

TANZANIA / JUDGMENT

19910712 TZHC Tabora 1

COURT
TZHCDECIDED
12 July 1991

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

. ~~~ AT TA:OOR.4 APP1filiI,AT-W. J11RISDTCTJ0l'r (Tgbora RPgistry) (HG) CRP"Ti°rAL AP"f"AL
1'JO. 177 cf 217 OF 1989 0 RJ GJ"IT .AL CRTI"l;T .AL CAS~ Tli0. 17 2 OF 1988 OF TH"!! DISTRJCT
COURT OF KAS'CLU DISTRICT AT KASULU

- ~.... ~ • , 'M Be~ore; L. M.ASOLJ.A 111sq., R?S;fJ:~rT/S~TJOR/DI S'ITUCT MAGI STRAT15. -
SJ? .ARROW BAJ~ ... ~ , , APP"fil.rL.ANT ~N~ 4NOTH~11 (Original
Prosecu.tor) T1f1l! R?PU BLIC • ,. • • , ... , ~: • • , ;' " • , I • • . • RESPOND1:i'NT '•
(Original ProsPcu.tor ... , ; '•:1,I J u 'n~ p :Y, 'D't }?, 'f'T .?; ,c I '1';_~ , • ,~--:~,fM•e.; ThP.se
appea,ls 1'To. 177 /89 '3na 217 /89 have been c~;~iia"ai;a 'so' that thPy arP. consi.dr~rP.a
ana aetP.rrnjneana collio.ctively si11.CP they spring fro'!!' the S'.:t11JP Cri rn:i nal CasP 11ro ~
172/88 aeci a ea by the Dtstrict Gou.rt, KasL1lu. The 1st AppelJant (1st AccusP.a) one Sparrow
Baje ana the 2nc Appellant (2nd ~ccu.sP.d), one ... Ayu b Sabi.bi: . were . jo.intly .
~har,ged - ' . . ' . with the Offence of stA31:i.ng by servant c/s _271 and 265 of the Penal
Cod'e. They vver~ conviotn.d:arid 0 8Ch s~htfmc""a ~to :a pr:i son~ te.rm of 5 years i~p-
rlsonri1~nt~ _Aggri.ev.Pd ~:y th~ °CP,ciBion pf th~ Dis:trict Court~, ~hey have ap_pealed to
thi.s Gou.rt :against _bo:t.h: .;i,,,, , ..,-:- .: -... . . • ' \ , . • convicti.ons and sentP.nces
• .Acco~ding to the evidpnce j thP. 2nd Appellant-. (2;;a~ Accu~;a) one Ayub Sabi bi was an
ernploYP.P of the Kasulu District Gour.oil with the ti. tle of Building Officer. He was cone
t:lrnP.d with thf" supervision of a varj_P.ty of work undAr the D:l.str:ict ~gineerii onP.
Damian ~yura. '(P~W. l) ana one : 11 'U!lbohP.la Filbio.rt (P.W. 2). Tn his capa<dtY as the
Builcinf Officer, the 2nr ~ppr.-11::mt, on~ Ayub Sabi.bi, w9s~ 1mp0w~red to lof'k. for
la.bourArs,. engq,p.:r>. thPm ~na thi=in prr.>pare n monthly . ' . . / > ' . ' . ' p3,yroll showingp
thr.> list of 1-'3.00U!f>rS,:Who vvouJ.d W0r.l{ in- 6rl0 2/ ,
- 2 - particular month. ~he payroll would b~ signqd by a fcrernan a.,pointPd by thP 2nd
Appellaht htmself to supervise any su~h piece. of work. The pay~ro11 would prO(H!duralJy
be sjg:nr--a by th"! foreman '!.n.a the 2nd Appellant.~ Thrs cul,Y si gt') P0 payr6li would thm1.
bP r~IDJ. tte a to _thP Clish off:i c9 for purpose bf getting pr0parPd a sin.gle paymPnt v ouc
hr>r b~ari ng the nP,C e ssqry particulars and thr-m sign r>d by th~ 2nd AppPllant. . Such
s1 gned paymr~mt vouoher ac coropanyj ng thG duly signed pay-roll_ would then
<t:uJ.roinate in the issu~ ~of a oheque which would be cashed ana the proCGt:>ds paid to th8
labourers. Between the per:i.od of 13/10/86 and. 10/11/88 a total sum of Shs.102,471/75 was
paid. to labourers. On checking, it was di scovP.rr:d that the payment voucher No. 23/11;

