

IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM

High Court Criminal Appeal No.46 of 1972

(Original Criminal Case No. 245 of 1971 of the District
Court of Mbeya District at Mbeya
before: W.J. Maina, Esq., Resident Magistrate)

JOHN MATHIAS NYAULINGO APPELLANT

versus

THE REPUBLIC RESPONDENT

CHARGE: Stealing by public servant c/s 270
and 265 of the Penal Code.

JUDGMENT

MBAKASEMBO, AG. J. - The appellant, John Mathias Nyaulingo, was charged before the Mbeya District Court of stealing by public servant contrary to sections 270 and 265 of the Penal Code. He was convicted and sentenced to two years and twenty four strokes corporal punishment. He has appealed against both conviction and sentence.

The appellant, who was at the material time a Chief Clerk in the Area Commissioner's Office, Mbeya, was apart from his other duties, responsible for issuing birth and death certificates and receiving the fees paid thereof. The prosecution alleged that over a period of several months appellant issued birth and death certificates to people, received fees for it, but never accounted for the moneys collected. Part of the money alleged to have been stolen by appellant related to several such pilfering of fees. Each such occasion constituted a separate offence which should have been preferred in a separate count. Thus, as there were 18 occasions when the appellant is alleged to have stolen fees paid to him for the issue of certificates, the prosecution ought to have charged him with 18 separate counts of theft. The prosecution, however, never did this. Instead of alleging each separate offence in a separate count, they aggregated the amount stolen and charged the appellant with a single offence of stealing the sum so aggregated. This was clearly wrong as it had the effect of depriving the appellant of the potential advantages falling within section 5(2) of the repealed Minimum Sentences Act, 1963.

Mr. Ismail, learned State Attorney, agrees that in this case there are special circumstances for reducing

the term of imprisonment imposed by the trial Court and with respect I think learned State Attorney is right.

The sentence imposed shall accordingly be set aside and there is substituted thereunto a sentence of nine months' imprisonment.

(Y.M.M. MWAKASENDO)
AG. JUDGE

Dar es Salaam,
12th May, 1972.