

IN THE HIGH COURT OF TANZANIA
AT MTWARA

APPELLATE JURISDICTION²

HIGH COURT CRIMINAL APPEAL No.99/81
ORIGINAL CRIMINAL CASE NO. 52-OF 1981
OF THE DISTRICT COURT OF SONGEA DISTRICT
AT SONGEA

Before L.C. MLELWA, Esq., Resident Magistrate

VICENT MNAMBA - APPELLANT

versus:

THE REPUBLIC - RESPONDENT

CHARGE: Occasioning loss to a Parastatal Organisation by Employee
c/s 284 A(1) of the Penal Code Cap 16 of the Laws.

J U D G M E N T

RUHUMBIKA, J.- The appellant in this case, an employee of the Tobacco Authority of Tanzania, was convicted of the offence of occasioning loss to a parastatal organisation c/s 284 A(1) of the Penal Code. The allegation was that the appellant being an employee of the above named parastatal organisation by reason of his negligence or failure to take reasonable care in the discharge of his duties did cause the named parastatal organisation to suffer a pecuniary loss of Shs. 5,681/-. The appellant was sent to prison for a period of 5 years.

In the first place, the sentence of 5 years imposed by the District Court against the appellant is illegal. The maximum punishment provided for under the law is two years only.

The court has reviewed the evidence which was relied upon by the District Court in convicting the appellant.

There is evidence that the appellant was responsible for collecting cash as a result of business transactions. The appellant had collected a total of Shs.5,681/- which he had kept in a cash box and had locked the cash box into his table drawer. The appellant was supposed to remit this money to the main cashier.

However, the evidence on record shows that the keys to the door of the office into which the safe was kept were held by two other people apart from the appellant.

It then happened that on or about the 26th of August, 1980 some unknown person or persons broke the drawer of the table into which the appellant kept the money and stole that money. Investigations conducted did not reveal the perpetrators of the offence, and as such it was decided to charge the appellant with the offence under Section 284 A(1) of the Penal Code as shown.

In his grounds of appeal, the appellant has submitted that he could not justifiably be held to have acted negligently in the matter so as to cause the loss. The keys to the office into which the money was were held by different people and as such the appellant could not exercise full control of the office into which there was money.

Although the Republic supported the conviction, the court feels it rather unsafe to uphold the conviction against the appellant. The extent of the appellant's negligence in this connection would not amount to that which is contemplated to constitute an offence with which the appellant was charged. To hold the appellant liable in thus event would be to flog a wrong horse. This court is loath to do that.

As a result, this appeal succeeds and is allowed. The conviction is quashed and the sentence imposed set aside. The appellant is to be released forthwith if not in prison for lawful cause.

Delivered in chambers this 31st day of July, 1982 at Mtwara.

Mr. Kaduri, State Attorney, for the Republic.

Appellant, absent.

R.J.L. RUHUMBIKA

JUDGE

