

IN THE HIGH COURT OF TANZANIA

AT MTWARA

APPELLATE JURISDICTION

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HIGH COURT CRIMINAL APPEAL NO. 88/79

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ORIGINAL CRIMINAL CASE NO. 148 OF 1978  
OF THE DISTRICT COURT OF NACHINGWEA DISTRICT  
AT NACHINGWEA

Before P.S. Litanda Esq., SENIOR DISTR. MAGISTRATE

ABDALLAH RASHIDI MAIGA - APPELLANT

versus:

THE REPUBLIC - RESPONDENT

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CHARGE: Stealing by agent c/s 273(b) of the Penal Code.

J U D G E M E N T

Mushi J.-

The appellant, Abdallah Rashidi Maiga, was convicted for the offence of stealing by agent c/s 273(b) of the Penal Code and he was sentenced to five years imprisonment. He is appealing against such conviction and sentence.

The appellant was the Chairman of Nambambo village. This village like many others in this area, was an agent of Cashewnuts Authority in so far as the village purchases cashew nuts on behalf of the Cashewnut Authority of Tanzania. The money to purchase the Cashewnut is given to the village by the C.A.T.A. and the village must remit produce to the C.A.T.A. of the value of the money received.

It is not disputed that out of the money given to the village to purchase cashewnuts, Shs.5,000/- was unaccounted for. It is also in evidence, and admitted by the appellant, that this amount of Shs.5,000/- was given to the appellant by his colleagues in the village committee to go and purchase beans for sale in the village shop. I think it must have been agreed that after the sale of the beans, the amount of Shs.5000/- would be put back into the account of C.A.T.A.

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The appellant said that he bought twelve (12) bags of beans from the National Milling Corporation and handed the twelve bags to PW.4 Mustafa Chilumba who was the village shop manager. The appellant said that he handed to PW.4 - Cash Sale and cash balance, which he did not remember how much it was together with the twelve bags. On the following day the appellant asked PW.4 to hand over the paper he had signed acknowledging the receipt of Shs.5,000/- but PW.4 told him that he had destroyed it. The appellant continued and stated that a letter was received from C.A.T.A. demanding the return of the said Shs.5,000/- PW.4 - Mustafa denied to have received the twelve bags of beans. This Mustafa told the court and I quote:

....."On the same day I handed the money to the 4th accused - 16/12/77 at about 10.00 a.m. I saw a lorry parking outside the shop at the corner of the building and I saw some bags being off loaded and then the vehicle left as well as 4th accused. I saw some people coming from the market who took away the bags and outside I only saw a bag which was not full - and at about 4.00 p.m. 4th accused came who asked me to take the bag which was outside containing beans (~~mbaazi~~) and I placed it in the shop. After refusing to take it but I was ordered to take it. I told Osward and Athumani Mkusa to examine the bag, and told them that 4th accused has ordered me to take that bag and sell the beans in the shop. I recorded the names of the people who brought the beans and after completing selling the beans I got only cash Shs. 200/50.....".

Osward Hamisi - PW.5 and Athumani Mkusa - PW.6 told the court that on the day in question, he saw the 4th accused came with National Milling lorry and some bags were off loaded some of which were taken by some people to the market and some were taken to the shop. None of the two witnesses were able to say exactly how many bags were taken to the market and how many were taken into the shop as the two were busy with their tailoring work. Another piece of evidence which require consideration, is that given by Yusufu Musa - DW.2. This witness said that one day he bought three bags of Kunde and two of Choroko from the village shop and paid the money to the shop manager - Mustafa but this manager refused to issue a receipt. This witness went to sell the beans in the market.

On the evidence as it is in this case, the question to be answered is whether infact the appellant handed twelve bags of beans to the shop manager as claimed by him. As I have stated above the appellant was the village chairman and when he took the money all the other committee members signed and this was after the committee had discussed about it. The appellant said in his evidence that he brought twelve bags of beans and handed over to the shop manager - PW.4 Mustafa, together with cash sale and cash balance and at the time he gave evidence he did not remember how much was the cash balance. Neither did he ask for the chit on which he had signed to acknowledge the receipt of the money. The money was handed over to the appellant by a committee and the appellant was to account for the money to the committee. It is not understood as to why the appellant should not hand over the bags of beans to the committee or at least show them the bags before they were handed to the shop manager. It is also not understood how the appellant could had over the cash balance without bothering to know how much it was when he was required to account for the Shs.5,000/- which money he said he handed over was part of it. Twelve bags of beans in a village is considerable amount of commodity and it cannot just disappear without considerable public notice. The shop manager is under the Chairman who is the appellant and as I have said if twelve bags were put into the shop it would have been a matter of public notice and it would be difficult for the manager to deny the receipt of such bags. The Manager took pain to call some witness to witness the one bag he received and recorded each kilo he sold. This exercise can not be a frame up and no suggestions have been put forward as to why the manager should tell lies to implicate the appellant. Both Osward (PW.5) and Athumani (PW.6) said they saw bags being off loaded and some were taken to the shop. There is also the evidence of Yusufu Musa DW.1 who said that he bought three bags of kunde and two bags of choroko from the shop and the manager refuse to issue him with a receipt. It is not realistic for the manager to refuse to issue a receipt for such a amount of commodity. It would also be risky for the buyer to take the beans without a receipt particularly as he was going to sell in the market. It is unlikely that ~~Mu~~Musa bought the beans from the shop. The witness must be one of the people who collected bags from outside as was narrated by the witnesses. The learned trial magistrate after reviewing the

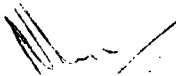
evidence was of the positive finding that the appellant did not hand over twelve bags to PW.4 - Mustafa. And on the evidence as I have pointed above, the trial magistrate was perfectly entitled to come to that finding. The appellant has not raised anything substantial in his memorandum of appeal to warrant this court to come to a different finding. However since the bags of beans fetched Shs.200/50, the appellant is guilty of stealing Shs.5000/- less this Shs.200/50. For the reasons I have given this appeal fails and it is accordingly dismissed.

Regarding the sentence, the learned trial magistrate sentenced the appellant to five years imprisonment because the amount stolen was Shs.5,000/-. According to the evidence the one bag of beans fetched Shs.200/50. This amount should be taken as remitted part of Shs.5,000/-. By simple arithmetic, the amount unremitted is

$$\begin{array}{r} 5000.00 \\ -200.50 \\ \hline 4799.50 \\ \hline \end{array}$$

It was therefore not mandatory for the appellant to have been sentenced to five years prison term. The sentence of five years is reduced to that of three years imprisonment. The order of compensation is also varied to the effect that the amount of compensation to be paid is Shs.4,799/50. In conclusion therefore, the appeal against conviction is dismissed, the sentence is varied to that of three years and the amount of compensation is varied as above.

Judgement read before the State Attorney, Mr. Sengwaji, in Chambers today 10th April, 1981.

  
N.M. Mushi,  
Judge  
10/4/81