

PC ~~GT 482~~

Judgment  
40,1956 Tanganyika  
✓

In the Privy Council.

No. 9 of 1956.

ON APPEAL FROM THE COURT OF APPEAL  
FOR EASTERN AFRICA

20 FEB 1957

UNIVERSITY OF LONDON  
W.C.I.  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

BETWEEN

LAILA JHINA MAWJI (Wife of Kassam Ali Karim  
Mawani, the second Appellant) and KASSAM ALI  
KARIM MAWANI ... .. *Appellants*

AND

HER MAJESTY THE QUEEN ... .. *Respondent.*

RECORD OF PROCEEDINGS

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INSTITUTE OF ADVANCED  
LEGAL STUDIES,  
25, RUSSELL SQUARE,  
LONDON,  
W.C.1.

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# In the Privy Council.

No. 9 of 1956.

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## ON APPEAL FROM THE COURT OF APPEAL FOR EASTERN AFRICA

BETWEEN

LAILA JHINA MAWJI (Wife of Kassam Ali Karim  
Mawani, the second Appellant) and KASSAM ALI  
KARIM MAWANI ... .. *Appellants*

AND

HER MAJESTY THE QUEEN ... .. *Respondent.*

## RECORD OF PROCEEDINGS

No. 1.

Charge.

Name and tribe or nationality of person(s) charged :

LAILA JHINA MAWJI, wife of K. K. MAWANI ;

KASSUMALI KARIM MAWANI, both Ismaili Khoja's of 27 Mkunguni  
Street, Dar-es-Salaam.

Offence-section and law :

COUNT 1 : CONSPIRING to obstruct, prevent, pervert or defeat the  
course of justice, Contra Section 110 (a), Penal Code, Cap. 16, The Laws.

10. COUNT 2 : RETAINING property feloniously stolen or obtained, Contra.  
Sec. 311 (1) Penal Code, Cap. 16, the Laws.

Particulars of offence :

COUNT 1 : The persons charged on 17.11.54 between the hours of  
3 p.m. and 4.30 p.m. at No. 37, Mkunguni Street in the Municipality of

In the  
District  
Court of  
Dar es  
Salaam  
District at  
Dar es  
Salaam.

No. 1.  
Charge.  
19th  
November,  
1954.

In the  
District  
Court of  
Dar es  
Salaam  
District at  
Dar es  
Salaam.

No. 1.  
Charge.  
19th  
November,  
1954—  
*continued.*

Dar-es-Salaam, conspire together to obstruct, prevent, pervert, or defeat the course of justice, in that the said persons did conceal a German made wall clock bearing the trade mark "Mouthe" which they well knew was required for the purposes of an enquiry into a criminal offence.

COUNT 2: The persons charged did on a date unknown between 13th April and 17th November 1954 in the Municipality of Dar-es-Salaam, retain property, to wit, a German made wall clock bearing the trade mark "Mouthe," knowing, or having reason to believe, the same to have been feloniously stolen or obtained.

Charge amended.

(Sgd.) J. A. SCOLLIN, R.M.  
20/11/54.

10

Station Dar-es-Salaam (Msimbazi).

19th November, 1954.

(Sgd.) ? EAGER,  
*Public Prosecutor.*

No. 2.  
Proceed-  
ings.  
20th and  
25th  
November,  
1954.

No. 2.  
Proceedings.

IN THE DISTRICT COURT OF DAR-ES-SALAAM DISTRICT AT DAR-ES-SALAAM.  
Criminal Case No. 3563 of 1954.

REGINA

20

*versus*

1. LAILA JHINA MAWJI.
2. KASSAMALI KARIM MAWANI.

20/11/54. Cor : J. J. McPhillips, R.M.

PROS. : A. S. P. Connolly, Police.

2 Accused present. Charges read over. The 2 accused wish to brief an advocate and request an adjournment until 25/11/54.

Accused are therefore not asked to plead at this stage.

PROS. : "25/11/54 is suitable date. No objection to bail."

Each accused is remanded on his/her own bond of Shs. 4000/- and 30 one surety of Shs. 4000/- to appear before the Court at 09.00 hours on 25th November, 1954.

(Sgd.) J. J. McPHILLIPS,  
R.M. 20.11.54.

