

TANZANIA / JUDGMENT

19890222 TZHC Dar es Salaam

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22 February 1989

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:5: . - r1OROCOrIO ~ . AFPEL:J.TJ; JiJJ.LDICTION IIIG:l COTTRr CJ.IIUIJAL AFTEAJ., NO. 92 OP 1987 CrtIGIHAL CRil-UHAL C.WE NO~ 151 OF 1980 Cf' TEE DISTRICT COT.;-'i:-G: ·OF J::ILC.3i. DISTRICT P.7: :i~IL03.A }3:.;:.'ORE :r. ~~~< fYJ'.llBOGi... ESQ,. 7 :DIST?..IC:;_- 1.fL·]:tSI'R:..T.J· SAIDI ALLY s/o ~ITI·IIlrra~1.A.« " 0 1) 0 ft 6APPELLA.lPJ: e O . 0 0 <1°d O ,. (Original Acc 1.1-2~d.) (Original Pros,;cv:iio:r) -lii'lc District 001:;,-r-; o~: KiJ.osa, Kilosa District 9 contrary to Soctio;)\ 294(1) o:(t:... c Pc-mal Cod.e. and sJce2,:Ling contra.ry to 0 cc~::~_o:;. t' 265 ·of ·che Penal Code. L.e w2.D co:-1victed cf ·:::otl,. tl1~ coviYGS ancl s:-mtenced, ,;o 10 yearG and 2 ye':l.rs im1):i:- isonme1:~i; : 3sp~c-ci:;,-cl;_y 9 a:~.1cl. ·i;~;,, sentencen ·wr;re or(.8rC:(~. , 1: to :nm concl,u~rently. The let· ac~ns,j!., 'f1~.-o;-i12,a :M:zibond.a was co;.1yic·0.ed eJ.oi:~:: w'i th -tho a,ppollant :,110. was scn~enccd. ::or the s22ne perio,l o:f impr'isomnent. The 3rd accused. waD ·l;l,e wife o-i:' ·c:::·o· am)ella.1Y~ 7 1Jy the nai.11e of Asha Musa, s::10 w2:s acqt;ittecl. on ·rJot1. the col.:11-i,s~ The fi;st acc:::s,;:<l _ap;ieal8cl alone to thic cot.1-1'-t and ti:10 appeal was 9 afte::: ,eing he2XcJ. l;y Jhaveri 1 Ar-;" Jv.d.gc (as :w 'c'... ,LJ. . was) dis!nissed ~or bsing u.:o.me;::i'io;is. Tho s0nt0nc<::B 1wre }:'oi;nd. to be adeqt;~::~c T'ne prese1,:c appel.La.,vi-i; sent b.is Iuerno:c:::nclu..111 of." appeal Oi'l 23rd Dr,0e2.bcr~ J.:;03 to the iligh Court. Ap;i;:;eal waf.: on ·i;im,./ as tl.1e 2,ppella..nt g2v0 notiee of appeal on 26tL August 1 1981, a <'la;y 9 Jc,,~it ;,d:·cor he Wc\S co;1vic~ed. .on 25-c;,, kc:::gu.st, 1981. The appellar1t received copies o::: ·proceedings and jud.5enent on 1st DE:::oesber 9 19,83 :.111.t his merJo:re,nd.1.1.,!1 of aPfJeal was received a;.1cl filec,l I-1; is not lu1owl1 w:iy the me;nor2J1durn o:f appeal. w2,8 delayed. too long ~o l'cac:1 Ligh C01.,1.r1 3 Dar es Salaam.. It wa,s also 1,;·J.:fort·1,;nat8 ·ct.2:li the appea.l co,~lcl not b;::: her.rd il:::mecliataly bec 0,use the original record. o1 the ease was also? of oouxse inadvertently 7 dela;reG, C to r2a,c;t ·i;:lle Rig::: 01rrt4 Indeed, this a,101::ntcd to "jv..stice dela;y-ed is ~j-c:::f:::ticc clenied 7 :i b,~t thj_s ;,a: :im woulcl ·be C[L,ii;G releva1ri; in situa/Gions whore ~he cij:·cumstances would warrant the appoL.atc court to allow ~he ap:~ea,1 9 ancl . . , - .', ,..

