

TANZANIA / JUDGMENT

19930526 TZHC Dar es Salaam

COURT
TZHCDECIDED
26 May 1993

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'W_____ b ~ (L ~) .Ll· · ·:i~ ~; ITICL1 C01t,-;T OF T:NZ.:JHL !..!11 n'....: :CT3 S1:.1.,;J.H <11: nnT.:J .:~. i'l'• 1 no. J 19 / 1~93 o:::na:m_.L Q'i;.IfiIK...L C...i>:C 1Wo 13t;/P£ OF TEE D:U)T.~.IC'T COU...T OF. D:..G:..lIOYO DJ:ST.~J:C-r .i..T CtLL:mzn .. JUDGILDlJT Tho c1,ppollant Sr,id:l. K,:o.1:::;1l'. wc:s convicted. of 02.ttlo theft· oont:t:clrY to sections 265 c:.nd 268 of t~.10 l'onul Code., Ile hc,d doniod the truth of tho chr..rgo oncl il.1 his dof once ho cldmod thd the· whole ocso .wr.s

- a. fruu.o-u,p. Tho oVi.doncc cdditcoc" c ;,:~ tJ.10 prosecution c.;;r,inst. tho appollMt which tho trial disti-iot oo·rrt 0,t Chalh"lzo aocoptod end c..etcd on 'Ti oa.n bo sumnm:.dzod ;..s follot-rst- on 9/9/89 tho c.ppollmi.t ·r-rcs e guest of 'lil Sand,oro t.isamG,U who 1~csides ct Sclni in the District of J3e.g--dll0yo· Tho appellant slipJ.)od a-re:,;/ dttd.ng tho· niaht rnd ·in the morning :nr.c diacovored thG.t his hor.d of cc·ttlo wr.s nlso m.i.ssi1lz hom tho oow-ehcd. Togothor with his two noi£:..,lloi.u.~s r:-n .sot out ~ sor~oh of tho animcJ.. jSi the.evening ·6f tile s,-mo day il-t2 ili D2.v.di and j?T14 Mrislio !Intct-ro. mot
- < with the appellant at Mkoko. Tho u:ppcllent wc.s lttivi:.lg the animal~ Tb.oy tol.~d with him. end ho told t?.,,om th2:t; ho tf;/,S comiltg from Soloni a.nd. tho.t· ho hcd c2JJ10 to Mkoko to slr,~tor the enimal rlld sell t~ mor..t ·. Tho soexoh ttiokt 'l'r:t c.ncJ. his · compnnions , to Idkolco t-thel"a they met 11f2 and ?1'4 in tho ovoninc; of 10/9/89 e.nd. rcfo,tod to tho:· thou- mission. On suspicion l':-1'4 hcd the e.J11oll2.nt sc~cb.cd for Md tl-ot\Ght before him. On intorrogc.tio.n tho appoJ.lr.nt ',,Cillll. ttod to h2.vo stolc.l tll.c miss~£!J'limal1 plcc.d.ing thr.t it wr.a hum~ to CIT· Hq disclosed th~t ho he.cl elc-~to-od. tho mimd nnd. ho prod't!.Ood the I-omr:,ins; tiamcl.1 tho lloro rnd. tho hide· Tllo eppolla.nt hr.s st:bmitted thl~cc eu'bstl'.ltivo gi:())Wld.8 in his, petition in rolv..tion to tho oonVietion. TJ..10 first ~ound is e.. ~Ijlp~int thc.t tho trial mr~trctc shifted t;,10 'btu-dcn of proof· 1hc aocond €,TOUJlO. is ·tlu-;t tho OV'i.dcnco against b.i.m d:l.d hot 0dr-,blish his eiult bo~nd rosonchlc doubt and th;,,t he should" h2:vo boci1 e-'· -- '-1-,o ~ i t <f the doubt· th::t obtniod. ,,,;.. -..· ' . I. ,, Tho thu-d ground is tht,'t the mi-'0istrdo should not ht-Ye relied: upon tho oon:f'cssion e2 it W2.S orlrectod by oppression o.nd as it wes feJ.so. I must dismiss all these grounds,. I h2.vc c22cfully rcv.d tho trieJ. judgment e.na. I hr:vc fdlclcl to sec czi.:y shifting of tho "bu:i:'don of proof. Tho oVidcnco fully Stt.i_>po~ted tho conviction· Tb.ore w2S tho fcot. thct the appcllc.nt l~ft tl.-.:i home of I-1IT f'Lti:'tively 1:1..nd tb.c.t his dcp:~.. "t'turo ooinoidod 1·rith the disr,?pcc:~rc-,nce of the wimale Thc:ro tras the fact thr..t

ho •WC.S in possession of the animcl. lr.tcr 0;1 t:...c scrao dr.: at l\t{oko. was his confession ::md his l):roduction <?f the romc.5.l1S of the an~. is quite possible thr,t ho w..d.o tho confession involuntarily. But tho confossion tcd to the disoo•vol""IJ of tho rom:rins of tho stolen c.nimaJ. al'ld oould thus "be adduced lJJ t:ic prosecution al'ld. i~oliced on ~ tho oow.t, by virturo of section 31 of tho :Jv:'idcnco .Lot 1 1967 •. "In the eireumst~ccs t tho nppoal e.gainst the conviction fdls 2.nd is d~.smissod. Tho sentence awe;;:-dco. 1>~.:r the trial magistrate was imprisonment for 15 yet.rs. hs I told c?.nothcr r.icgistre,to of the 82,illQ oo'U.:i:'tt it is beyond tho jurisdiction of c. d.ist~ict mr.gistre.to to l)c'..SS such c.. sentonoo1 ru1d wh~.t is mo:rc o.nd ovidc11.®~: tho sentonco is excessive. I will, ond do,• rcduoool it to a term of fivo yor~~ Delivered ,4)pollsnt present Mr ¥'.ambc. for tho Z.cpublic D. l' • M.!::: IG...? JO J'UDG]l •"

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