

IN THE COURT OF APPEAL OF TANZANIA

AT Tabora

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

CRIMINAL APPEAL NO. 31 OF 1980

B E T W E E N

JACOB s/o MREMA APPELLANT

A N D

THE REPUBLIC RESPONDENT

(Appeal from the Judgment of the High Court
of Tanzania at Tabora) (Mfalila, J.)
dated the 26th day of June, 1978,

in

Criminal Appeal No. 62 of 1978

JUDGMENT OF THE COURT

MAKAME, J.A.:

This is a second appeal by JACOB MREMA, a former Senior Court Clerk, who was charged with Stealing by public servant in the District Court of Tabora. He was sentenced to imprisonment for five years, which term was reduced to three years by the High Court which otherwise dismissed his appeal. Both on the first appeal and before this Court the learned State Attorneys who represented the Republic were unable to support the conviction.

The appellant had been given some Exhibit money in a High Court Sessions Case in which he was the Court Clerk in attendance. This he passed on to a Registry Officer, P.W.1 when he, the appellant, accompanied a judge on circuit. P.W.1 in turn gave the money to P.W.2 SAKINA JAMAL, a High Court cashier who gave it to P.W.3 HAMISI SALUM, a District Court cashier who had better custody facilities. Later the appellant asked for the money so that he might return some of it to a person who had been acquitted. P.W.2 gave the money, which was in

a sealed envelope, to the appellant. At the trial the appellant agreed that he was given the money by P.W.2, but he insisted that he gave the envelope back to P.W.2 once he had extracted from it one of the three smaller envelopes, the one containing shs. 141/-, which sum he gave to NICHOLAS SARONGE, the man who had been acquitted in the High Court Sessions Case. He called Saronge who gave evidence which effectively supported the appellant's story. Saronge told the court of trial that after he had received his shs. 141/- he went downstairs with the appellant who entered another office, evidently Jamal's Office, and when he remembered that he had not asked for a copy of the judgment and he followed the appellant into the office, he found the appellant giving the envelope, the large one which contained the smaller envelopes, to "a girl of mixed origin", which description apparently Sakina Jamal answers to.

In sustaining the conviction on first appeal the learned judge observed that at every stage, except the material one, the money did not change hands without the transaction being reduced in writing. He further remarked that the credibility of the Defence story was charred by the fact that the appellant did not have to go so far afield to get a person who saw him give the money back to Sakina. Sakina was not working alone in the office: The appellant could have a lot more easily secured a person working in the same office with Sakina to say that he or she witnessed the transaction.

There was one thing which appears to us to have escaped the attention of both the trial Court and the first appellate Court, and it is this: Within the compass of the evidence on record there are occasions on which the money changed hands without recourse to pen and paper. There were two such occasions:

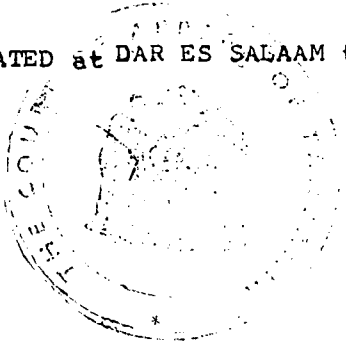
When Sakina gave the money to a cashier of another court, P.W.3, and when she got it back from him. People were not called to witness the money changing hands and people receiving monies did not always bother to check the amounts. So it appears to us that the system was not all that rigid and in the circumstances we are unable to say that the appellant's version was necessarily incredible.

The other matter was the one concerning Saronge. According to the appellant, it was Saronge who happened to be around and Saronge confirmed this. We have absolutely no evidence on record that there was any other Judiciary employee working in Sakina's office, and even if there was such a person he or she would not necessarily be in there at the material time to see all the comings and goings. We think it was not right in the circumstances for the learned judge who heard the first appeal to criticize the appellant for calling Saronge.

We share the discomfort experienced by Mr. Mchora, learned State Attorney, who appeared before us, that the two Courts below might have placed an undue burden on the Defence. The appellant did not have to prove that his version was true. It was, rather, for the Prosecution to prove their case beyond reasonable doubt. We feel that this was not quite done and, like the attorneys who advocated for the Republic in the High Court and in this Court, we are unable to sustain this conviction. We accordingly allow the appeal, quash the conviction, and set aside the order. We note, with regret,

that the appellant has already served this custodial sentence.

DATED at DAR ES SALAAM this 4th day of February, 1981.

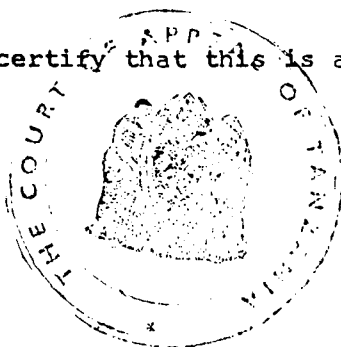


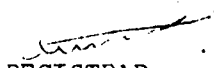
(F. L. NYALALI)
CHIEF JUSTICE

Y. M. M. MWAKASENDO
JUSTICE OF APPEAL

L. M. MAKAME
JUSTICE OF APPEAL

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




REGISTRAR