

IN THE HIGH COURT OF TANZANIA

AT MWANZA

APPELLATE JURISDICTION

HIGH COURT CRIMINAL APPEAL NO. 154 CF 1982

(Original Criminal Case No. 91 of 1981 of the District Court of Bunda District at Bunda - Before P. Z. Kagali, Esq., District Magistrate)

NYABUNDEGE S/C MUGETA.....APPELLANT
(Original Accused)

versus

THE REPUBLIC.....RESPONDENT
(Original Prosecutor)

CHARGE: Store breaking and Stealing c/ss 296(1) and 265 of the Penal Code.

J U D G M E N T

MUNYERA, J.:

The appellant and another person Robert Brushi were jointly charged for storebreaking and stealing M.C.H. milk. The appellant was a Medical Assistant at Bunda health centre and his co-accused a watchman at the same place. It was stated that during the night of 21/10/81 the M.C.H. Store was broken into and 20 bags of milk were stolen. The appellant and his co-accused were suspected. They were arrested and charged. In his defence the appellant denied that he broke the store. His co-accused also denied the charge. The appellant was convicted and sentenced to 5 years. The other accused was acquitted. The appellant has been represented in the appeal by Mr. Rugarabamu.

The whole evidence adduced against the appellant was circumstantial. It was said that because he was holding the keys of the doors of the offices or rooms adjacent to MCH store, he had opened those doors and entered and from there he climbed over the wall and entered the MCH store and took out the milk. A sketch plan was produced in court and indicated that the premises in question had 7 doors each with a lock and key. These were marked ABCDEFG and H. Two doors B and H led into the MCH office and door C opened into the MCH store. It was admitted that the appellant kept keys for doors ABCE and G while the coordinator of the MCH, one Nancy Peter (PW.4) kept keys for doors C and H. It was undisputed that the appellant did not have the key for the milk store. It was the prosecution's case that the appellant opened the MCH office and from there he climbed the door into the MCH store and took out the milk through a window which they marked D. Therefore the question was the possession of the keys. In this connection the doctor in charge, Waziri Juma (PW.3) stated among other things:

"..... doors ABCE and G keys are kept by the 1st accused (appellant). Doors C and H keys are kept by the MCH Coordinator. I cannot tell who is holding the duplicate keys."

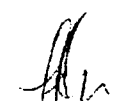
The appellant in his evidence said he held one key each. The MCH Coordinator (PW.4) said in his evidence:

...../2.

"I keep keys for door C and H. The rest of
the door keys are kept with the 1st accused."

He did not say who kept the duplicate keys of these doors C and H. According to the evidence of the doctor in charge the appellant and the coordinator each held one set of keys of the relevant rooms. The other set was held by unknown person. It was possible for that unknown person to use the other set of the keys to open the rooms and steal the milk. The trial magistrate made a finding that the appellant held two keys for each door ABDEFG but this was against the evidence of the doctor in charge who said he did not know who held the duplicates, meaning that the appellant's assertion that he held one key for each door was true. I find that the circumstantial evidence left other possibilities so it did not point irresistibly to the guilt of the appellant. I allow the appeal, quash the conviction, set aside the sentence and order his release.

MWANZA
15/11/82


F. A. MUNYERA
JUDGE.