

TANZANIA / JUDGMENT

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hepellate JurisdIction j CiU1l.II7L iPIILAL 110. , 60 OP 1971 fr (Oripinal Crisiinol Case No. 191 of 1970 oil the district court e: ore D. J. Guibo Psq. , district 111 lsGrale). Of Irinpo liTflh TI TUS itlililiTA APIELLANT (OTIi:IPAL ACCUSIID) versus Tile IPdPiJBIIC ,IIISFODl 7 T(Olill.IITJ1 pPosllcUPoR) 0]I1I:IIGE:-' Stealinp by public servont c/so 270 and 265 01 the Panel Code, JUUEST J0mITNAIT, Ag.J. The appellart, v;lao was he assistant superintendent ot police, was convicted on a chaxpe of stealinc; by public servant conleary to sections 270 end 265 oil the Penal Code and sentenced to threeyeo:o imprisonuent, without the statutory 24 strokes as he vice obove age. It was not disputed that, on 15/1/70 he was c;iven L.550/— by Superintendent iThina (P.1 1 .1) who viac then actint as the ilegional Police Commander, to pay as subsistence allowances to police aerde at the Pucl'ia Bridge. lie had then set off that day in a polic. vcl:icle driven by a police officer called Peter (P.11. 7). Uiortunataly, they found a brid:o at ilitonga havini been washed awayby floods making it impossible to cross tho river and continue the journey. They Pound other police officers tlewe. One of these was a driver of the Regional Police Comiander rho h ad imu hia vehicle on the other side of the river he had then aied th i s driver to take the iaoriey to the Rualia guards, lie seems to hDve been reluctant and to consiec e l jJ fl rc ucot was aniline, appell ` i ~' he ou t money and the supporting voucher and shorai then to thai drive:'. That lid :i.ot help as the driver then claimed that his vehicle was out of order. PInt beng SO the appellant had put bick the money. They iid then rotummac to Iringa where on the following day tile appellant claisied he had lost ties i:oncy in a polic rein coat which also vine missing. The intended payecs did not tot their money. The account of the appellant shovied that he had act out wearing a police rain coat in a pocket of which he had put the money end the payment voucher. At Kitonga he had taken them out and shown theni to the driver of the-Regional Police Comiesader, lie had then returned the money to the pocket, lie tried in vain to contact Superintendent Ithina by the nirelees set Pitted on to the vehicle and no sooner]:d ho rrived boci:. then he rep,orted to him at his house. The vaicle had not token bin to Pis house because jt had had to be serviced in readineas for another trip that night which was imminent, and eventually he had be en tekeri back hone in a 'taxi. It would seem that he forgot the police ig in ©at with the money in the car, lie looked for the raincoat on tho ne::: Oay but it could not he fernd while driver Daniel (P.i.l5) who hzdetokon control cii reier was of no a i.stance. lie had then immediately jeeuorme d Sup eri hend eat lihina o ±ha.loaa in the preeaucc; of Kanuti, the officer coiivamdinh the district the It uas/prosecutlOhIM case that the appellant had not reported the loan until he was asked five or six days- later folloainZ cociplaints 0± tiuC officers for whom the

money was intended.. Supdt. Ilaian was emphatic that the appellant had not reported the loss and that he did not become aware of it until he got report of the complaints through Senior Inspector Khan

