

**IN THE HIGH COURT OF TANZANIA****AT DAR ES SALAAM****CRIMINAL APPEAL NO. 178 OF 2004**

(Appeal from the decision of the Resident Magistrates Courts of  
Dar es Salaam at Kisutu Criminal Case No. 436 of 2002 before  
Hon. Kiseto/Mwakipesile dated 2002)

**THOMAS S/O MATUBE ]**  
**JAMAL S/O MOHAMED ].....APPELLANTS**

**VERSUS**

**THE REPUBLIC..... RESPONDENT**

**JUDGMENT****MANENTO, JK:**

The two appellants, Thobias s/o Matube and Jamal s/o Mohamed and another, Ally Omary Mbanga were charged of two counts, namely stealing goods in transit c/s 269 of the Penal Code and Neglect to prevent a felony c/s 383 of the Penal Code. They had all pleaded not guilty to the charge. At the end of the proceedings and judgment, the appellants were found guilty and convicted of the first count and acquitted on the 2<sup>nd</sup> count. Ally s/o Omary Mbanga was found not guilty in all the two counts. He was accordingly acquitted in both counts. The two appellants were sentenced to serve a (5) five years imprisonment term, with effect from 30/9/2004. They believed that the trial magistrate erred in convicting them basing on the evidence

before the court. They preferred this appeal. The Republic is supporting both the conviction and sentence imposed on the accused persons.

The facts of the case were briefly that the appellants were found stealing sugar which was on transit, on 8/8/2002 at. 3.30 hrs at Railway Malindi yard of TRC Dar es Salaam Ilala district in the city of Dar es Salaam. They jointly stole 25 bags of sugar each containing 50 kgs from wagon No. GGB(W) 56068, all valued at shs.750,000/= which were on transit to Kigoma port, the property of Tanzania Railway Corporation.

The appellants raised several grounds of appeal, most of which were nothing but repetition. However they contended that the prosecution did not prove the case beyond reasonable doubts. But the prosecution evidence, which was not contradicted by the accused persons were that three police officers who were on patrol arrested the accused persons with the stolen sugar at the scene of the crime. They were PC. Veronica PW1; CPL. Ezekiel, PC Frank and PC Christopher, PW Pc. Veronica and PW3 PC Christopher testified that they arrested the accused persons at the scene with the stolen sugar. PW2 Salim Salimin a commercial officer with TRC proved that the sugar, being the property of TRC proved that the sugar, being the property of TRC was on transit to Kigoma Port while PW4 Godfrey Kuyonga, a clearing and forwarding clerk of 01AU testified that the sugar

belonging to OIAU was intended to T.R.C. for transport to Kigoma port. The sugar in question was found hidden in the nearby bush where as the 1<sup>st</sup> appellant was found with an empty bag which was used in refilling of the sugar. Infact, the stealing was done by making holes in the bags of sugar while in the wagon, through an air opening in that wagon. Thus the sugar did speal through that air opening. If the accused persons were so arrested at the scene of crime, with the stolen sugar, I don't see how they can believe to say that the prosecution had not proved the charge. They had no claim of right and aspontation had already been done. So the offence termed stealing was proved.

The appellants complained that the conviction was based only on the police witnesses. Unfortunately, the law in regard to evidence does not exclude police officers from being prosecution witnesses. If it were not the police who are working day and night, then the accused persons would not have been arrested. Those police officers while in their normal duty, patrolling at that time, 3.30 am, they saw the accused persons and others who managed to escape, stealing the sugar.

The first appellant, Thobias who was the watchman, instead of guarding the properties of his employer, he colluded with other persons to steal the property of his employer. Then under the circumstances of the case

no one legally constituted court could arrive into any other conclusion than that one arrived to, by the trial court. That is a finding of guilty.

This appeal, as rightly submitted by the learned state attorney lacks any merits. The appeal is therefore dismissed and the sentence of five years imprisonment confirmed.

  
A.R. Manento

**JAJI KIONGOZI.**

6/7/2005

6-7-2005

Coram: A.R. Manento, JK

Fro Respondent - Mr. Mwipopo State Attorney

Appellants - Both present and Mr. Magesa Advocate

Cc: Claudius

Court: the judgment is read in the presence of the accused person and their respective attorneys.

  
A.R. Manento

**JAJI KIONGOZI.**

6/7/2005