

TANZANIA / JUDGMENT

19730302 TZHC Arusha

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TZHCDECIDED
2 March 1973

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II, fH RICH COTJ.IT OF liAiLA o m 0 AT ARUSHA APPELLATE JURI SDI CT I ON HIGH COURT CRIMINAL APPEAL NO. 360 OF 1972 ORIGINAL CRIMINAL CASE NO. 238 OF 1972 OF THE DISTRICT COURT OF ihUSHA DISTRICT AT ARUSHA Before W.L.L. Nlirambo, Esq., Resident Magistrate THADEO s/a MIJTABINGWA APPELLANT CHARGE: Office breaking c/s 296(1) of the Penal Code.

JUDGMENT

Bramble, J. The appellant in this case was charged with office breaking c/s 296(1) of the Penal Code. The particulars alleged that on the 17th March, 1972 within the Township and Region of Arusha the appellant did break and enter the office of Northern Di'ies with intent to commit a felony therein - to wit to steal. I should first point out that the particulars does not disclose on offence under section 296(1) of the Penal Code which reads:-

- (1) Any person who breaks and enters a school house,...office or Oounting house, or a building which is adjacent to a dwelling house and occupied with it but is no part of it at and commits a felony therein; is guilty of a felony. I 1 Breaking and entering with intent to commit a felony comes under section 297 of the Penal Code and this does not I invite a minimum penalty under the Minimum Sentences Act. The evidence led was that F.W.l left his office at the Northern Diaries at mid—day on the 17th March, 1972. I When he returned he found the lock to his drawbroker and the drawer open. There was nothing missing. He met the Secretary in the office when he returned. The messenger, P.W. 3, who had a key.to..theoffice firt said that he closed the door but forgot to take out the key. Under cross- examination he said that he forgot to close the office door because the appellant had.kept kim.in conversation. On this evidence it is iiossile to say with any degree of certainty that the loor to theoffice wa closed and that the appellant opened it and entered. Breaking was an essential ingredient of the chergo and it was not proved. It was not shown at what point of time the drawer was broken. When P.4.1 returned he met th Secretary in the office. The whole question was open tc speculation. For exariple, the Secretary may have stepped. out for a short while and someone could have gone in anO" tamped with the drawer. The Secretary herself could haye done so. The Secretary was not called to give evienc and the prosocution left too many loopholes. I —2- The maii point relled on by thej5rosecution was that an apparently fresh fingerprint of the appellant was found around

the scene of the incident. Although the fingerprint expert said that he photographed the broken area he did not say that he particular print was found in that area but said that it was around the scene of the incident, "Around the scene of the incident" has a rather wide meaning. The appellant, however, identifid the place where the finger print was found when he said that P.W,l showed him a piece of wood for closing the drawer cndhe held it and looked at it. The lea±ned trial magistrate held that the fact that the appellant was st een around the area sometime during the midday break and the evidence of the fingerprint established the prosecution's case1 While he properly directed himself on what constitutes breaking he did not analyse the evidence carefully enourh to see whether it had been proved. As I have indicated above this fact was not proved and the conviction could not be sustained under Section 296(1) or Section 297 c he Penal code. I allow the appeal, quash the conviction and sentence and order th.t the appellant be immediately released unless otherwise lawfully detained. Delivered in Court at Arusha the 2nd day of March, 1973. /cwm C. E.Bramble) JUDGE Mr. De Souza, State Attorney f.o.r the Republic Appellant not represented, present in person. 1

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