

TANZANIA / JUDGMENT

19830730 TZHC Mbeya2

COURT
TZHCDECIDED
30 July 1983

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14) IN THE HIGH COURT OF TANZANIA AT MIEYA APPELLATE JURISDICTION (Mbeya Registry) CRIMINAL APPEAL No.84 OF 1981 ORIGINAL CRIMINAL CASE NO. 431 OF 1988 OF THE DISTRICT COURT OF IRINGA)DISTRICT. AT IRINGA Before: W.N.B. Kapaya, Resident & Laitrate SGLEMAN & K. SINGE ii11.. APPELLANT VERSUS THEREPUBLICRESPONDENT CHARGE: 1st Count: Stealing by Public Servant c./ ss.265 and 270 of the Penal Code Cap.16. 2nd Count: Destroying Evidence c/ss.109 and 35 of the Penal Code Cap.16 Vol.1 of the Tanzania Laws. JUDGMENT gir.ifa, J.: The appellant was charged with two counts: theft of Shs.83,280/= by a public servant and destroying evidence. It was alleged that the appellant was a TSP.D.F. Captain attached to a Mgambo office at Iringa. On 15/9/80 the Regional Crime Officer Iringa instructed Insp. lyman (PW.1) to investigate a report that the appellant had stolen the above sum sent to him from his Head Office Dar es Salaam for paying ligambo who had returned from the war front. Insp. Mmani traced the cheque 3 095271 and verified that the appellant had cashed it. According to the prosecution, he failed to explain how he had paid the mgambo. He was charged accordingly. In his defence he admitted that he received the relevant cheque for Shs.83,280/ together with the payrolls. He cashed the cheque and paid the mgambo. Then he returned the payrolls to his head office, Dar es Salaam. The trial magistrate rejected the defence and convicted the appellant as charged and sentenced him to concurrent jail terms of 7 and 1 years respectively. He appealed. He was on 24/2/82 released on bail pending appeal. (2) As argued by the learned Counsel for the Republic the prosecution did not prove any offence against the appellant. They alleged that he did not pay the mgambo. They had the list of mgambo but they did not call a single one, to testify that he did not receive his dues. No one came to court to complain of the loss of the above sum. They alleged that he had destroyed the payrolls but they brought no evidence to refute his story that he had sent the payrolls back to Dar es Salaam after payment. I allow the appeal and quash the appellant's conviction, The sentence is set aside. The bail terms automatically lapse. At Mbeya, F . 30th July, 1983 JUDGE.

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