

TANZANIA / JUDGMENT

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1111111)' ~ I.N THE HIGH C.CURT OF TANZANIA AT DODOMA APPELLATE JURISDICTION <./
\CRIMINAL : APPEA.t, NO.-226 OF 1977 ;,'

- ' -, , . I, - . . / : . (ORIGINAL CRIMINAL CASE NO. 590 OF 1976 ,, ...: .. • OF THE DISTRICT COURT OF MBEYA). ', ~1-: . . t~ ,/~ "", s/o APPELLANT (Original Accused) Verllue THE REPUBLIC RESPONDENT (Original Prosecutor) .st . . . Charse: l Count: Forgery C/SS 33), 335 and 337 ot the Penal Code C~p, 16 of the Laws. · nd g . . eeun t : . , , . . . Uttering~ t~i~e doeumen~.c/sS 342 ahd 331 ot the Pa.n,i dcide C~p.H5 ~t. ihe Lsws. _{d Count: Stea li'ng by servant. C/S 271 of the Pert~a~l Code Cap. 16 ot the Laws.

JUDGEMENT

KISANGA, J • The appellant was convicted on three counte~of fel'gery, tittering a false document an~ stealing by servant and was sentenced to varying concurrent prison terms resulting in a substantive term ot 5 years. He has now appealed. 'Nie appellant was employed by the ·National Bank of Commerce Mbeya Brancho At the mate.ri~al time he. was· performing cler'ical duties one of which was t.o attend :customers at the counter .in ·the f.oreign department who had their monies tran~f'erred from foreign countries. One Julius ·Mwiba had· his money amounting t~o She. 7 ,455/ : . , ·· transferred from ·Zambia ,to this branch of the bank. ·on making enq~uiries at the bank, however, he was ·surprised to be told tha~t the ·money was a_lre~dy paid out •. On examining the relevant documents ·it was i{oticed that the money was paid to. the holder of passport No. 123165· in the name of Jameson Mwiba and not to the right claimant, Julius· Mwiba holding passport 1'J'o. 33007. The said Jame-ison ·Mwib! could- not be· traced and. although the records at the Immigration Off'ice confirmed· that Passport Noo 123165 was issued to Jameson Mwiba,, that 0!:tiefc did 11ot. r. ·ha-,e any particulars of his, ·such as, addr~ess · or photograph. · The PaYment voucher against which the money·was paid-was made Pa,yable to j, Mwiba and was endorsed on the back with the following words, . . ' lreceived~ash on 19_ .2.~ tr J. Mwiba. · Identification,,,: by s.howing his passport. No.123165 of Tanzania aiso . ident~ified by pho~to. 11 Evidence was adduced that this endorsement was in the appellantf s' handwriting. In his defence the appellant flatly denied the charge. He ' ' 1· appears to suggest that he was i'hexperience~d i.n 'his : j oh as a ele.rk 2 - because his substantive appointment was that of a messenger, so that whate~ver he did wati i..n accordance with the inett~uctions which were· given to him. He stre.ssed that- ·he .:was. ·-not in a~ .. . • ~aY connected with ·th-e ·p~aylh~irt· of the money in

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