

TANZANIA / JUDGMENT

## 19830825 TZHC Arusha

COURT  
TZHCDECIDED  
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IU THL IIGd COURT OF T2NfNI / T LRUSH HIGH COURT CRIMINAL PPEt NO. 105 OF 1978 c/F CRIMINAL LPP0. NO. 104 OF 1978 IcITLT0 CRIMINL CASE NO. 50 OF 1978  
SIIvIONjiURI\.&2OTHR3: OCOOOOOQOQOOOOOOOPPELLJTS vsus TiLL  
RLULI . . . .RLSPONDENT. J U D G E M E N T DEV KAPOQR J. This is an appeal by .Accused No02 SIMON IDJURI and. acused No.3 IvLRTINBIL as .ppe1lant No, 1 and 2 respectively against Ccl'iCtiofl and sentencepaased against them by the District C o urt of Kiteto. Both appellants were sentenced to a.term of 3 years imprisonment and each appellant was ordered to pay PW I, the cmlplainant a sum of Shs.727/50 as compensation. it the hearing of this appeal, Mrs. Lyimo Learhed State ittorney supported the conviction..and sei4ence. She said there is evidence on record that lat ippellant received the stolen money from Ramadhani who was 1he 1st accused at the Trial and that evidence of PW 1, 2 and PW 3 clearly shows that 1st appellant admitted to have received J. the stolen.inoney which was passed on to 2nd appellant. She also said that bection 27 of Evidence ict as amended by .ct No, 19 of l8O \$oction 4 provides that a coat'ession before liolice officer is admisible. On reviewing the evtdence I. find the prosecution case is 'solely basedon the confessiQn of the 1st accused n5de before a 'Police Officer which also implicates the 2nd and3rd Lccused persons whom I shall hereafter refer. to only at 2nd and 3rd pe1lants respectively. PW 1 9 the complai:irnt teai.tified tha ho had received a sum of Shs. 4 9 000/= frm sale of his crop. He adduced in evidence receipts in reIpect of this sale of his erop frT rni1r q1I V795/ P.VIO 3, the Pollee Ciee' hd tt-i im te a' 4 1h oO li exact amountatolen: " In then contacted accused 2 and interrogated h 1 m who admitted to have rceived Shs. 3300/= from accused 1 In the presence of accused 3" Accused No. 1 in his unswrn statement said." I don't know the actual amount of money he ,ot but I read from his cash ale recelot athta1 of about 4000/- 11 In ntopInibn the pro,secution ought to.. have established the correcci amount of cash stolen from PW 1. This they did not do. As . I have pointed out earlier that thvidencein this case is la'ed upon the confession of the 1st accused which also im2licates lt and 2nd accused is. of little value. What I fail to understand in this case is the reason behind accused l? s ettcuion to give unsworn statoient when he is admitting having stolcn oh'. 4000/= from his ernploycr. Be that as it may I mm- u now turn to Trial Magistrate 9 s reasoning in reaching ihe conclusion that the two ape1lants were guilty. I findthat the Honourable Trial Magistrate did not warn himself of the dangers of convicting accused persons poi'i the evidence of statements made by vitnesses arii out of confession by one of the accused which also implicates teother accused persons. IN R EP UBLIC vs 1WSENT HIh Clourt Digest 1978, Part I & II U-thquestion

- ' of confesions made by an accused per on were dealt with-in great detail. part from other findings it was Jield; It herc an accused person implicates hariself with an offence in his coxiession, his taternt that a co-accused arttrcipated in the commission of the offUce must be corroborated by other idependant ev i&snee, pointing to the built of his co-accused cnfe- ion statement made by an accu d implicating co- acccisedq may be taken lin, evince as aciiplice evidence but this evadenceiust be trested asth1evdenq weakcctkix4 tor conviction to s tand a r curt w11 have to , look for infiCei.tht evidence agairit t. coaccuaed peSOfls to justify,a 7 bnvjction •0 In the instant case there is no independant evidence whatsoever., implicating both appellants0 accordingly I cannot all these convictions against the two appellants to stand0 For the reasons I have stated above I allow appeals of both appellants and quash the convictions against both of them and se aside sentence passed against them and order their immediate release from custody unless otherwise lawfully held0 The order of payment of compensation is set aside and I further order that the sum of Shs, 18181= and Kitenga loth seized from 2nd Jppellant be returned to him forthwith0 D. KbPOOR, A d U D G - 25/8/183 Delivered in cnr. Court in the pros Mp 0 Lyimo'0 :. DIIt cPö-R 29/8/83

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