

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: Mustafa, J.A., Mwakasendo, J.A. and Kisanqa, J.A.)

CRIMINAL APPEAL NO. 14 OF 1979

B E T W E E N

JOSEPH BATON KAWIA APPELLANT

A N D

THE REPUBLIC RESPONDENT

(Appeal from the Judgement of
The High Court of Tanzania
at Mtwara) (Maganga, J.)
date the 23rd day of February, 1978,

IN

Criminal Appeal No. 39 of 1977

JUDGMENT OF THE COURT

KISANGA, J.A.:

This is a second appeal against conviction for stealing by public servant contrary to sections 270 and 265 of the Penal Code and a sentence of 6 years' imprisonment.

The appellant was employed by the Ministry of Health as an Administrative Assistant and was at the material time posted at Lindi Government Hospital. He drew from the bank a large sum of money and paid some of it as salaries to members of staff of the hospital leaving a balance of shs. 9,492/70. According to the appellant, he locked this money in his safe and went home but later on when the safe was opened there was found in it only shs. 8/75. The remaining shs. 9,483/95 has never been found to date and the prosecution case is that the appellant stole it, the appellant being the sole custodian of the safe key.

In his defence the appellant stated that after locking the money in his safe, he went home and kept the safe key in

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his bedroom but that while he was sleeping at night someone broke into his bedroom, took out the said key, went to his office and opened the safe with it, stole the money therein, re-locked the safe and returned the key to his (the appellant's) house and kept it in his toilet room. The appellant suspected the watchman at the hospital (P.W.2) as being the thief.

Both courts below rejected the appellant's story as being incredible. We are satisfied that there was sufficient material on which they could have done so and we see no reason to interfere. Once the defence was rejected, conviction was inevitable.

In the result we are satisfied that there is no merit in this appeal which is accordingly dismissed.

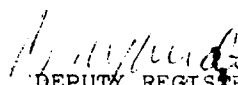
Dated at Dar es Salaam this 7th day of November, 1979.

A. MUSTAFA
JUSTICE OF APPEAL

Y.M.M. MWAKASENDO
JUSTICE OF APPEAL

R. H. KISANGA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.


DEPUTY REGISTRAR