IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: Mwakasendo, J.A., Makame, J.A. and Kisanga, J.A.)

CRIMINAL APPEAL NO. 11 OF 1981

B E T W E E N

MW 203099 SALEHE ABDALLAH. . . . . .APPELLANT

A N D

THE REPUBLIC. . . . . RESPONDENT

(Appeal from the Judgement of the High Court of Tanzania at Dar es Salaam) (Biron, J.) dated the 30th day of January, 1981

in

Criminal Appeal No. 90 of 1980

JUDGEMENT OF THE COURT

MAKAME, J.A.:

In the District Court of Ilala at Kisutu the appellant SALEHE ABDALLAH, who used to be a militiaman, was sentenced to a substantive jail term of three years consequent upon his conviction for stealing goods in transit and for corruption. On the count of stealing he had been charged with two other persons who were acquitted. Sir Philip Biron, who heard the first appeal, euphemistically refrained from commenting on the acquittals: we too think the appellant's co-accused were lucky to escape conviction.

To the first appellate court the appellant petitioned against the entire decision of the trial court but during the hearing of the appeal he revised his stance and confined himself to the second count, the one alleging corruption. Mr. Raithatha, learned counsel, appeared for the appellant in the High Court as he did again before us.

A lorry which was illegally carrying several bales of clothing material, and on which the appellant and others were, was stopped by the Police at a gate in the harbours area. Corporal Frank, P.W.1,

one of the policemen at the gate and when he accosted the appellant and his companions the appellant gave him shs. 2,000/- to grease his palms. There was evidence by another policeman, P.W.6 P. C. Martin, in support of P.W.1's story. P.W.6 was present at the scene and he was actually the one who had closed the gate to prevent the lorry from driving past. It is quite true, as Mr. Raithatha urged, that a militiaman, P.W.7 MWIBAGE, who was also at the gate made no mention of any money being given to P.W.1 by the appellant. We do not think, on the evidence, that that fact detracts from the credibility of the Prosecution story. Biron, J. dealt with that issue specifically and remarked that there was no evidence as to how close to the vehicle Mwibage was. We agree, and wish to add that there is in fact an indication in Mwibage's evidence that he was not very close to the vehicle: He says P.W.1 went to examine the vehicle, which must imply that the vehicle was not right where Mwibage was. It is not necessarily surprising either that in his evidence P.W.4 D/Sgt. Major Victor did not mention being told about the bribe when he got to the scene.

It is correct that, ordinarily, offences committed in the same transaction would attract concurrent sentences. However, that is not to say that in every such case the sentences imposed may not be ordered to run consecutively. There may be circumstances which make a court feel compelled to impose consecutive sentences. Biron, J. ordered the two sentences of three years each, imposed by the trial court and ordered to run concurrently, to be consecutive. We do not understand Biron, J. to mean, as Mr. Raithatha attempted to persuade us to hold, that he made the order simply because the two offences, that of stealing and the other of corruption, were not cognate. That the offences were not cognate was merely one of the factors Biron, J. took into account, as he was entitled to. He also took into account the fact that as a militiaman on duty, the appellant breached his official trust, the seriousness of the offence of corruption per se, and the prevalence of the crime.

The principle propounded in the case of LUHOGWA (2 T.L.R.(R) 47) to which Mr. Raithatha helpfully referred us, is a useful guide. We do not however think that Biron, J. overlooked it, nor are we of the view that the learned judge should have necessarily referred to it in so many words. We are of the considered view that the first appellate court took into account relevant factors and that it properly exercised its powers in ordering the sentences to run consecutively. Further, we find some merit in the argument by Mr. Lyimo, learned counsel for the respondent Republic, that although the two offences in this case can be said to have been committed in the same transaction, the distinguishing feature is that they are in fact intrinsically two different offences.

We find no merit in this appeal and accordingly we dismiss it.

DATED at DAR ES SALAAM this 19th day of October, 1981

(Y. M. M. MWAKASENDO)
JUSTICE OF APPEAL

(L. M. MAKAME)
JUSTICE OF APPEAL

(R. H. KISANGA)
JUSTICE OF APPEAL.

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