

TANZANIA / JUDGMENT

19850114 TZHC Dar es Salaam

COURT
TZHCDECIDED
14 January 1985

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IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM REVISIONAL JURISDICTION (DAR ES SALAAM REGISTRY) CRIMINAL REVISION NOo 15 OF 1984 ' ORIGINAL CRIMINAL CASE NOo 864 of 1984 OF THE DISTRICT COURT OF DSM DISTRICT AT KISUTU BEFORE Yo So MPERELLA RESIDENT MAGISTRATE THE UNITED REPUBLIC • • • • • o • • o. o PROSECUTOR VRSO ALLY MOHAMED MGOA RULING 3: BAHATI - Jo This case is before me for revision purposes with regard to the sentence imposed on the accused in this case who was convicted of stealing one bag valued at shs. 1,500/= belonging to the Post Office,:1111.. his employer. He was sentenced to one year imprisonment because the learned trial Magistrate found the accused to be 18 years of age and held that the Minimum Sentences Act did not apply to him. Mr. Mlawwa who is a Probation Officer attached to Kisumu District Court wrote a letter to this court requesting the Court to revise the sentence in this case to one of probation. In court Mr. Mlawwa submitted that he had interviewed the accused before judgment and had found out that he was the 1st born of his parents and that his parents depended on him. He asked this court to reduce the sentence because the accused is a first offender, young and has dependants. Mus. Mabey, learned State Attorney for the P. Republic did not oppose the application for the revision of the sentence to one of possibly 2 years probation. I have taken some time to consider the submission of the Probation Officer and I have come to the following conclusions. If the accused's age was 18 years at the material time, then the learned trial Magistrate was wrong in not applying the provisions of the Minimum Sentences Act to him because the provisions of the Minimum Sentence Act do not apply only to a juvenile, and a juvenile is defined as a person under the apparent age of 18 years. In this case the accused is described in the charge sheet and in the sentence to be 10 years old. That means that he is not a juvenile and the Minimum Sentences Act applies to him. However, it can be said that since the trial Magistrate in his sentence refers to the accused as being 18 years old, the accused must have been under 18 years at the time of the commission of the Offence which is the material time. I will therefore go by the fact that accused was a juvenile at the material time. Now as for the sentence, there is nothing to show that it is excessive. The accused who was employed by the Post Office stole a bag worth shs. 1,500/=. He was caught red-handed. He did not plead guilty to the charge and evidence had to be adduced to prove the charge. What are the mitigating factors? The record does not even suggest that the accused was contrite and sorry for what he had done. It is true that the accused is just about 18 years and that he is a first offender. But that does not mean that a sentence of one year for stealing a Post Office matter valued at shs. 1,500/= is excessive or wrong. It is also true that his parents depend on

him since he was their only hope, being the eldest child 1 But with due respect to the probation officer there is hardly any mitigating factor in those facts. Lastly, this court can not interfere with a sentence imposed by a subordinate court only if it is excessive or wrong or illegal. Even if this court were minded to release the accused on probation it does not mean that it can just substitute a probation order for the sentence passed without any good reasons. I see no good reasons to interfere with the sentence here. The application to set aside the sentence is therefore refused. A. BAHATI JUDGE 14/1/1985 Dated at Dar es Salaam, PAR Es Sja (AAM).

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