

DECIDED
11 September 1974

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HIGIFCOURTORIMINALAPPEALSJqos. 194 9 . 203 AND,*304 OF 1974 . Original Criminal Case No. 181 of 1973 of the District Court of Mwanza District at.Mwànzà before L.G0 Ruaimukamu,:Es, D/ M: JUNA ALLY& 2 OTIS • . • o o... 0 0 APPELLANTS • VEIT.S,US . TifF REPUBLIC RESPONDENT -cHARGE: Stealing by servant c/as 271 and 265 of.the•Penal Code. • . IV1FALILA, J.: The three app11ants:RENATUS 5./0PIMA ? 1st.:actisedin the trial court, WANGAELI:s/o APAELI,.2n. aOcus.ed. and JUMA s/o. ALI 9 3rd: accused were convicted, in the district court ai Mvtanzà of the offence of stea1g by. srvant. con -trary to section 271 oftie:Penál Code.As.thet' were employees, of a . ape cified .athority that is to say. the .def unt lMwanza Town Counoil, they were .e:ach sentanced to •- years' imprionnient .uider ,

- the provisions of the Minimum Sentences Act 1972. For ease of reference in the designation of each appellant in the trial court. At the end of the hearing of these appeals on 4/9/74, the appeals of the third accused, Juma Au, quashed his conviction set aside the sentence imposed on him and ordered his immediate release from Prison. I reserved my reasons which I intend to give. The judgment in
- respect of the first and second accused persons was reserved. The evidence as led at the trial revealed that on 1/10/73 a lorry registration No MZB 587 driven by the second accused, proceeded to the AGIP Depot Iwanza. The purpose of the trip was to collect 400 litres of petrol allegedly for the Mwai Town Council. The order (L.P.O.); No....244162 dated 26th September 1973. On presentation of this L.P.O., Agip, supplied the petrol, as "requested Delivery Order No. 18586 and Loading Order No. 9536. The petrol was put in two drums which were loaded onto this lorry belonging to the Town Council. After supplying the petrol, as above, Agip produced their invoice No., 3126 and together with the L.P.O. sent it to the Town Council for payment. When those documents reached the Town Council Offices, they were queried, for they did not appear correct. ISACK ONACH (P.W.) the Works Inspector, stated that on 17/10/73 as he was on duty, he was presented with an invoice from Agip in respect of two drums of super petrol. His inquiries revealed that no such petrol had been received

- . by the Town Council., and 'on .furthcr., inforMation he .proccded to the Agip Depot with the 1st and 2nd occuzcd persons to make further inquiricp rpgard.ing the supply and delivery of the petrol invoiced. t ihc depot, nc was tld tbet a Council lorry IIZB 587 had gone there and colic c-ted the said p trol and that it was the three accused persons who had. travelled in tha 4 lorry and collotod the pqtrol. At this juncture the 2nd 'ccuzoo. roqucated liv. Omach that they o back to the office whore ho would make ai explanation regarding
- the two drums' of jetrl. sack at th ie offic 'the 2nd. a8àused'ó1t. Mr. Omach thai i was h and the 1st. accuseft - who had takn the petrol frmythe depot and in the presence of both the Town Clerk and Totm Engineer, ?dr. Boko (PW.2) he asked 'la they be forgiven. The forgivcnness akcd for was.not granted as the incident was reported to police who proceeded t o prfer changes agiinst
- . them. .. :. • c,.. •.. Two employees a the Igip depot, gave cvid(nce iescribing how the three accused persons went to thi depot in a Council loriy on 'thu day in question and collected petrol. MAS}TAUR KITENDE (P.w.3) s ic1 that on 1/10/73 a about 2 p.m. the thr.e coiiseci.peraons .wct'.tô his off±cc I at.'theigip depot. to collect pctrol. He said that they went there in a lorry driven by the 2nd ccuscd. On arrival the 1st accused produced Town Council Local Purchaaø Order and asked to be supplied ith two drums of p'tol. Mashauri who was a petrol attc"idant at the depot supplied the petrol rcquird against his loading order.N.9536.. : .D. Iie;ide.i'tif±cd thQ.3rd c.cts.ed:by his puncturQd'eer and UT Do:) -çci. PDIUIdId pi o.t DZI ci2m .T tfl. .00ucrpTf t1o. -ç aa uottb u ip otj. uo qo - T j. 'j:o surntp •• IOJ .O'd'I W PDpW P! : 't' .DffflOO jt: 0,7ql. SM .t ODJJD Z,tfl. O 'M'd IotLd JO OU1tA YT WO 37. T1Zt. DO :pDOtiStnhD pt o 'DsoTql. o uoi —.nq -cI3'cp. IoJ?utj3 TP OtZSSDW DtfI, PDPUY3I.1 DLI &DotofIDio
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POq4TJ P5 '-t OLIM SSM Stfl , -3-, matria1 particular the evidence of his co-accused the 2nd
accusod that 2 drums .of petr1were collected, from the Lgip depot -on the strength of-the
L,cO: produccd,.hy.the 1st accuseci 'that after collcàting this •pctrol they deliver.ed it to
Nyamanoro.Primary School viorc- - thcy. left the drums.. .This pa -trol:was there-fore never
delivered to the Town.Coi.nci1.. The apprehension of. P.41,41 was thus.j.ustified a.d he
rightly querrid invoice . No. 3126.. : For all the-sc rosons, I a m atisfcd as was -ti~ learned
trial magistrate that on 1/10/73, the 1st accused wits. an L.P.O. Fx.i proceeded to igip.depot in
a Council lorry MZB 587 drive n by the 2nd accd use and on the strength of this L.P.O., he.
collected two.:drums 'of. super petrol worth shs. 644/ and it to destination ot'icr then te
Council ' rd. This prtrol as not received by the .'C.ouncil,'it.must.have bc-cn..put..to.thc 1st
accused's own use-., ht this stage the-ri there is tic. problem of. identi'yixg the offe-noc.
committed by the appellants. They were charged with stealing by servants
and .thily'convctecj. I' think ,the%.tiis charge wasmisconceived. .The:two drums of ;PQtQ1
never bocan3c,tho popety of the Nwanza. Town Ce-uncil in thc cirbumst.- ancas of this case.
what happened was that.,the- 1st.accused ...brandishjag a Council purchase order falsely
pretended that he was buying petrol for the Councilwhon he knw in f actl that he was not.