payment voucher 'f\To. 24/11 for Shs.26,606/30; pg,yment vollcher 1'lo. 4,/10 for Shs.28,539/45; payment voucher r--ro. 47/10 for Shs.27,318/50 with th0 r""leV9_nt pay-rolJ.s ana attaoH,;d to thnr!i sign8d by the 2nd Appella.nt w0.r9 falsA in that no work of. any kjnd had eVPr b"GI'l. don0. and t'13.t thP mon~y was thPr0.fore stol(m. Thr- 2nd App~ll!3.nt totqly a~nj.r.d sj gning any of thn Pxhibit8o PaymAnt Vou.chPrs '3.na payrolls. ThP 1st Appellant ,~st .Accuspd), one Sparrow Baje, -ch.~n thP, C!3.shjPr adrrjtC>a pr(.)pg,rjng thP, ~xl-)ib:i tP.d Pay:rn!':!-nt Vouchers o:ri th~ strP.11gth or -bhra aut12ori ty of thn 2nd Appel 1 ;mt 1 s sijnature. The 1st Appellant admi tt""a paying the JT1oney to th~ labour0r whorr: only thP. 2nd.Appellant knew and that hA did so, in th~ presencP. of th"? 2nd App eli,smt. .. The lr.;arned State Attorney, Itrr •.Bilalo unresRrvedly supported convictions of both Appellants. Having oare-fully gonP, through the evidence as adduc~d bP,fore the• Lower Court,• I am una.bl P. to agree with the 1 earned StatP Attorney, that th~ conviction against thP 1st •Appellant (1st Accus0a), onP Sparrow Baje, was well-foun.d.ed. The 1st Appellant was obliged to p n=n~are thn payment vo uch9rs on b0.ing s1.tisfj_1;d that tht:? 2nd Appellant, whose signature hP. kn~w, • had duly signt=>d on thP pay-roll~ Th~ signatories of the oheques sijn~a on thA cheques on• being satisfi Pd that the 2na App0llant had si gnPd on all thA pay-roll 9 3 n& payn,r-nt vouch~rs. 3/, , , , 3 Th,e 1st Appell mt paid th~ :monf'y to ~th0 .labo-u.rers as -confim.-Pd by th"" 2nd Appellmt ,. who undou b-t-,dly knew, the labourers, •hr-: h3.d himsGl f 0.nggged G As to the 2nd AppelL1nt 1 (2nd Accl:l-sP-d), ther~ was overwhr-lming eVidrnc0 to prov0. thP fact that it W:3.S th~ 2nd Appellant 9 hi.:m iloner '•4-, (who h.'3,d signrd thr- -1;;r.ndr,rc::d PXhibi tso :rhn evid0nce of Oll"" Tumian Fyura (P • 'ff,.,, 1), . /" on0 h:im ' ' - oonela :F'ilbr:r-c (P~Wo 2) on0. Iladqla. t'as:1nj.:1

