

TANZANIA / JUDGMENT

19771101 TZHC Mwanza 1

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I14 2i-E HIGH Ciu Rj CF 2i14ZjxiI . 1-kr r'it TZL •• k1P.LLL: JURI.DICTIOIJ . -1 P tUo NO. 63 OF 197' ORICiN;•L CRII'I1'42L CE NO 0 179 OF 1976 OF THE DI3TPICT COURT OF 1dTJ')Ib, DI3TPICT ATNUo)OA Before G. AOR BLENOORi ERESIDENTRhGIL. TC RICHRD i op LLNT Accused) versus THC REPUBLIC 00 SPOdDENT rçin 1 rosecutor) IIP: 1st Count - 3AKING: A FALSE Dc)CUME?.JT, C/ s 335(1) (ci) (1) of the Penal Co ~~, e Vol.I Cao 16 of th LaOS. 2nd Count - JrThRL C TLS' DOCUhrJT, c/s 349 339 the Pe1 Cde,-Vol. I Can 16 f th lmso 3rd Count - iTTL PT D Tx-jilT, c/ss 380 and 265 of Lfl. e na1 Code, V1 0 1 Co La 16 f the Laws -PoP- JUDGNiILNT ;.. LUGAKINGIRA, J . . . ,-. Before the District Court of l ius the noocliant, °chw o, was charged with thro cunts i - çiaa false docunr"- at c/s 335(u)(i), utterin' a false d'cuent c/ss 3 2 330, and attcxaptc1 LhLfb c/sc 380 and 265, all of the Penal Coce The first count concern oyrnoht - - voucher, the second a cheque and tna taird as in connecti i with that cheque0 He was acquittecb on the geconci and third ccunts?causo the chequeH was not tendered: it was lost after aroduction for identificati;n onl y. I will say nothing aboUt thCse : two counts in this judcjeuent H was con- victed on the first dodnt ::nc1 sentenced to two years ithprisanment and then appealed against conviction and sentence0 The appellnt was an acccntsassistant in the office of the District Financial Controller at MUsorcci0 The first count alleed that oo 23 May, 1975 he prepared a payment voucher für Shs0 130575 puroorting to be for one B. Jacscn wh was said to be non-existent0 It is evident even at a glance that this count was plagued with defects, one of which ws fatal0 The first defect is in rospect of the provisions cited or the manner they were cited. The orosecutor could not have been sure of what ho was up to when he cited this string of provisions known as section 335(a)(d)(i). Subsections (a) and (d)(i) set out different ways in which a false docu- ment may be made0 There is thus a complete offence under section 335(a) and another complete offence under secti.n 335(d)(i). Under the :.ormer the offence is making a document that purports to be what in fact it is not while under the latter the offence is signing a document in t name of any person without his authority0 It is not uncommon that several aspects of forgery may , hr found in one document0 If that happens the host course of . action would be to charge the accused with one f those asoects only0 But it may also happen that the orosecutor is not certain as on which of those aspects he may secure a conviction0 In that event the accused may be charged with each of those aspects in separate hut alternative counts0 The above apart, the charge did not cite the penalty section or occti'ans which in this case were sections 337 and 34.60 Correctly, therefece, the charge should have been laid either under sections 335(a) and 337 alv or under sections 335(d)(i) anc 346 only or under both sets of rvisions in separate and alternative counts0 In the latter event the court could have entered con-

viction on one count and another on the other. It seems, however, that there was no offence committed under subsection (d)(i). This is because B. Jackson was alleged to be a fictitious person. The ~ provision presupposes the existence of a person without whose authority a document is signed. In the absence of such person there is no offence committed under this provision. It is only committed under subsection (c)(ii). Hence, assuming that the... prosecutor was desirous of bringing out all these aspects, he should have charged the appellant either under sections 335(a) and 337 only or under sections 335(c)(ii) and 337 only or under both sets of provisions in the alternative. To put it briefly, the first count was duplex as it combined two forgery. I am certain, however, that the appellant was not prejudiced by the duplicity. Neither the particulars of offence nor the evidence made any reference to the voucher being signed in the name of E. Jackson. They spoke of it being prepared for or in the name of B. Jackson. The offence which was tried was therefore that under section 335(a) only. In the circumstances the appellant was not embarrassed in his defence. I hold the defect curable under section 346 of the Criminal Procedure Code. The second defect was fatal. The charge did not allege that the document was made with an intention to defraud or deceive. In other words, it failed to disclose any offence, for there was no allegation of mens rea. It is essential in a charge to allege an intent to defraud or deceive. That is the basis of the offence which would otherwise not exist. As there was no such allegation here, it means that the appellant was not charged with any offence. The trial was therefore a nullity. Even if this serious defect had not been perpetrated it still remains doubtful whether the appellant prepared the offensive voucher. There was no evidence of any kind to the effect that the voucher was in the appellant's handwriting. The trial magistrate held that the appellant must have prepared the voucher for he was the one seen handling the cheque and relied on the strength of the voucher. I think it was unsafe to come to that conclusion. It was unsafe not only because of absence of handwriting evidence but also in view of the evidence that the voucher originated in the Regional Office where the appellant did not work. Someone else could have prepared this voucher; in that office. However, it is difficult to say that the appellant was in league with whoever prepared it. It is a fair inference. His assistance might have been sought later when it came to the action of the cheque in the office of the District Financial Controller. It would therefore have been prepared to allow the appeal even on that uncertainty. In view of the foregoing it is so allowed. The conviction and sentence are set aside. The appellant should be set free unless further lawfully held. S. MNANA. K S K. 1.11.1977 .. 3 UGE

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