

IN THE HIGH COURT OF TANZANIA

AT MTWARA

HIGH COURT CRIMINAL APPEAL NO. 1 of 1981
Original Criminal Case No.271 of 1978 of the
District Court of Mtwara District At Mtwara
Before A.A.M. Shayo, Esq. Resident Magistrate

AHMAD HASHIM APPELLANT

Versus

THE REPUBLIC RESPONDENT

CHARGE: Being in possession of property suspected
to have been stolen or unlawfully acquired
c/s 312(1)(b) of the Penal Code.

J U D G E M E N T

MUSHI, J.

The appellant, Ahamad Hashimu, was charged and convicted with an offence of being in possession of property suspected to have been stolen or unlawfully acquired c/s 312 (1)(b) of the Penal Code and was sentenced to twelve months imprisonment. He is appealing against such conviction and sentence.

The particulars of the charge state, and I shall quote only the relevant part:

..... having being searched by Inspector Kebacho as a result of the exercise of the powers conferred upon him under section 24 of the Criminal Procedure Code, were found in possession of"

Section 24 of Criminal Procedure Code reads as follows:

"Any police officer may stop, search and detain any vessel, boat, aircraft, or vehicle in or upon which there shall be reason to suspect that anything stolen or unlawfully obtained may be found and also any person who may be reasonably suspected of having in his possession or conveying in any manner anything stolen or unlawfully obtained".

In this appeal the charge state that the police acted under section 24 of C.P.C. quoted above. But the evidence before the Court is completely at variance with the facts as set out in the charge sheet. The inspector who testified before the Court, stated clearly that he received some information that there were suspected articles ^{such as} / radio, in the house of the appellant.

The Inspector took out a search warrant and followed the necessary procedure and finally searched the appellant's house, where the articles mentioned in the charge sheet were found in different rooms. It is clear that the police were not acting under the provision of section 24 of Criminal Procedure Code. The proper section under which the appellant should have been charged is section 312(1)(a). However I am satisfied that the appellant was not in any way prejudiced by quoting the wrong section as the particulars in the two sections are the same except for the reference to section 24 of C.P.C. I would have substituted the charge under the above section except for the decision that I have arrived at in the judgement.

The articles found in the house of the appellant were radios and common clothes for wear. The learned trial magistrate in ~~convicting~~ the appellant stated and I quote:

"Some of the clothes found with the accused were T.P.D.F. clothes such as PT. shorts and shirts. They were not soldiers and some clothes were over size. It was not a satisfactory explanation that some of the clothes belonged to his visitor nor do I agree with the first accused that the radio receipt had been taken by his brother who had taken his bag. I therefore find them guilty as charge and convict them accordingly".

First, the so called PT shorts and shirts belonging to the T.P.D.F. though originally or may be even now, were perhaps meant exclusively to be used by soldiers, it is not uncommon to see fellows who are not connected with TPDF wearing them. In any event, this would have been an offence c/s 312A(3) of the Penal Code were it established that such possession was unlawful. Regarding the clothes, the appellant said that they belonged to his visitor and he mentioned the name. It was for the prosecution to disprove the allegation. The fact that they were over size as claimed by the trial magistrate is no evidence that they were not lawfully acquired. As for the radio, the appellant said that the receipt was taken by his brother who had gone to Morogoro. There was no evidence to the contrary. The learned trial magistrate refused to accept it without lawful justification. Had the learned trial magistrate properly directed his mind to the evidence before the court he would have found that the appellant gave reasonable explanation which was not disproved by the prosecution and would

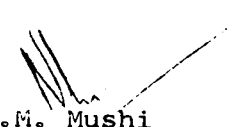
have acquitted the appellant. The appeal is allowed. The conviction is quashed and the sentence set aside. And exercising my revisional powers the other accused Haki Ismail, who was convicted in his absence and similarly sentenced, such conviction is quashed and sentence set aside.

On the day the judgement was read, which was on 23/11/79, the court did not make any order regarding the articles which the accused were found with and which were subject of the charge. Curiously on 7/2/80 the file was brought before the learned trial magistrate who made the following order:

7/2/80 Coram: Shayo, RM
C/C I have brought the file for disposal of the exhibits since the accused have not appealed.

Order: Radio Registration No.282680 Phillips 4 bands to be sold in public for shs.250/=


I said curiously because it is not true that the accused had not appealed. By this date copy of judgement had been supplied and appeal filed. Order was made only in respect of the radio and not other articles. The trial magistrate ordered the sale in public but he went on to fix a price. In a sale by public auction a minimum price may be fixed but in this case there is no indication that this amount was the minimum. It is ordered therefore, that the money obtained from the sale of the radio should be given to the appellant. Similarly the clothes should be returned to the appellant.


N.M. Mushi

Judge

12.5.82

Judgement read in chambers in the presence of Mr. Kaduri the State Attorney today 12th May, 1982.


N.M. Mushi

Judge

12.5.82