- I (P.W. 8) a,n . ~ othr.-rs co:a.:f:1.rmr-d -L.h.0 1st Api:i<::~1r-mt' s tr-stirnony thqt thP r>Xh:i.bi t0d v:i.ym,,,nt VO L~.:;hP:r'S :mfl P!::!YTOLJ."s h:iq br.n1"1 sign0c by th" 2nr Aponll~mto •rhPr0 is th,• r~7j_r-,nc.:r> of O:r7P W;i.lljgm Rubw9 (PoW. 12) q C.!ishinr 1.n th,, IT~lvn.:nsl F:iH,<.. :~f C:rri:r,n;n; K~sulu Br.9nch. p'7. 12 ! f!,J.VI"> 0-w-i {ir,r.cn br,forro ti-1,c, Lc• ;;-,:r- Co L~rt ,.na tolcl tti.r- Court th~t h_,-, hq_d 1 C~s~nd th~ ChPqUns ~x~jt it P. 5, ~- 6 ~na P. 7 qpd h~d giV~P thn proc9Jos to th"" 2-rn 1~ppeJ.'i 1nt w•,o :n1.d si ,gi;,0n i:n his prr->snn(.). Ori tryc. t'or,=,o:orin ,grou:11 rlss T ',,'OUL.d. :!1.1.bw th,;, "JPf'l?..11 jr, rnsp 0 ct of thn 1st Ap_pr.>:1_ 13.nt, on n Spa:crow B1. jG '1nd dj smi ss th1.t of th(.\' 2:n a Appellqnt, onn Ayub Sibjti. I E0for" J conclud0 1 J wo:11d oosnr,., th:1t thr- AppG17.:mts h::i.d br.nr1 I wrongly ch,1rgr-cl unc'er- th.r. prov is, one of •s,,,ctjon .271 _ ,ma ~65 of t!1r, Penal Cod",. Th""? Appell :i;:1 ts h:iving bnr:n 1rmployr f:'9 of thr. Distr:i. ct Counnil, K3..sulu w!1jch is~ - :3pncifrd Au~horityj th0:y sh0 ,,(Ea . h appropriq_tcly h:i.->e: 'occm chg_rgca with th0 Offr,ncc of stoi.ing by :1 I p Arson rJLploy rd in thr publ:1.c ~ s0rvic ~ b/s 265 me 270 of th0. Prn 11 Ooae. _TTowr:ivrr, J 1Jil not •1.t 111. surr, if th~., provisions of srec:t:ion 270 ,CJnc! 265 of th,... F"n 1.1 Co fj r is thr. c9rr. ct on~. 0 Th,.,-r~ w~ls :no attr.ct th~.,ft of thr Cour,d!s rnonr.y. Jt w11s ar1wn fro.m t1.1.,., ll~1t-r;n9l J3':l.nk of. Corr'rnr.i re E! ll 1{ 1.sul u r.n prns0nt'1tirn of oh r..qu.0s whj ch purportnd to b"" -Vqli<L Tf thn J3i.ux Kq,sulll h-9d :knoimi. of th~ ungi:m.uinr-nr,ss of I• ,. th0 prr,e,-,ntr-a Gl-1.,,quns_. it woula hqvo rnf~rr0a thP :mr.:ittnr to th,-, Cou.t:c:il; counsr.iq_uP11.tly, p9..yJTJr:11t stopor., 1,a. •

Tt i.s my siPCP.rP vjow, t1'1nrrrforr.,, th1.t th0 off,,-, :ncn co.,,,,.,,,:ittnd' w:::ts th,1t of
obt::d:nF-; goocls by frus" prAt,,ns0s. 11 t".lorr--forP9 coJ"lvic~ th0 2nd Appell';_nt of th0
offrmcn of obt7.ine g:::ods by fqlsn pr0 trn'.~""S c/s 302 of th.n. Pen?.1 Cod8. As T s1:ia bP-
fore, J dj_s~:iss th('> 1,ppr-ql. in r~spec-t of th 0 2nd Appell mt (2na Accus0a), o n ~ - - ~ ,
(..... . 4/. " _,-) \ ; , I, ' / t /

- 4 - As to t110. 1st Appel,a11t. (1st Accus.--d) one Spg_rtow Baje, J quash conviction 1.g.-:drist
h:i:m gnf! snt asidr:i t.h/:l s(>nt~ncn of 5 y~grs :i mprl sontnent. The .1st App811 'Int b"
r0l~-:ts"a forth.w:::i th uriloss o-thPrw:i S(> lawf ull.Y hAld j n Custody.· A. G. GM_.KOROSSO,
JUDG~ · . \.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE [https://media.tanzlii.org/media/judgment/344549/source_file/
ac05a06526040e16/19910712_TZHC_Tabora_1.pdf](https://media.tanzlii.org/media/judgment/344549/source_file/ac05a06526040e16/19910712_TZHC_Tabora_1.pdf)

CASE PAGE [https://chat.esheria.ai/case-law/tanzania/sparrow-baje-v-the-republic-theftbyservant-
tzhc-1991](https://chat.esheria.ai/case-law/tanzania/sparrow-baje-v-the-republic-theftbyservant-tzhc-1991)

Prepared on 14 October 2026 · Esheria