

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

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

CRIMINAL APPEAL NO. 66 OF 1979

B E T W E E N

ABDUL MUGANYIZI . . . . . APPELLANT

A N D

THE REPUBLIC . . . . . RESPONDENT

(Appeal from the Judgment of the High Court  
of Tanzania at Dar es Salaam) (Mrosso, J.)  
dated the 17th day of October, 1979,

in

Criminal Appeal No. 110 of 1979

JUDGMENT OF THE COURT

MUSTAFA, J.A.:

This is a second appeal. The appellant was convicted of theft of a bicycle in a District Court and his first appeal was dismissed. The conviction was based purely on circumstantial evidence. He was the Chief Clerk in a labour department at Ifakara. A bicycle belonging to one of his colleagues was kept in the department's store, and there is evidence that the area labour officer P.W.3 had instructed the appellant that the bicycle could be so stored. There is also evidence that the offices of the said department comprised five rooms, four for offices and one for the store, and that a set of keys for the five rooms was kept at a nearby police station when the offices are closed and the doors locked after office hours at 2.30 p.m. daily. There is also evidence that no department official was supposed to collect the office keys after office hours in order to use the offices, owing to certain thefts from the office store.

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The appellant apparently was not on particular good terms with the owner of the bicycle. His attitude towards the storing of the bicycle was that it had nothing to do with him, and he even denied knowing anything about it. It clearly was an unofficial storage, as it was not entered in any book, as required if the storage was official.

There is evidence that on or about the 27th of December, 1978, the offices of the labour department were duly locked at 2.30 p.m. and the keys deposited at the nearby police station. At about 3 p.m. the appellant went to the police station and collected the keys as he wanted to enter his office for some task. The police woman who was aware of the instructions concerning office keys, nevertheless gave them to the appellant. The appellant returned the keys about half-an-hour later.

There is evidence that P.W.2, a watchman discovered in the late afternoon of 27th December, 1978, that the store door was not locked but ajar. He peeped inside and found that the bicycle stored in the store was missing. He reported the matter to the appellant who allegedly told him that the owner perhaps might have taken the bicycle. The appellant told P.W.2 that he had been back at the offices after 2.30 p.m. to collect his files.

The trial magistrate found the appellant guilty of theft because (1) he had collected the keys of the offices after 2.30 p.m., despite the directive; (2) that he had told a lie when he denied that there was such a directive; (3) that he told a lie when he denied knowledge that the bicycle was in the store. The trial magistrate was of the opinion that the only person who could have stolen the bicycle was the appellant as he had the office keys on that day after office hours.

On first appeal, the judge also referred to the appellant's possession of the office keys after office hours, despite standing instructions. The judge referred to P.W.2's discovery of the store door being ajar, and held that the store door must have been opened by a key/that the appellant had the keys. The appellant on his way to the Police Station to collect the keys, had met P.W.5 Salvina, who had just deposited the keys with the Police, and the judge thought that if the appellant had wanted the keys he should have asked P.W.5 Salvina for them, instead of going direct to the Police Station to collect them himself.

The judge, on those circumstances, found that it was the appellant and nobody else, who had stolen the bicycle and confirmed the conviction of the trial court.

In this Court, Mr. Mwipopo for the Republic has strenuously attempted to support the conviction. He referred to the circumstances which were already dealt with in the trial court and the first appellate court, and asked that the appellant's appeal be dismissed.

We are of the view that the circumstances relied on by the Republic do not, and cannot, support a conviction. There is the circumstance of opportunity, in respect of the keys. But the appellant had openly gone to get the keys and never attempted to conceal that fact. There is indeed no attempt by the prosecution to establish that there was only one set of keys to the offices. Even if the appellant has told lies about his lack of knowledge about the bicycle in the store, about the reasons for his return to his office after 2.30 p.m. on that day, and about what P.W.2 the watchman had told him, there was nothing in the evidence which pointed to him as the thief of the bicycle to the exclusion of any other reasonable hypothesis. In fact the only circumstance against him is that he had the opportunity of opening the store where the

bicycle was stored. There was no other material evidence against him. Opportunity by itself cannot be enough to found a conviction of theft on circumstantial evidence. Indeed in this case apart from the fact that he had the office keys, there was nothing of any material importance against him. His lies, assuming he did lie, have no relevance to the offence of theft as such.

We do not think that there was sufficient evidence to convict the appellant of theft; in fact the evidence adduced falls far short of the standard required. We allow the appeal, quash the conviction of theft and set aside the sentence imposed on him and order that he be released forthwith if he is still in detention.

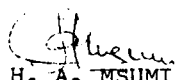
DATED at DAR ES SALAAM this 22nd day of May, 1981.

A. MUSTAFA  
JUSTICE OF APPEAL

Y.M.M. MWAKASENDO  
JUSTICE OF APPEAL

L. M. MAKAME  
JUSTICE OF APPEAL

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

  
( H. A. MSUMI )  
SENIOR DEPUTY REGISTRAR