

TANZANIA / JUDGMENT

19830804 TZHC Mbeya

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r111 COUFT OF TIUZAiIA AT MBSYA AP1aLTE JURISDICTION (C It (Mbeya Registry)

- t. / (He) CRfliflAL MPEiL NO 80 ÔF O1UGIiIAL CRIIiINAL CiSi NO; 325 OF 1982 1 THE DISTRICT WURT OF MBEYA DISTRICT AT JViBEY Before: J. E. C. 14asancle 9 Clef Resident liagistrate, lst. SELiM.ANI JAI'JUARY) 2Rd.JAILOSMW.AKYUSA) "" APPE1LNTS VERSUS
- THEEUBLIC , RESPQNNT CHARGE: Selling meat above maximum price c/a.20 and 2 of the Re.1atioñ of Price Act No.19 of 1 973 J1JDGvUiNT ThTYERA, J: The two appellants were charged 3oint2.j ia t}& wt aø *1ey apaar in the-appeal. This was before the District Court of Mbeya. appellant was said to be the employee of the second ind this latter was running the business of butchery in icbeya town. On 16/7/82 the Assistant Price Comrnissiner here, issued a-lett Ii13Y/B/1QJ(/i14 in which he fixed the maximum price of meat at Shs.25/=. It appears t;ie t7q.+,aharQ iored the new price. The police started to crackdown. On 17/f/82 P.C. Aheri (PLi) was given tw.notes of Shs.20/= each. He was tld to go and pretend tebuy meat. He went to the market place. happened to a11 at the appellants' stall. The first appellant was busy selling meat. The second appellant was not seen there, Ashen (Pw.i) asked the first appelant to give him a kilogram of mixed meat. He paid the appellant Shs.40/ &r 2.y. 1Quo'bes These were the notes the witness was given at the Polic,e Station and their numbers had been recorded. Th'. first appellant weighed a kilogram of mixed meat and offered it to Ash.ri. He also returned a 10/= note as change. This meant that the - first atpellant reained Shs.30/= price of meat. lie had ozercharged Shs. (30 - 5) 5/=. Sio af ard lVaP. -M18N (P77.2) in company with other Polioesn swoopedon the first appellant. He searched him and seized the two 20/ -notes, He managed so with the hid of the numbers he had in his.note book. He arrested the first appellant. finally the second appellant was adc3.-d to the charge in his capacity as the owner of the meat business and the employer of the first appellant. In their defence the first appellant denied that he sold the meat at (2)
- i) Shs.30/=. He argued he had returned Shs.15/= change out of Shs,40/= he reeeived. from Ashen, which meant that he sold the meat at Shs.25/= as fixed by the Assistant I-'nice Commissioner. He therefore committed no offence. The second appellant stated that on that material day he was ;ianning to ge' •n safari at 2 p.m. Before he left he got news that there was trouble in his butchery. He went to see and was told that someone in his b.itchery had slid meat above Government price. He argued he did not instruct the first appellant to sell

meat in his stall. That is to say the first appellant embarked on selling meat in that stall without knowledge and consent of the second appellant. The trial magistrate accepted the evidence of prosecution to the effect that the first appellant had sold the meat at Shs.30/= instead of Shs.25/= as fixed by the nice Commissioner. With regard to the second appellant the trial magistrate found that the first appellant was his employee and was acting in course of his employment. The second appellant was therefore vicariously liable for the offence committed by his servant. The trial magistrate convicted both appellants and sentenced them to fine of Shs.15,000/= or 18th months imprisonment and Shs.20,000/= or 2 years imprisonment respectively. They appealed and engaged Mr. Lwakiisa to represent them in the appeal. In the first para of the memorandum the learned Counsel averred that the trial magistrate erred in holding that the letter which fixed the price of meat had force of law. During the hearing he admitted that the official who fixed the price, the Municipal Director, had power to do so. He conceded to this fact after reading the amendment to S.7 of the Regulation of Prices Act 1973, in Act No.2 of 1973. This then disposed of para 1 of the memo. Next the Counsel argued that the trial magistrate erred in rejecting the evidence of defence. This should concern the first appellant mainly. In this respect there was evidence of Ashen (P.1), who stated that he bought a kilogram of fixed meat. He paid 2 x 20/= notes. The first appellant returned a 10/= note change. The 2 x 20/= notes were found in possession of the appellant. The dispute was that the buyer (P.1) said he received Shs.10/= change while the appellant, said he returned Shs.15/= so that he charged Shs.25/= for a kilogram of meat. The trial magistrate considered the dispute and arrived at the conclusion that Asheri was a truthful witness. The trial magistrate was in a better position to assess the credibility of the witness than me. I therefore have no quarrel with his finding. The first appellant had sold meat at Shs.30/= instead of the official price of Shs.25/= a kilo. He was rightly convicted. As for the second appellant the trial magistrate found that the first appellant was the employee or agent of the latter. It followed that the second appellant was vicariously liable for the offence committed by his servant. The learned Counsel for the appellants attacked this finding, saying that the Regulation of Prices Act did not provide for vicarious liability. But it has always been the rule of original law that in statutory offences such as this one, employer is vicariously liable for the acts of his servant. I know of no exception. As for the second appellant's story that he was not aware that the first appellant was selling meat in his stall, cannot be accepted. How did the first appellant get in there? Did he break it? The second appellant knew better what the former was doing in there. The trial magistrate was right in convicting the second appellant as well. The appeal against conviction is dismissed. Now the sentences. Both sides at the bar agreed that the sentence of 15,000/ fine imposed on the first appellant was unrealistic. He received same sentence as his employer. This defeated the doctrine of vicarious liability. I agree. I set aside the fine of 15,000/= and substitute thereof the one of 5,000/ or 6 months imprisonment. With regard to the second appellant, he deserved a stern penalty. The Assistant Price Controller displayed the price at the butchers' stalls. They decided to ignore it. What else could the courts do? If I see that the sentence of 20,000/= fine exceeded the trial magistrate's sentencing power. Maximum he could impose is 10,000/=. Proviso to subsection (2) of Section 7 appears misleading. To set

the record right I set aside the illegal sentence of the trial thhitrate 'nd substitute 'thereof this 'Cour±'-S ntenc'e f a fine of •Shs.20,000'/= or 12 months imprisonment. The reult of this exercitse is that the 'first aIpellant '(Selemani January)'sappèal against sentOice is allowed td the etent stated aboè.- à.O,000/= to be refunded to him' The seOond apellai't' appeal is" dismissed. Wita the above 'ddjustment the fine of 20 9 000/= 'i oonfirmed S - Atlibeya•' ' ' . P. .. 4th:ugust, 1983-' : ' '-... - JUDG};; C 0 L.

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