

IN THE HIGH COURT OF TANZANIA

AT TABORA.

APPELLATE JURISDICTION.

HIGH COURT CRIMINAL CASE NO.45 OF 1974

ORIGINAL CRIMINAL CASE NO.227 OF 1973

OF THE DISTRICT COURT OF TABORA DISTRICT AT TABORA.

BEFORE H. A. MSUMI Esq., RESIDENT MAGISTRATE.

EMMANUEL s/o HAMISI APPELLANT

versus

THE REPUBLIC RESPONDENT

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CHARGE: Stealing goods intransit c/s 269 (c) and 265 of the Penal Code Cap.16 Volume I of the Laws.

JUDGEMENT.

Mwakasendo, J.


The appellant, Emmanuel Hamisi, appeals from his conviction and a sentence of 5 years' imprisonment for stealing goods in transit, that is to say 29 cartons of cigarettes, contrary to section 269 (c) and 265 of the Penal Code. As the property belonged to a specified authority and its value was over Shs.5,000/=-, the trial Magistrate, in accordance with paragraph (d) of Section 5 of the Minimum Sentences Act, 1972, imposed a sentence of 5 years' imprisonment on the appellant.

The brief facts of the case for the prosecution were these. It was alleged that Police Constable Stafford and Inspector Maturege (P.W.3 and P.W.5 respectively) were on duty at the Tabora Railway Station when at about 3.00 a.m. they discovered that on a siding a wagon No. CL 62754 fully loaded with cigarette cartons, the property of B.A.T. had been broached and some cigarette cartons, 29 in number had been stolen. As they were conducting an investigation on this incident, they saw some persons acting suspiciously in the vicinity of the broached wagon. On being challenged, the suspects took to their heels and were closely pursued by the two police officers. All the suspects, with the exception of the appellant, disappeared into the night and were never see again. The appellant however, after running away from the Station, he went straight to a motor vehicle

parked near the stadium along the Isebya Road. He got into the vehicle and the vehicle drove away in the direction of Isebya. The vehicle in question was identified by the two officers as vehicle Registered No. BK 4957. A few minutes later the vehicle drove back along the same road heading for the town. It was stopped and the appellant, identified by the officers as the same person who had got away from them earlier on and another, an Arab were found sitting in the vehicle. On inspection of the vehicle six cigarette cartons bearing identification labels marked 70602 x 346 were seized. These identification marks were similar to identification marks on the consignment of cigarettes in the broached wagon. That the six cartons of cigarettes found in the vehicle came from the broached wagon was further confirmed by the finding in the vehicle a piece of wire used for the sealing of Railway wagons. The two suspects were then arrested and taken to the Police Station where they were charged with the offence of stealing goods in transit. Unfortunately the case could only proceed against the present appellant because the Arab suspect absconded while on bail.

Appellant in his defence denied the offence alleging that the police told lies when they said that he was arrested near the National Stadium at about 3.00 a.m. in the night of the 8th/9th June, 1973. According to him at that time he was at home and no where near the National Stadium. The appellant went on to assert that he was in fact arrested at about 6.30 a.m. on the 9th June, 1973 as he was driving in a hired tai going to the Railway Station. This account differs completely from that given by witnesses for the prosecution. But accepting the two police officers as witnesses of truth which the trial Magistrate did, I do not think there can be any doubt that the evidence adduced in the case fully supports the conviction of the appellant. I cannot therefore accept appellant's contention that the police for reasons best known to themselves conspired against him in order to involve him in this serious crime. This assertion which is plainly a malicious afterthought is devoid of any merit and it is duly rejected.

Since the sentence imposed is the minimum prescribed by law, I direct that this appeal be dismissed in its entirety. It is accordingly ordered.


Y.M.M. Mwakasendo,
Judge.

21/8/1974.