

IN THE COURT OF APPEAL OF TANZANIA

AT MWANZA

(CORAM: Nyalali, C.J., Mwakasendo, J.A. and Makame, J.A.)

CRIMINAL APPEAL NO. 33 OF 1980

B E T W E E N

YASIN S. KASOLA : : : : : APPELLANT

A N D

THE REPUBLIC : : : : : RESPONDENT

(Appeal from the Judgment of the High Court  
of Tanzania at Mwanza) (Lugakingira, J.)  
dated the 15th day of December, 1976,

in

Criminal Appeal No. 181 of 1977

JUDGMENT OF THE COURT

MAKAME, J.A.:

When the appellant YASIN KASOLA fell foul with the law he was an employee of the National Bank of Commerce at their Kenyatta Road Branch, Mwanza. He was working as a clerk performing the duties of a teller. In the morning of the 19th March, 1976, when his cash collections for the previous day were checked there was found to be missing a sum of shs. 341/- out of a total amount of shs. 16,917/60. His recorded teller's Cash Balance, also described as TCB, was found to reflect the correct sum he ought to have been having. He was charged in the District Court on two counts: Fraudulent False Accounting and Stealing by Servant. He was acquitted on both counts, whereupon the Republic appealed to the High Court, but only against the acquittal on the second count, the one alleging theft. The High Court reversed the trial court's decision, entered a conviction for theft, and directed the District Court to sentence. The appellant was duly sentenced to be imprisoned for three years, hence this appeal to us. Mr. Loomu-Ojare, learned State Attorney, is appearing for the Republic.

There was no dispute but that the sum of shs. 341/- was missing from the appellant's collections. The evidence given by the Bank Supervisor, P.W.1 MUNISSI, brought out two main points: first that where there was a shortage the appellant ought to have reflected this on the TCB and that the appellant did not; and secondly, that the appellant said he had loaned the money to a relative who had a patient and had hoped that the said relative would refund the sum that very morning of 19th March, 1976. P.W.2 STEVEN MINJA, the Bank's cashier and Assistant Manager, said that when Munissi reported the shortage to him, and he confirmed it himself, he was told by the appellant that he, the appellant, had loaned the money to a brother-in-law who would refund it that morning. On the Branch Manager's instructions the appellant was made to explain in writing how the shortage had occurred and he did this by writing Exhibit D, which is a clear confession. A female typist, P.W.3 EMAKULATA MATETE, told the court of trial that she typed out Exhibit D from a draft the appellant furnished her with and that she gave Exhibit D to the appellant.

At his trial the appellant conceded that there was found a shortage of shs. 341/- but he maintained that it was a genuine shortage which he was unable to explain and that he had nothing to do with Exhibit D, which he said was a fake. His brother-in-law happened to be around at the bank when he was being grilled for the shortage so he, the brother-in-law, lent him shs. 341/- to make good the shortage.

Regarding the confession to P.W.1 the learned District Magistrate "rejected the truth of this confession" by which, in the context, we reckon he meant that he did not believe

that the appellant ever made such a confession to P.W.1; and as to Exhibit D he did not "find it easy to accept its authenticity". We note that he did not specifically deal with the alleged confession to Minja.

As the first appellate court observed, correctly in our view, it was not the appellant's case that he made the confessions under duress, but rather that he did not confess to any theft. He in fact repudiated the confessions. Like the first appellate court, we cannot, from the evidence on record, discern any reason why Munissi and Minja should fabricate lies against such a junior employee under their charge, and no reason suggests itself as to why the typist should gang up with P.W.1 and P.W.2 to destroy the appellant. We have looked at, and carefully studied, Exhibit D and we find no reason to doubt its authenticity. It is garnished with such personal details as the appellant having three sisters and four younger brothers all depending on him. It is, further, a plea misericordia explaining the extenuating circumstances in which the money was "borrowed".

We think that if Exhibit D was the evil instrument of some people intent upon destroying the appellant it would not have been studded with so many mitigating factors: it would have confessed to a straight villainous act and concentrated on that.

We are satisfied that the appellant was the author of Exhibit D and that, in the particular circumstances of this case, the repudiated confessions do not need corroboration (See YOHANNIS UDINDE AND ANOTHER v. R., 22 E.A.C.A. 514). We are of the opinion that the first appellate court quite justly reversed the trial court's decision and we accordingly dismiss this appeal.

We desire to associate ourselves with the observation made by Mrs. Matovu, learned State Attorney, when she appeared before Sisa, J. at the hearing of Criminal Application No. 12 of 1978 for leave to appeal to this Court, that the matter could have been better dealt with administratively instead of taking the appellant to court. The amount stolen was comparatively trivial and, considering the peculiar circumstances of this case, we think that the Bank officials could quite properly have employed the discretionary element of choice and handled the matter without recourse to the courts. As it is now, the law must take its course as we are duty-bound to handle the matter according to the law, without emotion or predilection.

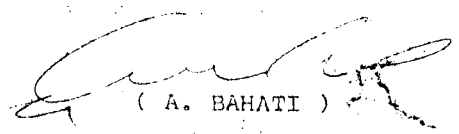
DATED at MWANZA this 10th day of October, 1980.

F. L. NYALALI  
CHIEF JUSTICE

Y. M. M. MWAKASENDO  
JUSTICE OF APPEAL

L. M. MAKAME  
JUSTICE OF APPEAL

certify that this is a true copy of the original.

  
( A. BAHATI )  
DEPUTY REGISTRAR