

IN THE HIGH COURT OF TANZANIA

AT MBEYA

ORIGINAL JURISDICTION

(Mbeya Registry)

CRIMINAL APPEAL NO. 75 OF 2001

(Originating from Mbeya District Court Cr. C.

No. 7 of 1995)

LUTENGANO MOSES APPELLANT

Versus

THE REPUBLIC RESPONDENT

JUDGEMENT

MACKANJA, J.

DOROTHY MBENA (W.1) was the administrative officer of a foreign organization known as IFAD since May 1994. She, on 14th March, 1995, discovered pilferage in veterinary drugs in a store that was managed by her firm through the Livestock Department here in Mbeya. Several people were suspected and quite a few were arrested, some of whom were discharged only to appear later as star prosecution witnesses. The drugs that were found to have been stolen were valued at Shs.169,300.00.

The evidence that links the appellant to the crime is that of Musa Mudonya (PW.4). He testified that at 7.40 a.m. on 3rd March, 1995, while he was on duty as a watchman the second approached him with a suggestion that he and others planned to steal from the place PW.4 was guarding. The witness alleged that the second accused approached him a second time on 5th March, 1995. PW.4 reported the planned theft to the Regional Crimes Officer even though the second accused never carried out his plan to friction to the knowledge of PW.4. On 19th March, 1995, PW.4 picked the second accused from a Police identification parade as the man who had approached him with plans to commit a theft.

The other piece of evidence the trial court relied on was that of D/Sgt. Salum (PW.3) who testified that they found the second accused hiding under his bed when they were led there by the first accused. This, and the testimony of PW.4, was the evidence upon which the conviction was founded. The appellant was aggrieved, so he appealed.

Mr. Materu, learned counsel for the appellant, has raised three grounds which he argued generally, contending that there was no evidence at all which could support a sound conviction. Mr. Mwenda, learned State Attorney, joined issue with Mr. Materu.

Let me say right away that fear of arrest alone, whether or not the appellant was criminally liable, could easily induce a person to seek refuge. It cannot be considered to be evidence of guilt. Now, PW.4 alleges to have seen the second accused, the appellant at 7.40 a.m. on

3rd March, 1995. He claimed to have reported the matter to the office of the Regional Crimes Officer. Government Offices open at 7.30 a.m. for business. Why did not he find it necessary to report the matter to his employer?

As Mr. Mwenda has pointed out, evidence such as that of P⁴ required corroboration. No such corroboration was given. It follows that the conviction is unsound; it cannot be allowed to stand.

The appeal is allowed. Conviction is quashed, the sentence of five years imprisonment is set aside. It is directed that the appellant be discharged from prison forthwith unless his continued detention is justifiable on some other legal excuse.

Delivered.

(Sgd.)

J. M. MACKANJA

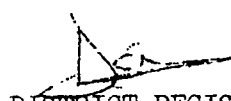
JUDGE

19.11.2001

Mr. Materu, Adv. For Appellant.

Mr. Boniface, SA: For D.P.P.

CERTIFIED true copy of the Original Judgement.


DISTRICT REGISTRAR