

TANZANIA / JUDGMENT

19710507 TZHC Arusha

COURT
TZHCDECIDED
7 May 1971

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4L IN THE liIGH COURT OP TANZANIA AT ARUSEA.. 1 'D &M"" ZLjJURISDICTION 94 HIGLCOURT
CRIMINAL4 A PP1AL_NO.1 OF 19'1 ORIGINM4 CRIMINAL CASE NO 186 O1 1970 OF T ITRI
CQURTQP MBULU 1RICT MLLJ1 Before L.A .L.Mjzoni* .Esou&re_District ?(aistrate TARIMO 6/0
NADE.... .. 00000000 APPELLANT' a.. a a ii a••• a a .. i . (original ccuned) versus THE
REPUBLIC... .. ,. RESPONDEIT (Original Prosecutor) C1J.RGE_ Otore
breaking and 3tealing, o/9 296 (1) of the Penal Code. JU D. Q E LLE N P. Kwjkjma Ag.J. The
appellant was jothtly charged with others for store- breaking and stealing. The others pleaded
guilty to the charge. The appeUant was convict cd on the evidence wblch came out during his
trial, He was sentenced to two years and twenty tour strokes under the Minimum 3entenceo Act.
He is now appealing against both conviction and sentence. There was ample evidence for the trial
court to have convicted bin. The appellant was caught on the verandah of the broken ponbe shop
consuming the stolen beer. His conviction cannot be faulted. The sentence imposed on him was
excessive, however. The beer stolen was valued at eb 15/ only. The offence itself was so oillly that
had it not fallen under the Minimum Sentences Act, a conditional discharged would have been
most appropriate. The appellant himself is a very youngmirn of 22* He is recorded to have told
the court that he has a mother and a father to support. All this would clearly constistute special
circumatanceaE in terms of S. 5(2) of the Minimum Sentence Act. In sentencing him the trial court
observed that the offence was too prevalent. It must be respectfully pointed out that the
prevalence of an offence is a circumstance special to the ofrence and not to the offender On the
other band special circumstances under section 5 (2) cap 526 are those circumstances relating to
the offender. It to quite olear that the trial court seriously misdirected itself by refusing to find
that there were special circumstances relating to the appellant simply because the offence itneff
was prevalent. This misdirection, however, is curable under section 346 C.P.C. under which
section Duff 3 has he34 that "The High Court nay, on revision, consider the quotio!1 of "special
oircnmtancea" which might warrant leniency under section 5 (2) of the Minimum Sentences Act,
despite the feact that the issue was not considered at all by the lower court" 0 0 •. 0 0 . 0 0 . ./2...
1 .9 •s•..4s. •, ... This ruling Is applicable the more to this case especIally as the trial court did
actually consider the question of special ciroumatances. Where It erred was to relate these
cIrcumstances to the offence and not to the offender. The legis'ature clearly intended that the
circumstances should relate to the offender, The sentence imposed on to the appeUant Is in the
cIrcunstancea excessive. God knows rihat damage his character has suffered during the four
months of constant contac1 with hardened criminals, He ought not to have gone to jail in the first

place. The ajterxwtive sentence of ten strokea would have more than met the justice of his case. Accordingly the appellant's sentenoe is hereby set aside and In oubatItutin tbex\$r' It is ordered that the appellant beand is hereby diec!iarged absolutely under section 38A P.C. in view of the unneessary hardship he has euffere. uha 14H.A .KW XKIMA, 7th Lay, 1971. AG.iIi OJL

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CASE PAGE	https://chat.esheria.ai/case-law/tanzania/tarimo-so-nade-v-the-republic-store-breaking-tzhc-1971

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