

IN THE HIGH COURT OF TANZANIA  
AT Mwanza

APPELLATE JURISDICTION

HIGH COURT CRIMINAL APPEAL NO. 235 OF 1982

(ORIGINAL CRIMINAL CASE NO. 70 OF 1982 OF THE DISTRICT COURT OF  
MWANZA DISTRICT AT Mwanza - BEFORE E. K. MUTAKI BCS., DISTRICT MAGISTRATE )

JAMES SINTARA : : : : : APPELLANT  
versus  
THE REPUBLIC : : : : : RESPONDENT

J U D G E M E N T

MEA LILA, J.

The appellant JAMES SINTARA was the 2nd accused at the trial in the district court Mwanza. He was charged along with four other accused persons with the offence of shop breaking and stealing contrary to section 296 of the Penal Code. The appellant along with the 1st and 3rd accused persons were convicted as charged and sentenced to five years imprisonment under the Minimum Sentences Act 1972. The 4th and 5th accused persons were acquitted. I think on the evidence on record the 4th accused should not have been acquitted. However the appellant alone appealed against both his conviction and sentence arguing that he should not have been convicted on the evidence of an accomplice that is to say Accused No. 4, and with regard to the sentence he said that the property stolen was not public property so he should not have been sentenced under the Minimum Sentences Act and that in any case the sentence of 5 years was too harsh.

The 1st, 2nd and 3rd accused persons were all employed as tailors by the complainant one AMERIA MBEKENGA (PW 1), who owned a tailoring shop at Kirumba Stadium. The 1st accused Alphonse Alela was so to speak the foreman for he was responsible for the security of the shop and he kept the key thereof. On 6/2/82 when he reported for duty at the shop, he found that the padlock had been tampered with and in his own words, when he touched the door he found that it had been broken and when he checked inside he found that ten heads of sewing machines had been stolen. He raised an alarm and went to report to his employer who directed him to go to the Police Station and make a formal report about the breaking. Throughout that day the appellant and his colleague the 3rd accused did not appear at their place of work, the complainant therefore strongly suspected them and asked the 1st accused to trace them at their respective places of residence. Meanwhile during the night on 7/2/82 something was taking place at Igoma on the outskirts of Mwanza town. During that night the Militia in the area were making a house to house search for unemployed vagabonds. In the course of this search they reached the house where the 5th accused rented a room. In this room the Militia found something covered in sacks. When they uncovered it, they found eight heads of sewing machines of different makes. They asked the 5th accused as to whom they belonged, he said that they had been taken there by the 4th accused. The 4th accused was traced and questioned. He agreed taking them there but he explained that they belonged to two people who had brought them to him and that they would be collecting them the following morning. He added that he did not know their names, but that he knew them by face. It was decided to keep Militiamen at the Busiya Hotel where the 4th accused worked and arrest anybody who came to claim the goods. Indeed the following day the appellant and the 3rd accused arrived at the Hotel and asked for the 4th accused. They were arrested by PW 4 NILA SHAMBA.

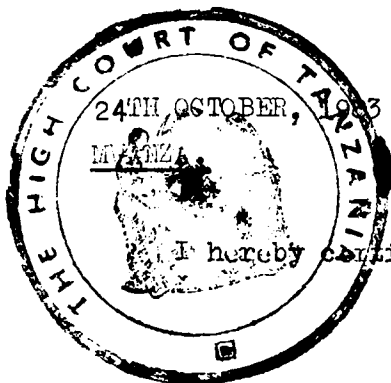
In his defence the appellant denied these allegations. He said that on 6/2/82 he did not report at his place of work because his wife was travelling that day. Then on 8/2/82 he went to Igoma to buy some khangas, which he did not get because the person responsible could not be seen. But he met one Veda a friend of his who informed him of the breaking at their shop. It was while Veda was telling him this story that Militiamen appeared and arrested him for having been involved in the breaking into of the complainant's shop. This he denied.

The only link between the appellant and this offence is the evidence of his co-accused the 4th accused. According to this accused the appellant and his friend the 3rd accused went to him at about 10.00pm and asked him to keep in safe custody their luggage until the following morning when they would leave for Musoma. They told him that their luggage consisted of sewing machine heads which they were taking to Musoma where they were moving their business. As he lived far from the road, the 4th accused asked his colleague the 5th accused the use of his room for this purpose and he took the room key. He went and deposited the luggage in the 5th accused's room. To prove his point the 4th accused said on his arrest that the two people responsible would come to fetch their luggage. It was for this reason that the Militia laid an ambush at the Busiya Hotel where the 4th accused work. They intended to arrest whoever came to ask for the 4th accused. The appellant and his colleague did exactly this and the 4th accused identified them to be the people who had taken the luggage containing sewing machine heads. The appearance of the appellant and his colleague at the hotel asking for the 4th accused collaborated the latter's evidence. There was another corroborative factor. Both the appellant and the 3rd accused worked at the place where the very machines had been stolen, they had disappeared from their place of work since the theft and what is more the 4th accused had no reason to make false allegations against them. I therefore agree with the trial magistrate that the appellant took part in the breaking of his employer's shop and stole the machine heads. Later at night he and colleague took the loot to Igoma possibly as a first phase of their plan to dispose of them. He was rightly convicted and his appeal against the same is dismissed.

With regard to the sentence, the sentence of 5 years imprisonment was proper, my only complaint against it is that it is inadequate. He should have been sentenced to a higher sentence for this ugly and flagrant abuse of his employer's trust. For the information of the appellant, the offence of shopbreaking and stealing is a scheduled offence under the Minimum Sentences Act and the owner of the shop broken into is irrelevant. As the value of the property they stole is more than 5,000/=, the Minimum Sentence is five years.

With these reasons the appeal against sentence is also dismissed.

Delivered in Court at Mwanza this 24th day of October, 1983.



(SGD)  
L. MPALILA  
JUDGE

I hereby certify that this is a true copy of the original.

  
DISTRICT REGISTRAR  
MWANZA.