

IN THE HIGH COURT OF TANZANIA

AT MBUYA

APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 6 OF 1980

(ORIGINAL CRIMINAL CASE NO. 230 OF 1978

OF THE DISTRICT COURT OF SUMBAWANGA DISTRICT

AT SUMBAWANGA)

BEFORE: J.B. MUGANYA BSC., - DISTRICT MAGISTRATE

FESTO MWITA ..... APPELLANT

Versus

THE REPUBLIC ..... RESPONDENT

JUDGMENT

SAMATTA, J.

This is an appeal from a decision of the district court of Sumbawanga district whereby the appellant was convicted of corrupt transaction, contrary to s. 3(2) and 3(3) of the Prevention of Corruption Act, 1971, and was sentenced to a term of three years' imprisonment.

The impugned decision cannot, for reasons I shall hereinafter endeavour to give, be allowed to stand. The prime witness for the prosecution was one P.C. Jairoa. His evidence was to this effect. On July 2, 1978, he arrested the appellant and two other persons on a charge of being in possession of goods suspected to have been stolen or unlawfully obtained. As he led the trio to the police station the appellant asked to have a tete - a - tete with him. The secret conversation took place in the house of one Sigara (PW2). The appellant handed over Shs. 500/= to him (the hound of justice) and asked for forgiveness. According to the policeman, who denied having searched the appellant, the money was handed over to him in the presence of Sigara. The appellant followed him into Sigara's

house on his own initiative. He did not, directly or indirectly, summon the appellant into Sigara's house. The evidence of Sigara tended however to support the appellant's version of the story. According to the appellant, the hound of justice, after the arrest, searched him and recovered shs. 300/= from his person. At Sigara's house the policeman counted the money in the presence of Sigara and alleged that he had given it to him as a bribe. According to his testimony, Sigara did not witness the appellant hand over any money to the guardian of law. His evidence on the crucial point, to use his own words, was as follows: "The policeman told me to keep an eye on the loads ... [P.C. Jairos] told me to call the accused in the room. I called him and they started discussing things which I did not hear ... Later on the policeman called me inside the room and told me to count [some] money he had in his hands. [It] was three hundred shillings ... The policeman did not tell me who had given the money to him."

In her judgment the learned trial magistrate made no reference to the glaring inconsistency between P.C. Jairos's testimony and that of Sigara. This omission was a serious error. Is it possible that the guardian of law was falsely crediting himself with a reputation of being a hater of corruption? Having not heard the opportunity to watch the demeanour of the witnesses - a subject on which the learned trial magistrate made no express comment - I cannot see how I can confidently answer that question in the negative. Judging from Sigara's evidence, the conduct of P.C. Jairos towards the appellant seems suspicious. The policeman gave no convincing explanation why he visited Sigara's house. On the whole, I am inclined to agree with Mr Kapinga, counsel for the Republic, that the appellant's guilt was not demonstrated beyond a rational controversy. Accordingly, I allow the appeal, quash the conviction and set aside the sentence imposed thereon. The order

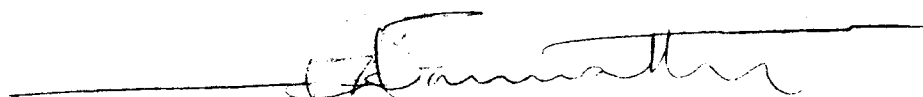
for forfeiture is also set aside. The three is also set aside.  
The three hundred shillings should be refunded to the appellant. I  
make no order for the appellant's release as he has already finished  
serving the sentence I have just set aside.



B. A. SAMATTA

JUDGE.

Delivered at Mbeya this 10th day of September, 1982, in the presence of  
Mr Kapinga, counsel for the Republic.



B. A. SAMATTA

JUDGE.