

TANZANIA / JUDGMENT

20171208 TZHC Mwanza

COURT
TZHCDECIDED
8 December 2017

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IN THE HIGH COURT OF TANZANIA I I - • AT MWANZA. 0- MWANZA REGISTRY CRIMINAL APPEAL NO. 407 OF 1970 Original Criminal Case No. 115 of 1970 of the District Court of Nzeg District at Nzega Before F.M.K. Mwamwaja, Esq., District Magistrate, THOMAS KIYABO •.....
.... •..•• •. •.. APPELLANT Versus THEREPUBLIC • • OO••• •,••. • ••. • •... s.... •. •
RESPONDENT. CHARGE: Stealing by person in the Public Service contrary to section 270 and 265 of the Penal Code Cap. 16 of the Laws.

JUDGMENT.

MNZAVAS, AG.J, The appellant was on his own plea of guilty convicted of stealing by a person employed, in public service 0/s 265 and 270 of the Penal Code and sentenced to 9 months imprisonment, He is now appealing against sentence. The facts of the case are that the appellant who was employed by the Nzega District Council as a revenue collector stole shs. 5/- property of the Council. The learned magistrate in sentencing the appellant said - "The appellant is a first offender, the amount involved is less than shs.100/- being shs. 5/- only. The accused has already refunded the money to the council. He tells court that he has a very large family. He has also admitted the charge at once. This which shows that he is regretting 'or all what has happened. In my opinion I find that there are special circumstances in this case to enable this court to act under the provisions of Section 5 (2) of the Minimum Sentence Act". He then sentenced the accused to 9 months imprisonment after noting that he was 46 years old. Mr. Rugarabamu argued that the sentence of 9 months imprisonment is manifestly excessive taking into account the mitigating special circumstances found by the learned magistrate; and was of the opinion that the sentence ought to be reduced. The Republic was actually of the view that in view of the special circumstances found by the trial court the sentence was excessive. I would say that there is a lot of sense in both arguments. The appellant is 46 years of age, and he has all these years lived an unblemished life. The amount stolen is trivial and it has in fact been refunded to the council. And, over and above these mitigating factors, he pleaded guilty to the offence. The mere fact that he readily pleaded guilty shows contrition which was a step forward towards reformation. For the above reasons it is obvious that this is a case which loudly cried for leniency. Had it not been for the mandatory provisions of the Minimum Sentence Act, this was a proper case for extreme leniency. A fine or even a conditional discharge would, in my view, have met the justice of the case. The appellant has been in prison since 26/6/70. This is sufficient

punishment. I sentence the appellant to such term of imprisonment as would result to his immediate release from custody. The appellant is released unless lawfully held in oonnect? with another charge. JU WANZA. (N.S. Mnzavas), i: i/12/7O.

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CASE PAGE	https://chat.esheria.ai/case-law/tanzania/thomas-kiyabo-v-the-republic-stealingbypublicservant-tzhc-2017--6a3ea5293b1caa91298212a8

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