

TANZANIA / JUDGMENT

19770502 TZHC Tabora

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- t W' e/i ?4LA 4 / IN THE HIGH COURT OF ThZANIA / AT MVIANZA APPELLATE JURISDICTION (Tabôra Registry) (HC) CRIMINAL APPEAL NC. 382 OF 1976 ORIGINAL CRIMINAL CASE NO. 53 OF 1976 , OF THE DISTRICT COURT OF I'ASWA DISrRICT A' MASWA Before: D. N. Nahizi.,Esq, D/Magistrate. SOSPETER S/C BUDADI APPELLANT -. versus .
- e .•..... PHE REPUBLIC o RESPONDENT CHARGE: CattlethetO/s 268 of the PeRa].. Code. '4APIGANO, J The appellant is appealing from a conviction of cattle theft contrary to sections 268 and 265 of the Penal Code and from the resultant sentence of six years imprisonment. The iepublic doe 's not support the conViction and has expressed the view that in any case the sentence was unduly excessive. In this case it was said by the admitting Judge with truth that the conviction was practically based on he-arsay evidence and that the evicence relating to the ppellants possession of the stolen:animals fell far short of the standard ofproof enjoined by law. . The prosecution case estiblished that 23 goats were stolen from the pasture on 31/1/76 and that on the following day at about 2 p.m. one Ma .chiny6 came to theNaswa Police Station alleging that the a,peellant had been found in possession of eleven goats and suspecting that he had stolen them. It turned out :that those .elövon goats were part Of those stlen on the previous day and they were duly identified by the complainant. hachinya, for one reason or another, did not g i v e evidence in •court nd the appellant denied tht..heas found in possession of the eleven goats. Even so, the learned district magistrate convicted him,of the offence, ... No doubt the conviction wasbad. As it happened.the Magistrate accepted and acted on what Machinery allegedly told the Police. That was essentially hearsay which was devoid of
- any evidential value, in law. The, conviction will be quashed /2 — 2— Ii and the sentence, which as properly observed by the learned State Attorney was unreasonably heavy., in that there was no basis whatever for the learned ?ag±strateto impose a term which exceeded the minimum -paaavided by law, set aside. I feel constrained to comaent on the trial M ag i s t r a t e s facility with the English language and the art of reasoning and also on his acquaintance wit,h.s'omcbasic principles of the law he is 'supposed' to... interpret.'nd apply. It is sad to say that the Magistrate is pori equiped with these attributes and his judgmt Is a very long shot to the standard dpected from a magistat of his posit'ion. If there is any reasoning t all in his judgment, then it is, to say the least, beggarly0 The key passage of his

judgment runs "This trial court had carefully scrutinize all the 'accused pro'seQutiofr evidence and' that of the defence case, the., court:..came at a final decision that prosecution case

- ' was pi- ved without a query' It is'4 act"uàlly found that accused. id dole as charge and. adduced defence is only his ways to escape the. conviction for it had nd nierii to cause the court to believe, as he had not committed as charge. Therefore accused persork is fo'und guilty.: and. convicted as per charge." . I havd to say that I th unabe to. discern any reaSoning in the abOve extract. This dooO.sati'sf' the requirethents of the laW tli.'a judgment must cpntai four clemnts'(1) a coneise statO'ment of the case; (2)'the points for dotérainat'ion;
- (3) the decision thereon; (4) the reasons which lead him to such decision. And that is as it should be, because the whole object of a judgment is to enable those concern'd to find out whether the trial court has appreciated and"appliOd.his mind to the case anc"*qhethe the decision he reache.: •is according to law. It eras that the magistrete reacIOd the' decIsion that the apellarkt had lied to the court. Btt h" did not state, as he ought to have,,why he thought h'e hacilled.. Again, if I understand him' to say that theprosecution case was proved beyond reasonable doubt, he didnot state' rhy he rOached that conclusion. Thus jt can be argu'd with!.coniderablo fOrce that the.tiagist'rate did net adequhtely ssess the. evidence and that he waprJy,a.olourable pretence of having considered the evidence wb..n he said that "this court has carefully scrutinised the evidence". Reading the judgment I at' inclined to think, s observed already, that the learned 14agistrafes knowledge of some basic principles of' the adjective law. is very much.suspect. a • . . . 0/3 J vJ Apart from his receiving the obvious piece of hearsay into evidence and acting upon it, his words, to the off ct that the adduced dfence -cannot cause -the coutt to blyht..he did not commit -the offence, tends. to give the: impression that he has not grasped th rules as t..the onus and standard o proof in e cr.minal case, or else that he is unable to fittingly apply those rules. . And then •about.the English. ' Iri-thet respect the judgment is simply dismaying if not sickening. The extract quoted above attests to that.. But again witness:- "Prosecution case ha- d adduced three prosecution witnesses to wit the first twtwitnesscs are from one village and all neighbours.t' "The children who were so looking goats. (this
- is, supposed to be a complete sentence)" .() 'PW.1andPW.2 further adducedthat the first :. - herd offour goats was belonged to one Masanja....." - -
- (k) "After those two owners of thoe herds had tried
- they level best to trace the herds and failed. (agajn this is supposed to be a complete sentence)tt "Machibya identified all goats to be belonged to Nasabuda. It 'SIIt was a quarrel which accused was promised by that Policeman as he will on one d.ay be put into hot water." "Accused asked the court to deliver this case judgment." Not that these are the only ones. They are only a sampling of incomplete sentences, mis-spellings, wrong tenses and other appalling grammatical mistakes which are littered in the judgment. I must confess, that in terms of language, this judgment is about the worst of its kind I have come across. This

appeal. is allowed in its entirety. The conviction and sentence are set aside and the
apiDellant is to be set free forthwith unless he is otherwise lawfully detcinedl. Pronounced
in Court. Mr. Sengwaji for the Republic Appellant absent. Tabora, D. P. YiAPIGANO, 2nd Nay,
1977 JUDGE 000 .4 0 . •./ 4

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