

TANZANIA / JUDGMENT

19771101 TZHC Arusha

COURT
TZHCDECIDED
1 November 1977

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IN THE 'HIGH COURT OF TJNZA 1A AT RUSHJL j r ELL TE JU1LDICl. HIGH COURT CRIMINtL r 1
L Co 56 OF 1976 ORIGINJL CRI'iLi.L C. SE NO0 '182 OF 1975 OF THE DITRICT COURT CF U 4 i
O'3T°ICT 4T IRUSHA Before B. MunUo (Mrs) ----- Resident Magistrate SILVFR JOHN -----
---£1-'ELLNT (Original Accused) THE RSV3LIC ----- R'SPON3 NT (Original
Prosecutor) JU'DGEM"NT ,.. 0•

- "•:• Mwesiumo, J. On 20th Septem.er 1977 1 dismissed thct appecl of Si1vr John immediately r.learing böth'siddSbut"l reserved my reasons fot so doing whichrl now propose to give0 The appeal arose from Arusha District Court Criminal Case No. 182 of. 1975 in wh.,ch two people, namely, Gabriel' N. JacOo ind L SilvL.r John stcod cherged with sixteen Counts of fôrc'..ry plus stealing and destroying evidence and Silver Johrialone . ,stooa charged with thL 17th Count of being ,in unlawfulpossession of a Stamp Contrary
- 'toSectiCti' 365of'thePálCcK1e.,
- "" The ttmcdu operandi" pursued by the to accused persons demonstrates 'an advnced' manner in "trminals can evade detection for a fairly long time ahd by the time th' are discovered considerable -. damage has been effected to the c'ompiainn,.t,, as was the rsii1t in the istañt case. ' S : .•' " ' Evideflce,,adduc2d ef ore the t.ri.a'l ,€Oürtrevaldd the following facts which were held so by the trial' Court, 2nd in thaview of this Court rihtly s. The 1st accused at the material.t±ma was workinf.or Emslis LimiLod, Arusha Dranchan hd-was,4eS1gfla.td' •meSsener.,• That firm Which sells air tickets' has its main office at Mshi where on Ashak Mohomed Taki works as the 4anoger who also occEsioñally travels to Arusha to chock the official affairs of' their b±mnch' This manager who was sum .oned as p.' 4 testified that the first accUSed p.rson in his capacity as a meenocr was assign,,A'thed;ty, ambng.'others, of taking the money: of -the firm and banking it in their accounts with the Natianal Bank of Commerc Uhuru Road branch, Ar ush.
- The 2nd accused was just a town dweller, apparently unemploy.d, residing in the area commonly known arid 'called Unga Ltd; most' likely because. of themillin activities going on in that industrial area of Arusha town. On a numbe': of occasions as enumrated in th- "harge-Shet .the: 1st accused, when h'was sent to bank th'; money, in fctt did not do so. He pocketed it but very qunningly, as it would' appear, he stamped the pay-in slips in such a manner that one who sw, such. pay-in sli.,ps would he mace to believe that the money was properly

bAnked d receiptA. This sort of mihief went' on undetected till 'the complainant, came to disco'rer'from the bank statement that the money shown th,reon vry much fell short of the amounts ruflc:cted on the pay-in slips.

2. 7,4 4 wrote to the bank to seek clarification about that discrepany and thu bank on checking confirmed that several sums 'had not been banked with them. J V_) attter was red - td ôiico The otart i ye ijst is if tccuserefwch it afc'.nd li tn first accused pocketed tha ny aidin doi so they fqrorchcover thtth nd accusc1 the had qu bankS pliCfl qa usat tmpzton tb isp\lt pay-in si; cofTha-the a3d hig .•.. •V : - Vory cler evilrrc. was civn on this pfnt ch.nB-r :.lt was proyetm.t - t1 2nd accused was caught J11ch subseuentl' was rcd-h-nded i sesqr of th said stamp sent o- handMriting experts in Dar 1nmf or cLmpatison study in opinion. An expert from Dares Sa1am tē-t1fied thathc stamp USV~ d to .tanp t ipUtc s'Llp wassimilar' to th 0-e n VP0Vfl in the p.osesip o.f ± -ic-2nd- acsId and ' - a4' ie s1gneturs -on the dsjutcd pay-in sLips,,T;tro.. smil't to th £pecirnen sign-çtures df '-tho 2n cu oi 4 r to J ,s sqThdrn. w\$. wee ferent'f.'bm tho'e of the actua f nkMri1c fi (f)44th cttain V i+h.é stage the 1st acUdV athitEd help of son1cbd' who - h ' cldl bedn '-an sssier po,us nk 4 stamp. \$ihc'J ic sa fdtfl -1 in th poss-sabnef thea 2nd L ac2 s4 tallicd w2bji Le F6't uedoitFcQ hs - d yin Lip tJe w an irr-es.istoble infcr.ncd wnich the 1LOr'nOd trial Resident ri- _gjh bhc't 4it Wcstht Stamp which wasus d and tht the.two aqcused persons 4artapti3 in us1rij There we's also furthJr ample eviddnc that he two destroyed
- som.. PtYfl. VSl1PS in th exonorat. themselves. Th a tis. reflected in the '16th Co'.int in the Charge-Sheet. V V ,-.: .. - V ' •., in 0 ingthjUdqbmntV rünninc. into-qlght typed V .pages the loarhed trial 'Resident Magistrate,VE Munup (Mrs.). V hs sorted OUt all the VaViia,3I uostisiV th.cs.a, Thearia1ysisof the evidence was cohtidobly ;thoVough and n l .VVfind , - the.re is no substance .on which her judgement. could be sustinly' faulted, V V Notwithstanding that c1.2rity of judqemcnt Silver John now would.like to have this Court helive that héwas wrongly convicted. in my, view his rnemOrandurti. of ppal arid his p:'rson(tl submissions before this Co-ut, in spi.te bfthe±r lengthy elzl)or jitions, hove not orcught up anything new , in defrice or complaint. 1-1i.s maldy vituperative lanc'uae only succeeds in portraying him as a vulgar and witty criminal V Suffice it to conclude thLt the appeal c-einst convictions :is of no merit at all and therefore it must fail is regards sentences imposedy the 1 arned trirul osi ent Magistrate, if any- thing, th(y erred dr ovr_lnincy,. However this problem a lrcady attLnded by this court as can be seen from this Court's order of enhancem nt of 12th February 1976 .(FOLO Nyalali, g. J. as ha- then was). . V There being no further question to be sorted out V this , appeal- ends in its entire dismissaL. - • V • V Delivarëd ir open court at Arusha this 1st.day of November 1977, V •
- , V •. V V ••••• Eoio ,JikSIUMO,. V V ..
- JVUDG, V V V For Appellant.: in Person. V V For Responent (Republic) Mr. MSeChU, State ;,tterney. EAM/GKK • V •V

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Prepared on 13 October 2026 · Esheria