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revision.al j.,ri8rlie-l;ic:i and cli:l,mce t:10 'J,3;rco;.1cc vidc soc ...;ion 373(1) o:' t:10 Cri;inal Proo3d1,r:: Act., In otller v-ro:rc. .s>' al-t~ot1. fl'l t:-s a-;pcllz.n~ ;nav b.a.:"/e co:-1p~.ct.)d ser-vii1g ~-is/ • , ... c~ (l~11.JJ..!l; J. JC. , J _; af,~;>Oal I ~;;~;o:ce;or~e c':.iroctod ~:12.t tho Republic s;.10;:ld. D.I'f,1.1.0 tL.r~ v.p,J:~;.2. E\n~ le;;,vo the ~;lat~;c:r i:ior t:i.0 co~c:rt to decide. T;_o G.P':aL E.l,ffC list8(~ S JTO:.mc..s of a~pcal but I will St.Ui}I';a.rise ~;.10,,1 in one lot" ho claims ~c',at t: . , Di::rc;;:ict c01.1:rt erred in convictin::; t::~;: appella::t o::~. a ~chin cvide;;.1:Je 1ihic'. L die,. no~ ;;;~o-;re a;;,,inst i:1is in.1oco,100 .ie~roml I'8c'.80ll:J,blo Cco~.bt • Socone,".ly th:,t t:i.,c ,~;vid.e:::t,~O ac.,,i:1s-c hi:i was Jc];,a~ o~ to the conclusion that ;:o was one 0:~. t]..o burcl~.:~s. Fourthly, the articloc, naiuely, tho ~c2 ~jlo clo~cll and t':.0 ~c1ro ~:~ o::~.~:s :fo~ nc, in '..is ro:m 9 t]ie ap:ricll2:i.1t clai:as t).~v.t t:1cy arc his l)rop::L~c~. •T:12:i; the police c:o:~.1god tho story to ;~a.,;;; it appe2-r that the: thing,~. ~belong to ~Lt,;; complc.ina;1.t (PW .. 5) in orcler to victimise hir.1 (af'l)ellant) for r02.son ~c:1:~;i; the a 1;~;•Glla.'1.t was complaining ti.1at '1is wife had pr:::vio ~:~;ly a;;;socia;ccd wi~:~: one oi' tl:to police mcm,, Fo1-1..l.'i;~;,l3r and lastly t:w ap~ellant claims t:1; ,;b t:1:re was no evidrJ::cc s:10wn at t)1s ~ri2... It wc1,s o:,lly taken for &,"l'antocl, he cloth belonged to the complainant because such i'bc;,10 are corruon and. can ~ie -this appeal. T:iere are only three poin,;;s for considoo.'ation ancl cbcision in t:,us o,~: ~:, ~: ~

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(3) If' t'~e pnswor in two is 2.L:o ;;;,~:~:irr...~tiY~o, tl1 .a.t is con,~ictio::1 w;,r,;; co0.:;_~ ... ~ras the. nc::~;te:ncc tl'Titi...11. tb.e :\~=:~: rJC:ic~t:1.011 o:t t:\0 Diot:~:ict Co1.}...ct? Soptenb-3r, 1980 a...7.C.: thie~,rns entered t>.eroin allrl loot:::d >cu::;o~holcl i t,~;~;s w1J:~:c .. t;:ic cor!lpl2.:j.na::1:c, PW. 5, 2, '1d. }~is 1~ri:~>? pW. 1 ;~;~:,1;i; thie: ~:,~lv.o ~o S} 1s. 16, 616/50., For t...10)t:~:f:~'poso of ~tl'is ju.~[,oc0nt it I s poin::;less to list d.ow;1 ttle thing;1 w~:~:ich were desc1~ibod. in tho clla,r_zc S~:~O ~t to ha,() boe:::a T1;0Lm, ~;~or I a:::1 o::ly concc::rned ~ri'Gll tho The i tens t,or~c: two t2:b10 Lorks and 0110 table cloth. In the morninc following ~i;>c ~;)1:r. 6 112.r~r and GtGalil1g, police wore iu:'~'oj:aod a...~l.cl invosti('c:1,tio:::i started. In ~:1e course uf t~J.G inv::rsiig"tion ancl aetinc; on a tip t:::ie a;1pellan~ 1s),,uuGo w3r3 in;2 ..cd by police ~:~nder a soai~cl1 war:rant4 '211e t~m cell lea.dar of tb.c a..rca? ~one Ifo:::~.2.ned Ra;"b.i6.i (P~T o4) Has 81.-'.illilo1wd by ~;ho 1 The police were looking lo:~ articlou darrving tho dosc:riT,)tions o? t:10 articles tb.o co:nnLinc1nt 112.cL 0 . - described to t~10 police to lla , o he,,n stolen. • In the appolla.'lt I s lwnse? a ta,hlo c],oth ancl two :for~;~:~: woro v:noa.rthed. Upon in-corrog2,tion as :low t~:o appol:'..ant got tho :forks and tc.'3lo cloth, at first J wore give;i;i. to his wife by one Apollo., lie again changed. tho Gto:ey a.l'lcl saicl or s:101-r tt,e wJiereabouts o~: Apollo or Abdul, llc reversed his sta..tff.:;onts? ~:~:~:is tir.ic act:1ittin[.,; :chat.they w~(E_c l.1.is 'an property w:lic1.1~ he alleged to h;~,,o bought at l:Isicbazi gtree.:!/:Da.r cs Salclar:1., T.... is h.tter stoi~v was repoe,tcd in tl,c ap~;Gl;l.l.ant I s sworn sta/1.iC;.1cnt at t'..10 trial~ T;~:o a;

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