

IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

(CORAM: MNZAVAS, J.A., MFALILA, J.A., And LUBUVA, J.A.)

CRIMINAL APPEAL NO. 62 OF 1994

BETWEEN

JAMES MALEGESI MKANGARA APPELLANT

AND

THE REPUBLIC RESPONDENT

(Appeal from the conviction of the
High Court of Tanzania at Dodoma)

(Mwalusanya, J.)

dated the 12th day of August, 1992

in

Criminal Appeal No. 41 of 1992

JUDGEMENT OF THE COURT

MNZAVAS, J.A.:

The appellant James Malegesi Mkangara was charged with and convicted of 49 counts of stealing by a Public Servant c/ss 270 and 265 of the Penal Code by the Dodoma District Court; and was sentenced to between three years and eight years imprisonment. The sentences were made to run concurrently making a total of 8 years imprisonment. Dissatisfied with the finding of the trial court he appealed to the High Court against both the conviction and the sentence. The High Court dismissed his appeal in its entirety and confirmed the sentences. Still dissatisfied he has come to this Court.

In his memorandum of appeal he attacks the High Court judgement saying that the learned judge erred in believing the evidence of the Accountant (PW.1) and that of the Auditor (PW.7)

that they checked his books of account and found them to be discrepant to the tune of Shs. 575,686/10.

In ground four of his memorandum of appeal he argued that the learned judge misdirected himself in law in believing that he had confessed that he had stolen the money and that his cautioned statement Exhibit P1 should not have been acted upon to his detriment.

In rebuttal Mr. Kaduri, learned Senior State Attorney, supported the conviction. The learned Counsel submitted that over and above the cautioned statement to the police, there was other evidence supporting appellant's conviction and referred the Court to the evidence which showed that bank paying-in slips which the appellant had filled and signed showing the amounts he had collected but not banked between 9/6/88 to 10/8/88 - (Shs 575,686/10) were found in his office by the accountant PW.1.

In dismissing the appeal the learned judge said inter alia:

"As the learned magistrate who tried the case pointed out, the issue at the trial was as to whether the appellant handed over that cash to the accountant vide a dispatch book. In my considered view the learned magistrate rightly dismissed that claim. I agree with the learned district magistrate that there was no such dispatch book in existence ... The suggestion advanced by the appellant was preposterous and a cock and bull story."

We entirely agree with the lower courts' assessment of the credibility of the appellant. Given the overwhelming evidence in

support of the charge of theft against the appellant; his defence is more remarkable for its display of imagination than for its veracity; and it must be conceded that he obviously has a talent for fiction. Apart from appellant's cautioned statement to the police admitting the theft which statement the learned judge found that there was "no reason to suggest that it was not voluntary"; there was also the evidence of the accountant (PW.1) which was to the effect that the appellant had confessed to him that he had used the money. There was no suggestion leave alone evidence that the accountant had reason to tell lies against the appellant so as to cause him his undoing.

On the question of appellant's retracted confessional statement to the police - Exhibit P1 which statement the appellant argued that there was no corroboration of his retracted confession we would like to reiterate that "corroboration is not necessary in law. The Court may act on a confession alone if it is fully satisfied after considering all the material points and surrounding circumstances that the confession cannot but be true" - TUWAMOI v UGANDA - (1967) E.A. 84; to mention but only one of the many decisions on the point. As we have already mentioned above both the lower courts were of the view that appellant's confession to the police could not but be true.

On the totality of the evidence we agree with the learned Senior State Attorney that there was ample evidence ⁱⁿ support of the conviction. In the event we have no alternative but to order that this appeal be dismissed in its entirety.

DATED AT DODOMA THIS 24TH DAY OF APRIL, 1995.

N. S. MNZAVAS
JUSTICE OF APPEAL

L. M. MFALILA
JUSTICE OF APPEAL

D. Z. LUBUVA
JUSTICE OF APPEAL

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


(M. S. SHANGALI)
DEPUTY REGISTRAR