**Ramadhani v Republic**

**Division:** Court of Appeal at Dar Es Salaam

**Date of judgment:** 4 March 1974

**Case Number:** 5/1974 (29/74)

**Before:** Sir William Duffus P, Law Ag V-P and Musoke JA

**Sourced by:** LawAfrica

**Appeal from:** High Court of Tanzania – Biron, J

*[1] Criminal Law – Corruption – By public servant – Loan – Lack of interest not necessarily conclusive*

*that consideration inadequate.*

**JUDGMENT**

The considered judgment of the court was read by

**Law Ag V-P:** The appellant, a superintendent of police, was convicted by a resident magistrate of an offence contrary to s. 6 of the Prevention of Corruption Act 1971, and was sentenced to three years’ imprisonment. His appeal to the High Court was dismissed. He now appeals to this court against conviction. The offence charged against the appellant was that on 15 February 1973, he obtained for himself an advantage for a consideration which he had reason to believe was inadequate, to wit a cheque for Shs. 2,000/-, from one Popat whom he knew or had reason to believe to be concerned in a matter or transaction with himself as a public officer. The facts of the case are that towards the end of January 1973, two members of the Board of Management of the Aga Khan Hospital complained to the then Inspector-General of Police, Mr. Aziz, that officials of the hospital were being subjected to harassment and threats of involvement with the police by two persons, Amirali Baloo and Popat, with the object apparently of having the matron of the hospital dismissed and replaced by Popat’s wife. Mr. Aziz instructed the appellant to investigate the complaint. The appellant asked the complainants to submit statements in writing by 30 January. They did not do so. On 15 February the appellant obtained a loan of Shs. 2,000/- from Popat. On 16 March the appellant submitted a report to the Commissioner of Police, C.I.D. In this report, he set out his instructions from Mr. Aziz to hold the investigation. He referred to the failure of the complainants to submit written statements by 30 January and commented “from that day till now I am still waiting to receive the statements”. He referred to an interview with various people including “a Government lawyer” on 3 March “regarding this matter”, and concluded with the following recommendation – “Please continue with the investigation”. It seems perfectly clear to us, on these facts, that on 15 February 1973, when Popat lent the appellant Shs. 2,000/- at his request, the appellant was engaged in investigating a matter with which Popat was concerned. Mr. M. A. Lakha for the appellant has submitted that Popat’s connexion, if any, with the inquiry, was too remote to involve him being concerned in the matter with the appellant. With respect, we do not agree. As the judge on first appeal remarked, the appellant had been ordered to investigate the activities of Popat and of the police over whom Popat apparently had so much influence. Clearly Popat was concerned in a matter with the appellant as a public officer. Mr. Lakha also submitted that by 15 February the matter had died down, and ceased to be of concern. This submission, in our view, is disposed of by the fact that the appellant, in his report of 16 March, recommended that the investigation should continue. That report contained several references to Popat and to the allegations against him. The other grounds of appeal relate to the adequacy or otherwise of consideration for the loan. It is common ground that the loan was to be free of interest, but there was evidence that the appellant and Popat were friends of many years standing, and could almost be described as brothers. Popat had often advanced smaller sums to the appellant in the past, not only free of interest but without expectation of repayment. Mr. Lakha submitted that the absence of interest in this case was immaterial; the promise to repay which could be enforced by a suit on the cheque, together with the relationship of close friendship which had existed between the appellant and Popat for many years, provided adequate consideration for the loan for the purposes of s. 6 of the Prevention of Corruption Act. On this point Mr. Lubuva for the State submitted that a loan made without provision for interest must be for an inadequate consideration to the knowledge of the borrower, and he relied on a dictum in the judgment of this Court in *Haining v. Republic*, [1970] E.A. 620 at p. 624, when we said: “In the case of a loan, the ‘adequate’ consideration will not be merely the promise to repay, but also the promise to pay interest at least the lowest rate at which the borrower could have borrowed elsewhere. . . .” In *Haining’s* case, this Court was concerned with a transaction of loan between persons “who had been acquaintances but not friends”, and the dictum cited above should be construed in that context. In the instant case, we are concerned with persons whose relationship was very close, and the failure to provide for interest does not have the same significance as in *Haining’s* case, especially having regard to the previous transactions between the parties in this case. We agree with Biron, J. that the mere absence of interest is not in itself proof of inadequate consideration for the purposes of s. 6 aforesaid; each case must be decided on its own facts. In the case now under consideration there are concurrent findings of fact in the two courts below that the appellant, before obtaining the loan, had told Popat that he was the subject of an investigation being conducted by the appellant. This circumstance, together with the failure to provide for interest, and the fact that previous although much smaller loans had not been repaid, left the courts below with no doubt that, in obtaining the loan of Shs. 2,000/- from Popat on 15 February 1973, the appellant obtained for himself an advantage for a consideration which he knew to be inadequate, at a time when he knew that Popat was concerned in a matter with himself as a public officer. We are accordingly of the opinion that the appellant was properly convicted, and this appeal is accordingly dismissed. *Order accordingly.*

For the appellant:

*MA Lakha*

For the respondent:

*D Lubuva* (Senior State Attorney)