

TANZANIA / JUDGMENT

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·i i... J~ ,r IN THIS COURT OF APPEALS, OI 'J\ d: TZ} JHA AT DAR ES ,Sf~Lf,ltM ---- (~ MUSTAFA 2 J .A 09 omrn. 9 J. /... And HJ\l'IGANO, 11{!, • J .ii.) CIVIL li.PPEAL NO. 16 OF 1987 YONA NGUTO LU\10HGO APPELLANT AND

1. HON. AUSTIN ICAP::JRE SHJJ.lA. • • .1 ST 'LWSPoiIDENT
2. HON. ATTORITJY G~NERLL. . • • • ZIID n:cs?mT.DZHT (AppGal from the judc:nent 9 c1ecree :nd order of the Hi;;h Court of '11 onzanie at Mtwara) (Rubama 9 J.) d.at0d. 18th day of July 9 1986 in Miscellan12ous Civil C2use l~.J. 2 of 1985 JUDGI'iEtJT QJP T}f;::; COURT OMAR 2 Mr. Yona N-;uto LuwoDGo was a 112·tition0r in the election petition Miscellaneous Civil CGuse ~!o. 2 of 1985 against Mr. Austin Kapere j~dward Shaba I the .successful candidate in 1985 General 11elections in the co:1kst}?d seat of Mtwara urban constituency. The second re.spom1ent in this appeal is the Attorney General. Mr. Luwone;o I s pe:tition woo disnissed.. In this appeal he has submitted that I1'ir. t3haba had cm:inittcd on act of bribery. '11 hat is his only eround of complaint. It was concerned with the donation of Shs. 2,500/- by Nr. Shaba to Mtwara Girls .Secondary School. Mr. Shaba had gone to this school on 9th r.'arch 9 1981 as part of his duties os a Member of Parliament to visit places of educ2tional and· political interest in his constituency. The school was one of the party branches~ two other schools 1·rer0 also visited by him that day as they were c:lso p3rty bronches. i"lr. Shaba addressed this school on the constitutional chan::ces that Parliament had passed the previous year and as his visit coincided with the sports 1 presentation day he was asked t 0 l)resent .,;. .:)rizGs to the students •• 0 0 •• /2. 2 which he d.id. The prizes were for sports activities. It was in evidence tha.t the sports teacher had : said that the school had no table tennis table for the stuJonts to prlll:C:t.i'Se on ancl that they were forced to go to other institutions for th2ir practices. To this the first respondent resi10nded by pr,:imioin:s to contribute towards its purchase if they coul: 1 discover the price. The price ' was communicated to him in a letter written by the sports te8cher lialifed.ha dated 27/4/85 which he the first respondent received on 3/7/85. The evidence is to the effect that he was away from - Mtwara for about three months and. as soon as he received it he tried to contact the He:admistress but found the school closed. On 2/8/85 he managed to talk to the Headmistress about the table for table tennis and his proposed visit concerning that rIBtter but the school had just opened and the headmistress had some travelling to do and it was not a oonvenient time then for his visit. On 20/8/85 first respondent contacted the school

asain about his donation and the headmistress agreed they should meet the following day for the handing over of the money to the school. Counsel for the appellant) Mr •.- Rweyemamu contended that Nr. Shaba had deliberately timed. the giving of this gLft and. that act ion converted an otherwise innocuous act into a corrupt transaction. He asked. why was money not paid earlier or sent by cheq_uc as soon as he had received. the letter on 3/7/85. Instead. Hr. Shaba waited for more than one and half months until it was elect ion time before he r11ade the presentation. On 21.B.85 fir3t respondent went to the school and gave shs. 2,500/- to the headi;listress in the presence of students who had c:issembled the r:1oney W3D then handed. to the head Birl, one Miss F8tu. 'l1he coreraony to,1k ten minutes and first respondent left in a hurry. ~hl·ee school girls gave evidence of this short cerer,10ny and one of then P. u. 3 /3. -a:-' .. ~ r 1 lo,

- 3 - Zainabu Rashidi said. that first respondent told them at that meeting that he was a Parliamentary candidate ancl that they should. vote for him 9 but the other two girls P.W.5 Marry ~esi and P 1W16 Dorothina Philipa merely stated that the short address of first respondent was restricted to sports d.evelopmentl P.w~ and P.W,6 stated that when the first respondent was bidd.~g the girls farewell he was heard to say that they would meet again du.ring the election campaign. The headmistress, D.W,2, who was present throughout at that meeting denied havirig heard Iv.ll', Sheba saying anything about meeting during election campnign as alleged by P1 W.5 and P.w.6 or about Mr. Sheba asking the girls to vote fo~ him as alleged by P •W ,3. The learned judge reviewed. and analysed the evidence of the witnesses at great length. He was satisfied that P.W,3 was a liar and that P.W.5 and P.W.6 could not have heard the remark allegedly made by Mr. Shaba as neither J)l'W.2 the headmistress nor P,W.,4 a
- -- tea,oQer who were present throughout tho short ceremony of the money donation had he:ard ony such remarks. The judge accepted. P,W,4 and. D.W.2 as witnesses of truth. As the trial judge had properly evc1luatod ond assessed the evidence, we are not in a position to say that he was wrong, The timing of the donation was due to the convenience of D.W,2 r the head.mistress and. it was fortuitous. 'l1he trial judge could. discern no improper or corrupt motive in the whole of Mr. Shabo's conduct surround.inc this transaction an,j ,•rn think that he was right. This is the only ground of appeal urged to nullify the elect.ion of first respond.ent. We find the n1J.egation of corruption not proved., . We dis11iss the appeal. No order for _ -.. __ costs will be made in this appoal as the appeal has been conducted ~- under legal aid. . . ; . / DATED a.t D.Aiv.ES SALAAM this 7th day of August, 1987. A. MUSTAFA JUST I CE OF APPJ!JAL .. / / _.,,,.,/ A. M1 A. OMAH ;" JUSTICE OF APPEAL D. P. HAPIGANO !1E• JUSTICE OF APPEAL I certify that this is a true copy of the origin 8 1. t ' / // .. ' . (J. H. MSOFFE) DEPUTY REGISTRAR

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