1 973 JUDCMJiNT MWAIctBETE J. Before Mbeya Distriet Ocuri; rho appellant was charged with and convicted of two counts naeioiy failure to display maximum prices o/ss 22(a) and 26 of the Regalatioii of Prices Act 1973 and selling controlled goods above the naximurs price c/ss. 20 and 26 of the said Act (1973). He was fined sic,1,0001= or 6 months iiprisonment in default in count one and sentenced to 9 months imprisonment in the count of overcharging He Las appealed against both the conviction and sentencl in either case The rarticulars of count one alleged as follows and I Quoten- uTha t the person charged on 31 clay of March, 1978 at about 1230 hous Market Street within township of Mbe1a District and Region of Mbeya being a shopkeeper dealing with the selling of different controlled and uncontrolled goods, did fail to display the maximum and charges as imposed by the crolleof prices." Section 22(a) under which the charge was laid stipulates as followod _-'-- - -* .. ----- I i

- ----- equLrenents in':regard to the display of maximun prices and charges, imposed by section 17 shall, unless he has been exempted from compliance with such obligation, be guilty of an offence." And section 17 to which reference is made by section 22(a) provictes as follows: "17 - (1) The Price Commissioner may, by order published in the Gazette, require any trader or other person or any class of traders or persons supplying price-controlled goods or rendering price-controlled services to display, in such language or languages as may be specified in the order, in a prominent manner and in a conspicuous nosition so that. it may be easily read and is clearly legible to customers in those parts of his or their business promises whore business is done, a list of the current maximum prices and maximum hire charges for such price-controlled goods as are mentioned in the order which he or they may supply 9 or the maximum service charges for such price-controlled services, as are specified in the order, which he or they may render.

- (2) An order under this section may apply to Tanganyika as a whole or to any area or areas thereof and may provide for the form in which any such list of maximum prices or maximum hire charges or maximum service charges which it requires to be displayed shall be arranged." Section 17 clearly speaks of the requirement to display maximum prices in relation to controlled goods. It is not understood therefore why the particulars of the offence purported to include the allegation of failure to display maximum prices in relation to non-controlled goods as well. The anomaly in the charge was, however, found by the trial magistrate to be curable under section 346 of the Criminal Procedure Code. He observed that the charge ought to have stated that the offence that was projected in the particulars was created by section 30 of the Act (19/73). I note here that on appeal, Mr. M. JANKA - State Attorney - was arguing that section 30 ought not to have replaced section 17 but that it should simply have been added to the statement of the offence. And for that matter section 30 reads as follows:- "30-(1) The Price Commissioner may, with the consent of the Minister, and by order in the Gazette, require all or any category of traders dealing or authorized by their business licence to deal in any price-controlled goods to display, in such order, prices of all or any class of goods (whether or not price-controlled) sold or exposed for sale by such traders.
- (2) Any person to whom any order made under this section applies and who fails to comply with any requirement of such order shall be guilty of an offence, be what as it may. -the- question is was there evidence in support of the charge as amended. by the trial court - or the learned State Attorney on appeal? With respect to both the trial magistrate and State Attorney I am unable to see any on record. On count one this is what the price inspector - one LIKWILE - from the Regional Commercial Office had to say: "Some items inside the accused shop had no price tags. There were other tins of yeast but none bore any price labels as required by law." Then in cross-examination he said as follows: "The law requires every shop keeper to display prices of controlled items. If the items are in the cupboard it is lawful to indicate the price on the cupboard instead of using tags. The accused had labelled some goods inside the shop by using paper tags." He finally deposed as follows in re-examination: "The tin of yeast had no price label. There was nothing like price indication where other tins were displayed. The accused never claimed to have labelled them." To my understanding, the evidence of the price inspector in relation to price labelling or marking of goods sold - in terms of section 7(5) of the Regulation of Prices Act - Section 27(5) is couched in the following terms: Price Commissioner, any Assistant Price Commissioner, or any person authorised in that behalf by writing by either the Commissioner or an Assistant Commissioner shall have the power - to order in respect of any price-controlled goods, or any goods in relation to which an order has been made under section 30, that, when exposed or offered for sale or hire, they shall bear such mark or label as may be specified, in the order for the purpose of indicating their quality, grade, price or place of origin; by order in the Gazette, to prescribe the place in which any price controlled goods may be stored". 'Display of list of prices' is a totally different concept from that of price labelling or marking. As already seen 'display of list of prices', is dealt with under sections

17, 22(a) and 30. What was produced in court as exhibit P3 by the prosecution were books of Y'4X LWUY lists of prices of price controlled items. They were not price labels or tags as such as Qn*?saq44 in section 27(5) of the Act. I am fortified in this view by the wording of sections 16, 17 and 30 on the one hand and that of section 27(5) on the other including, S • S • • /4 • Goirexn+ - NO-tjcellD.. 125/76 which, was made under section 30(1) and Government Notice No.126/76 which was made under section 27(5). The evidence of the other prosecution witnesses like that of the Price Inspector who sought to establish the alleged non-compliance with sections 17, 22(a) and 30 simply talked of a different thing altogether. All talked about marking or labelling of prices on goods on shelves, offered by sale. The notes made by the trial magistrate at the locus in quo also related to marks or labels on the goods displayed for sale. The charge was not one of failure to label or mark goods offered for sale but one of failure to display a list of current maximum prices. The two are two distinct offences with different elements to be proved. In the absence of an authority to substitute a conviction of the one proved for the other I find myself left with no other alternative but to allow the appeal and quash both the conviction and sentence in respect of count one. The fine paid on count one is to be refunded to the appellant. Order accordingly. I now turn to count two. This related to overcharging. It was the prosecution case that appellant sold a tin of yeast, 21 kilos of French made to P.W.1 at shs.100/= instead of shs.67/75 which is the official maximum price for the commodity. So going by the prosecution case appellant overcharged by shs.33/25. Appellant denied having overcharged P.M. He claimed to have given him a change of the amount he is alleged to have overcharged i.e. shs.33/25. There was no dispute that the 100,1= note whose number was said to have been recorded by the prosecution witnesses, before P.W.1 gave it to the appellant for the tin of yeast, was the one actually found on the person of the appellant. There was also no dispute - in fact it was fully established - that the current maximum price for the tin, of French made yeast sold was shs.67/75. The only question therefore is, didn't appellant give back the change as claimed? After a thorough study of the record and upon hearing the two counsel who argued the appeal I am satisfied this was a case of a trap - by the police working in conjunction with the Regional Commercial Office - after receiving a complaint from P.W.J. For, otherwise, I cannot see how the act of recording the number of 100/= note before handing it to appellant could be explained away. On the evidence, it is irresistible that P.W.1 did in fact complain to P.W.3 and the Police about appellant - overcharging. The recording of the note must have been done at the time and under the circumstances explained by the prosecution. It could not have been done after or before the sale transaction, because in the former case there was