He therefore obtained this petrol by false pretences, he did not steal it because ownership was in fact passed. For these reasons the accused should have been charged with Obtaining Goods by False Pretences contrary to section 302 of the Penal Code and consequently under the powers conferred in section 187 of the Criminal Procedure Code, the powers which should have been exercised by the trial magistrate, I acquit the 1st accused from the offence originally charged and substitute a conviction for the offence under S. 302 of the Penal Code. Subject to this variation, the appeal of the 1st accused is dismissed. " The case against the 2nd accused indicated that he was the driver of the lorry which was used to transport the petrol from the depot to its intended destination, It was for these reasons that he complained that he did not know that the 1st accused was committing an offence, for he simply obeyed his instructions to drive him to the LGIP depot and collect the drums of petrol which on further instructions he took to Nyamianoro where he left the 1st accused, his relative and the two drums of petrol. This may be so, but the circumstances in which this petrol was collected were such that if he did not know or was not a party to the original plan, his suspicions should have been aroused. By his own admission, he knew that Council petrol is collected in Council drums taken from Council premises, On this particular occasion he was asked to go and collect drums from non-Council premises, they then proceeded to the petrol depot where the drums were filled with petrol on the strength of Council L.P.Os, after so filling the drums, he was instructed to proceed to Nyamianoro where he deposited the drums and left the 1st accused there. He himself drove back to the Council yard. These incidents would have aroused the suspicion of any man, and prompted him to ask a question or two. But the second accused, not only failed to entertain any suspicions, but he went farther and tried to cover the nature of his mission to the depot. Contrary to normal practice he deliberately refrained from stating in his log book Ex.E the purpose of his trip to the LGIP depot. Therefore it can only be that he wanted to cover what the 1st accused had done with his assistance. He knew the illegal nature of the activities of the 1st accused, he nevertheless assisted him in carrying them out and helped him further to cover them by entering incomplete information in the log book. Therefore if the 2nd accused was not part of the scheme worked out by the 1st accused, he at least aided and abetted the offence committed by him. He was therefore liable and composed himself to be convicted as a principal offender under section 22 (b) of the Penal Code, and for the reasons given below he is also convicted under S. 302 of the Penal Code. Except for this variation, the appeal of the 2nd accused is also dismissed. I will now consider the sentence imposed. The trial magistrate sentenced the accused persons to three years' imprisonment under the Minimum Sentence Act because on the charge before him, the property stolen belonged to a specified authority. I have already shown that the charge as laid was misconceived and substituted, a conviction under S. 302 thereby removing the -4;

- S. offence from the purview of the Minimum Sentences Act, or it was not shown that LGIP (Tanzania) Ltd. from whom the accused persons obtained petrol fraudulently is, a specified authority. But apart from the fact the sentences of three years now require the confirmation of this Court, I cannot say that they were excessive that this Court should intervene. On

ho conTtr.az'y the maximum sentence for offences under S. 302 has been increased to seven years. The sentences were therefore proper even outside the Minimum Sentences Let.: They are accordingly confirmed. The order for compensation made against the accused persons in favour of the official of the District Development Director is set aside as they stole nothing from the defunct Town Council of which the office of the District Development Director is the successor. In the result, apart from the variations indicated in the body of the judgment, the appeals of the first accused RENLTUS FIML, and the 2nd accused z...I'GAELIAPAELI are dismissed, and the Court at Mwanza this 11th day of September 1974- M JZL L. 11th September, 1974- . . . JUDGE

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