- 6) Six days later. Partly, Senior Inspector Phan and Inspector Hilhinga (para 16) were clear that, when asked by Supdt. Ilaian on 22/1/70 the appellant had said that he had not reported earlier because USC he had hoped to get money and make good the loss. However, this seems to have been contradicted by Kanuti whose evidence showed that the appellant had reported the loss on the 16th. In dealing with this matter, the learned trial magistrate does not appear to have considered, as indeed he should have done, the evidence of the appellant's defence. The appellant had cross-examined Supdt. Lihina on a number of details, but he did not refer to him that Kanuti whereat P22ina had told Kamuti of a loss report by the appellant. If the evidence of Kanuti on this point was correct, then the appellant must have reported within a few days of the loss and it must in the circumstances have been a deliberate lie. From the evidence of Senior Inspector Khan, it appears that there was a meeting on 22/1/70 comprising Khina, Kanuti, Khan and the appellant and it is quite possible that at this meeting Kanuti referred to the loss. It is from the record that the date —16th— was mentioned by the appellant and that Kanuti had only to affirm it. In the absence of any assisting time indicator, it is unlikely, that Kanuti could remember the date as at the time of giving evidence it was nearly six months later. The evidence, of Sergeant Lajor and Inspector Litali (para 14) would seem to be of assistance. He had met the appellant on the 16th and asked him if he was going to Ruaba that day. The appellant had replied that he had failed to get there on the previous day on account of a bridge being washed away at Kitonga and said that he would try it again on the following day. He had made no mention of the loss of the money, as would normally have been expected. However, all, it must have occurred to the magistrate as extremely unreasonable for him to get report of loss of the allowances badly needed by his junior officers and fail to take any action. It seems that, even if the trial magistrate had considered the evidence of Kanuti on this point, he could not have come to a finding different from that he arrived at regarding the matter whether or not the appellant had reported timely of the loss. The trial magistrate seems to have gone fully into other circumstances on which the prosecution relied to prove that the loss report was false. Firstly, contrary to the appellant's claim, his own driver, Peter, was clear that he had left for Ruaba wearing a civilian overcoat. Secondly, Mviamhapa (para 11) and Constable Rumbachid (2.1,12) whom they had come across at the Kitonga impasse confirmed Peter's evidence. All three witnesses were also clear that the appellant had taken the money from the back pocket of his trousers and that he had rammed it to the same place. The magistrate believed their evidence against the appellant and found that he had not put the money in the pocket of any coat at all. It was not apparent that the witnesses could have gone out of their way to allege anything against the appellant and it is perfectly entitled to find as he did. In his statement to Senior Inspector Khan and in his own evidence, the appellant said that on his return from the UIISLCCSSPU1 trip he was driven to the house of Idhina. This was done by Lihina

himself while the driver had no doubt that he had taken the appellant to his house. This was one man's word against that of other: but it seems the magistrate had no difficulty, and I do not think he erred, in finding that the appellant had not reported to the police that night but that he had been driven home by Peter. At one stage the appellant would appear to have told C. lie to the police. It seems that initially it had not been intended to charge the appellant and the appellant was given time to make a refund. The appellant himself has said he was given three days. By the 26th he had not, in fact, paid up but was asked by the police and the police he had replied that he had given the money to Kanuti. Kanuti, however, refuted the appellant's claim. From the foregoing, it seems the magistrate as plenty of evidence before him the magistrate pointing irresistibly to the appellant's guilt and/or satisfied he was properly convicted. The summary of appeal does not raise matters which were not before, and considered by, the trial court. It may be added that, as regards two of the grounds of appeal, the appellant seems to go back on his own evidence. He is on record as saying he that at the time he took out the money and showed it to the driver of the Regional Police Car, while ground No.5 of his appeal states that he did not do so. Similarly, he appears to have stated in evidence that although at the time he could not contact Ujwa on the air class, he stated in ground No.6 that he did so contact him. In the result, the appeal against the conviction is dismissed. In sentencing the appellant, the learned magistrate considered that he had caused financial hardship to the intended recipients of the allowances. That was so, but considering not only that the stolen sum was not that alarmingly large but also the fact that, following the conviction the appellant would almost certainly lose such terminal benefits as his service of 22 years might have earned him, the sentence of three years is appropriate. The learned magistrate has also stated that the appellant is a person of good character and that he has a family to support. In the result, the appeal against the conviction is dismissed. In sentencing the appellant, the learned magistrate considered that he had caused financial hardship to the intended recipients of the allowances. That was so, but considering not only that the stolen sum was not that alarmingly large but also the fact that, following the conviction the appellant would almost certainly lose such terminal benefits as his service of 22 years might have earned him, the sentence of three years is appropriate.

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