

TANZANIA / JUDGMENT

19830902 TZHC Mbeya

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- IN THE HIGH COURT OF TANZANIA AT MBEYA J 88/11 - APPEAL JURISDICTION
- (Mbeya Regis try) d4 CRIMINAL APPLAL NO. 77 OF 1982 ORIGINAL CRIMINAL CASE NO. 567 OF 1981 OF THE DISTRICT COURT OF IRINGA DISTRICT AT THINGA Before: J. H. C. Masanche, Esq. C.R. Magistrate JJOKATJINGA & 20TH JLRS. AIPELLINTS VERSUS THE REPUBLIC so, REONDENT ____ 1st Ct: Conspiracy to Defraud c/s. 306 of the Penal Code. 2nd Ct: Fraudulent false accounting c/s. 317(b) of the Penal Code. 3rd Ct: Forgery c/ss. 335 (a), and 337 of the Penal Code 4th Ct: Uttering a false document clsb 342 of the Penal Code. 5th Ct: Obtaining by false pretences o/s. 302 of the Penal Code. JUDLa iT MUN YEAA, J' he three appellants and another person not in this appeal (4th accused) were charged jointly with five counts. The first four were charged with conspiracy to defraud in the second count, the 2nd, 3rd, 4th and 5th appellants (as well as the 4th accused), were charged with fraudulent accounting. In the 3rd and 4th counts the 1st appellant only was charged with forgery and uttering. Lastly in the 5th count all four were charged with obtaining money by false pretences. It was stated that the first appellant was a contractor in Iringa. The respondents were workers of Ujenzi same place (two accounts and the 4th accused a technician); The thesis of the prosecution case was that the Ujenzi worker (the two appellants, and the 4th accused) made LPO No. C/L64.152 to the 1st appellant ostensibly requiring him to supply 650 trips of gravel to be spread over 'Itoril Manda' road. On strength of the LPO the 1st appellant submitted a bill for Shs.146,510/= and this was paid to him by cheque No. D166671 dated 3/2/81. It was later discovered that in fact no gravel was brought on that road - It was a fraud... Hence the charges. In their defence the first appellant argued that he had sent his tender for gravel to Itoni 'Manda road and he won. When he was preparing to send his tippers to the site the third appellant, Henjewe, contacted him. He told him he should not go to that road. Instead he was to go to Nduli - Rising road. So he did the work on that Nduli - Kizinga road. He delivered. 650 trips as per the LPO.
- .../2 • 4 (2) The second appellant argued that it was true he issued the LPO to the first appellant. He signed it as a purchasing officer. The first appellant had to gravel Itoni - Manda road. He also admitted to have signed the cheque for Shs.146,510/= payable to the first appellant. He further argued that he did all this believing that the work had been done. In March, 1981 he was told that the work had not been done. The third appellant stated that in 2/2/81 the LPO in question was sent to him for authorising payment. "He authorised: it and

found it in order,, He authorised it.: On 3/2/81 the cheque for Shs.146,510/ payable to the first appellant was also brought to him for signaturc He signed it. That was all he knew That is:to say he had no responsibility to know whether the gravels: were broight or"hot. The learned trial Chief 'Resident Iiiagistrate I considered the evidenbe before him and arrived at the conclusion that the proseoution::had proved the case against ;the three appellants. iie Convicted them as charged (eèc'ept th .:3d. count of which 'e acuitted the first appellant) and entenoed them to various concurrent jail terms the highe't be.ng five years for the first appellant in the 5th count (the second and third aipellants bt four years each). The fourth acdused was acquitted of all counts. he three appellants brought this :appea.l and Mr. 'M wakflasa rep±esented +heiti,' " ' ' It is agreed that the whole prosecution case hnged on the evidence of Peter Linje (P1.7) who was the Regional Znginc6r of Ujenzi during the material time. In his evidenbe he denied that he gave the first appellant any contract to gavel Itoni I' ianda road nor that of Nduli. - Kisinga (along Iringa - Dodoma trunk mad). That he visited these two sites and found no gravel put on them. The defence attacked this witness as a liar.. That: ±be appellant was awarded the contract and performed it as required The learned trial magistrate believed Linje (PW.7)' s evidence that no,,wrk had. been done. This' witness, was the man responsible for seeing. that .works were done as required. If.it was true the flrst appellant was duly awarded a contract and performed it therec was no reason why : the iitness should deny it. The first appellant 'd remarks that the Regional Enginar (PW.7 against him because he (appellant) refused to offer what he called was .nothing more thanì the usual ".anguage of oriininals. IC t'eall,y he did.- the job he had ample 'tine to take independent people to the site and refute the claim of the Regional Engineer that no wo:rk was done. On the whole',the learned trial magistrate as right in accepting the evidence of the Regional Engineer. His finding that no work was done is fully supported. His claim that he had delivered 650 1rips of gravels were naked pretences. He was rightly convicted. As for the second and third appe1lanta they admitted that they issued the LPO and the 'cheque. They knew the paree (first

- j. .j . . (3) appellant) had done no work. They conspired to defraud the Government. They were rightly 43onvioted., The appeal of the three appellants is dismissed in its entirety. (Sgd.) F. A. JviUNCERA, JUDGE. 2/9/83 ORDER: The sentences of four (4) years imposed on the second appellant Edward Muhone and the 3rd Appellant Michael Heneweke were illegal becise the money involved belonged to the Government which is a speeified authority for the purpose of the M.S.A. The value exoeeded Shs.5,000/=, the minimum sentences should have been five years. I set aside the illegal sentences imposed by the trial maGistrate and substitute thereof the sentence of five (5) years imprisonment each cij the appellant named above. At Mbeya, (Sgd.) P. i. I01RA, 2nd September, 1983 JUDG11. I certify that this is a trae copy of the original.. - "?t (Li. D2jch la) DIRlCT REGIRR IvL13E!Yh. 4

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