

TANZANIA / JUDGMENT

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;/ ,, I ,I i :1 i ilJ THE COURT OF APPEIL OF TANZANili 11 ,/ .AT MW.ANZ.A I ,I) MUSTAFJ;' I SYLVilNUS s/o CH.bOTE e liPPELL~NT ' ' i AND I ,,I ,, ~! " THE REP UBL IC. RESPONDENT 1 I ,I , (Appe::i 1 from the conviction of the High Court of Tanzania at Mwanza) (Rubama, J.) dated the 22nd day of Mar~, ~85 J in ii ,I Criminal ilppeal No. 112 of 12_82 i JUDGEMENT OF THE COURT " •I ,1 JI i/h., The appellant was the Chief Clerk and Cas i:er of the District Court of Kigom~h He was charged with three doun'ts of stealing by a I ... person in the public service in the District 1Court of Kigoma. He was ,1 acquitted on two counts but was convicted on onecount ·of stealing Shs• 30,000/- which was an Exhibit in a criminal trial. He was I ,, sentenced to 5 years imprisonmento He unsllbcessfully appealed. to ,) the High Court, and is now appealing to this Court. He lles request.ad. I ! that the appeal be heard in his absence, and he has filed a petition I stating his grounds of appeal. At the trial court evidence was led wh:i.ch: established that when I I the exhibit Shs. 30,000/- w:s to be returned to its owner after the ii owner was successful in his appeal, it was J,di~covered that the sum was ,I missing. There was evidence that the said/sum was handed over to the I / appellant as cashier on or about 8-4-78, and when the money was requirer-- , I • to be re~Wlded about 2 yeRrs later, it could not be found. It was allc ~ I ,I that there was a purported pay-in slip iniicating that the money was I .! / / ,i II ,,~•• 2. ,,I .I , / ,1 ! ,I ,/ li j e- 11 .I ,,,,;... ~,•• 2 - bankeCL 1 but i~ tr,rnspireu. that no such p~yn1-3nt wccs made to the bank. The appellant a 11 eged thr, t he had kept the money iri. h,is c.,; sh box all the time and .suggested. that somebody might have stolen it. However on the discovery that the money was missing,' p. ,i.l~. th.e ' Resident Magistrate of Kigoma, who was responsible f'or staff supervision therq I swrnwned the appellant to his off iceo ThG appallan t, after some delay, turned Upo By then the auditors had Gs tabl'ished that the ~um of Shs. JO, 000/= was missing, af.ter a careful audit of all the books and papers, From the books p. 'i[. l had seen an endorsement on the register that the money had been sent to the bank I but could not find either the original or duplicate of the letter transfer or tho duplicatG of Revenue Collectors Cash folio. p •. J'l.-1 asked appellant where he has sent the money. lit that time P,w,l was merely inquiring into the los's 7' of this mcney 1 departmentally,. The appellant told p.w.1 that he had used the money for his personal use, and asked for time to repay it. p.-1'[.l agreed to tho proposa 1-. However the appellant f c1i led to do so, and in the mean time the owner of the missing money h;:id repor t0d to higher authorities and tile appellant was eventually a.crested ana. chaT'ged/ The trial magistrate accepted. the eviJ.ence of P~W.l to the effect that the appellant had admitted using the money f9r his personal use anc.l. had therefore committed theft. He however was of

the mistaken view that the evidence of p... must be corroborated. He however found .
corroboration in the attempt" by the appellant to try to mislead by . Indicating that the said
money was banked when in fact it was not, and by the appellant's allegation that he had kept
Sh. 10,000/- in a cash box for over 2 years. The trial magistrate stated that this explanation
was unacceptable. On first appeal, the judge held that the admission to Piv:1 by the appellant
does not need corroboration as a matter of law, although generally it is prudent, in practice, to
require corroboration once an admission is retracted or repudiated... However the judge held
that a finding must be made as to whether, in all the circumstances, the contents of an admission
are true. The judge found that the evidence given by

p. w. 1 was true. He also however proceeded to refer to the other corroborative evidence and
in the end dismissed the appeal.

- i. /3. ~ - :l'8H', ~r' - a ~
- !, _ : '~ : flllif ~ : all . t- i ~ J ; . ~ J 3 - We have had sight of the appellant's long petition of
appeal. No point .. 1; ; ~ - t e. a. leu. In our view the conviction was based ~ : t ~ o ~ - 1 < >
on the evidence 'ace, ~ted by both the courts below, and as no ~. . A!J;f':<:, !\ ~\ .'(\ legal
P.\$in t ~, ; inv.6l); ed, \j iis appeal 1 is incompetent and is hereby . . r: - _d I . d 1sm1 , ~ ~ • ! : ~ 1 \
(; . ! f : '~") . ~ ~ .. \ . . . , , ~ ~ / . #I 1J.h.1r-ED\ -t l-idANZA~thili1~3rd day of December, . 1985 • ~
~ : - , ; ~ , 1/ / .f , / A. liiUST1Wil JUSTICE OF APPEAL JUS 1l'ICE OF .ilPPEil L R. H. K1Sl¼NG.A
JUSTICE OF APPEAL I certify that this is a true copy of the original (s. J-. LAVI.ENA)
DEPUTY .aEGISTRAR.

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