- nothing to record - the note having been handed to appellant - while in the latter appellant would most probably have noticed the act of recording. It does not strike me that the Police and the Price Controller could have conspired with P.W.1 to frame appellant after the event - that is after the sale having taken place. I accept the story of P.O.W.2 and 3 that they were signalled into the shop immediately. N. 1 appeared at the door with the tin of yeast. I accept also the version of all same witnesses that P.W.1, like appellant, was searched inside the shop when 12/= only was found on P.W.1's person. Accordingly I see no opportunity for P.W.1 to

have disposed of the other amount alleged to have been given to him as change. Like the trial judge, I hold that appellant lied on the question of change. He lied also on the point that P.W.1 went away after the sale transaction and returned with the Police after 20 - 25 minutes. It was a question of credibility and the trial magistrate who saw and heard them all testify was satisfied P.I.2 and 3 told the truth. On the facts his finding cannot be impugned. Appellant never gave a change to P.M. Of course, there were SOG anomalies in the evidence of P.W.4 - as, where for instance he was unable to say from where appellant removed the tin when he handed it to P.W.1, and his inability to observe closely where appellant kept the note in question after P.W.1 handed it to him in exchange with the tin of yeast. In my view, however, the anomalies were not falsehoods but merely evidence of the Police Officer not being reasonably diligent in the performance of his assignments. For the reasons I have endeavoured to demonstrate I am satisfied appellant was properly convicted on count two. Accordingly I would dismiss the appeal against conviction on that count. As for sentence I had the occasion to comment, in my ruling on the application for bail pending appeal, on a number of misdirections which apparently influenced the mind of the trial magistrate when he imposed a prison sentence of 9 months. I did remark that the sentence was not warranted by the circumstances of the case. It is my intention to elaborate this observation. Under the Regulation of Prices Act there are two categories of offences. There are those which are compoundable and those which are not. Compoundable offences are dealt with under Part VI of the Act. And section 33 defines what compoundable offence means. For the purposes of this case it means that overcharge which involves not more than fifty shillings. So that by this definition appellant's crime was one that belonged to the category of compoundable offences - pure and simple. . . . I O O & a -. According to the Act the Price Commissioner - in this case the Assistant Price Commissioner (R.D.D. or D O D.D.) - could compound appellant's wrong—doing by requiring him to make a payment of money, the sum of which is not less than shs.100/= (one hundred) but not more than shs.2,000/= (two thousand). The fact that the R.D.D. or D.D.D. did not compound appellant's wrong—doing, in my view, in no way removed the offence from the category of compoundable offences. It may be argued that compounding under the Act implies admission of the offence on the part of the perpetrator - in this case the appellant - and that failure to admit the offence or to plead guilty to the charge, the appellant aggravated the situation - hence a sentence which is patently more severe or stiffer than that, which would otherwise have been imposed. Yet on the authority of *MUTIGI v R* (1922) R-1 260 no increase in sentence may be made because the accused has pleaded not guilty. This is... the 'loaned Judges (Siapson Mull) had to say in their judgment with which I am in full agreement "While it is perfectly proper and indeed desirable to impose a lesser sentence than that which would otherwise be imposed on the ground that the accused pleaded guilty it is quite wrong to impose a sentence higher than that which would otherwise have // been imposed on the ground that the accused had wasted the court's time." Having observed, thus their Lordships proceeded to re-impose the sentence imposed by the lower court. I note finally that the prosecutor had asked the trial court to impose an exemplary sentence because allegedly everyday people went to the Police to complain about goods being sold above maximum

prices. I do not read the prosecutor's remarks as amounting to a plea for a sentence which is incompatible' with the letter and spirit of the Regulation of Prices Act. A sentence of fine within the range of 100/= and 2,000/= was in my view capable of being exemplary in the circumstances of this case - although the prosecutor's remarks are questionable. For the court returns of cases filed and/or decided in lower courts - which reach the high Court monthly show negligible number of cases of overcharging. I am not persuaded either that cases of overcharging are difficult to detect. It is my considered opinion a. based on the above observations and the ones canvassed in my judgment on the application for bail pending appeal - that the decision to impose imprisonment in count two was without good foundation.

Accordingly I would alter the sentence of 9 months imprisonment to one of shs.1,500/= fine or distress in default. The order of the lower court as to the amount vercheed is so stated & undisturbed. I so order. -7., Delivered in court at Mbeya this day of May, 1978. M. J. IIMBETE
JTJDC-E IN THE PRESENCE OF:- TUXtJNJOIEi for the appellant and H4MMXA for the Republic.

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