

TANZANIA / JUDGMENT

19840803 TZHC Mbeya

COURT
TZHCDECIDED
3 August 1984

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r Li 811tH HIGH COUHT OH TAUZJTIA AT JLi3EYA. AppELLtTT1t JURISTICtOiT

- HIGH CO81RT C2BTTTAL LPPT811J IRLLB/I? 4 OF 1983 OHIO I11tIAL CITEtIITAL CiSE iflJ'BJH1t 13 OF 9c3 OF T1t DII Lila T COGHT C H SL6 WANGA ID IS TRIO 8 A T UWLi- W LTA. RECITE W.S. KT5lTJliOU D/ DIG Li PP 11 H PHT TI : VIIRGUG ThE REPUBLIC FJtSThDTT0dt1tTT OHARGIh Stealing by agent c/s 273 (b) and 265 of the Penal Code JUT GLI I12TT. '- KWIKINJH, AG-. J:— The appealsat sacI:other were arraigned before the Sunbawanga District-Court for the charge consisting of Ovo counts of stealing by servant. They wore convicasa and sentenced to serve five years in gaol each. Ike c,ppelloab 's a isse tistocion with t1wt decision led han to lodge this appeal. It is pvidenfron th record the t the court trying The appellant was far finn iupsrtial, for the wore untested wod of the prosecution led to -the conceflation of his boil even when he woo not shown to have been at fault when This adverse ordorw's node ogeinot hiw. Li would be r000t to reproduce the record 05' the whole incident. "Prosecutiofl2 iho lot accused is outon bail. He could not turn up again today for unknown nawaon. I an told there is a tricky (sic) for the accused person to abscond, Thus I ask for cancellation of the :drosont accused bail end arrest warint for the first accused.. - OER Hppiicatioe. uLc?ld. it looks that there is a tricky (sic) snong the accused to cbscond, bones the 2nd accused bail is hereby cone oiled ad guAr red that the eccased be remanded in custody till On 22/6/83 That a travesty of, justice that Abc a pellont oould have lost hi bail just because his co—ciccuoed h::d rwiied to turn up. Ho trouble was taken to substantiate the kold alJan- ation by the prosecutor that the appellant was planning with his co—accuse' to jung tail. , If anything the appellant had provd his good iLith by rogulerly showing up in court, despite the many adj curses eats theA had orecooded the cane oils tion of his bo.il The order was only node because the court was there to do the prosecutor's bidding The prosecutor was not coiled upon to substantiate his profesed fears, ..0/2 - this is coriparbd with the ohs. 23933/6 0 given in the .ehar'e and by IW1 ohs. 3 6347/10 given by }5 biannwiria and ohs. 21603/60 given by the thagistrote himself, the confUsion is very ree.1 indeed. Pvcn the conclusion that the appellant hadadmitted noorly all the fects strngely everlook4. Otherwise The court should have boon on ins •euari to see whether those fv facts not admitted did not ned orcof by the prosocutiun! iio uncertainty of tho convictinp nogistrate, wl4ch uncertainty he should have used to ncquit the appellant, is revealed by his observation the t Uifter considering the whole evidence on recoxi I found

that had the alleged using sum was (sic) say slis. five thousand .. I could guess that the accused failed to check the figures . but having •0 admitted that he was checking .. to ensure that the issued money were properly spent . I found that The accused could not miscalculate the figures to. such agreat amount!" So, even he, the trial isogistrmte, was not sure that the system of accounting ould reveal to him how the great amount was embezzled. He could only have understood if the stolen sun vao small, say ohs. 5000/ ! Yet he could not find cause to confer tho benefit of his doubt to the appellant as is by law required! iere cannot be gar.isaying that the circumstances adduced against the appellant did not exclude hi innocence. Infact they pointed to some other suspects such as Jairos and his committee whom the prosecution, for reasons peculiar to them chose not to touch the result was that they i.11yied behind the court which in its bias tool: their every word to land the appellant into the trouble which he did not deserve... His unfounded conviction is ThUS quashed and the sentence thereof set aside. 'Dne appeal succeeds and it is iereby allowed. Any oraer node under the quashed conviction is in the result, set aside. Zie appellant is to be set free promptly unless otherwise lawilly held; I note, further, toot the aspollant !a co-ocused has chosen not to appeal. As The reasoning in this judgenent is equally applicable to him, I would invoke my revisionary powers and order that his conviction bo and is hereby quasi_led and the sentence thereof set aside. He should be released forthwith on the sane teisas the a_l.pellant It is So ordcred 4 / / tT \ T'TTTrT' 1. r' rT1rr' U.ii. ...i v.: r • u uA;r_. 03/03/1984 Delivered at Sunbewanga this 3rd day of August, 1984, in the presence of Mr. Ndunguru, counsel ±' r the Repub Ic 11.11. .A • KWfICibY , dO. flTOGE. AIVDN 03/6/1984

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