25/11/54. Cor. : J. A. Scollin, R.M.

PROS. : Connolly.

Both accused present represented by Mandavia.

CONNOLLY Ask for amendment to charge. For words during 1954

in second count I wish to substitute "on a date unknown between  
" 13th April and 17th November, 1954."

ORDER : Charge amended in terms of amendment requested.

Charge read over and explained to accused who state :

In the  
District  
Court of  
Dar es  
Salaam  
District at  
Dar es  
Salaam.

### PLEAS OF ACCUSED.

1st Accused : Neither count is true.

2nd Accused : Neither count is true.

Entered as pleas of not guilty.

(Sgd.) J. A. SCOLLIN.

10

CONNOLLY. I ask to add word "pervert" to count 1 to bring item  
into line with Section 110 (a).

MANDAVIA. No objection.

ORDER—Charge amended accordingly.

(Sgd.) J. A. SCOLLIN.

No. 2.  
Proceed-  
ings,  
20th and  
25th  
November,  
1954—  
*continued.*

### PROSECUTION EVIDENCE

#### No. 3.

#### Evidence of Derek Gwynne Cawley Eager.

Prosecution  
Evidence

#### No. 3.

Derek  
Gwynne  
Cawley  
Eager,  
25th  
November,  
1954.  
Examina-  
tion.

P.W. 1. DEREK GWYNNE CAWLEY EAGER, Xtian, sworn :

20

I am Superintendent of Police i/c Crime branch Dar-es-Salaam.

On 13th April report was made to police about theft from premises  
of Vaju Raj.

The report was made by Mr. V. S. Ramji.

He reported that one German made wall clock has been stolen with  
word "Mouthe" printed on front.

Investigations followed on this report without success.

On 4/11/54 I received information about a clock of this description.

On this report I told Inspector Solanky to make further enquiries  
since the information was extremely vague.

30

As a result of these enquiries, I interviewed this Mr. Ramji and as  
a result of this interview, while I was still not satisfied I decided to go to  
the premises of the accused.

I went to the premises at 3 p.m. on the afternoon of 17th November,  
1954. Inspector Solanky went with me to interpret from English into  
Gujerati and the reverse.

I did not obtain a search warrant. The reason I did not was that  
I was not satisfied with the information and I wished to make enquiries.

The premises are at 37 Mkunguni Street.

When I got there Mrs. Mawani (i.e. Mawji the first accused) in this

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District at  
Dar es  
Salaam.

Prosecution  
Evidence

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Derek  
Gwynne  
Cawley  
Eager,  
25th  
November,  
1954.  
Examina-  
tion—  
*continued.*

case was there. That is the person I saw. (Witness identifies 1st accused.)  
There is a shop in front facing on the street, a bedroom behind it and a living-room beyond the bedroom. There is an inside passage joining them.

The 1st accused was in the shop when I got there.

I told her that I had received certain information which I would like to discuss with her. She agreed and let Inspector Solanky and myself come into the living-room.

I then told her that I had received information that a clock in her house was the property of another person. I told her that my information was very vague and that it would be up to this other person to prove the clock was his. 10

I saw a clock on the wall of the living-room. The clock answered the rough description I had of the stolen clock. The clock was over the window above the settee.

I asked her if I could examine this clock. She refused.

I was speaking in English and Inspector Solanky was speaking in another language.

After her refusal, I pointed out that the clock was the subject of a police enquiry and that I wanted to see the clock. She again refused. 20

I then said that I would be obliged to seize the clock for the purposes of this enquiry.

She called a boy (boy brought into Court). That is the boy (gives name Jama Salum).

He climbed up on the settee and took clock down and handed it to me. I examined the clock.

It had "Mouthe" printed on the face, and also on polished wooden surface of face. Between figures IV and V and the centre of the dial, I noticed some faint scratches.

I recalled that Mr. Rajey had said that there were faint scratches on the face of his clock. 30

I examined the back. There was a rough hole in the wood about a  $\frac{1}{4}$ " deep. The wood on the back of the clock was painted green. But not the hole or niche. This "hole" was a hollow gouged out.

There were two pieces of metal holding the clock on the wall, one fixed to the wood work at the top of the clock, the other down at the mechanism.

It is a circular clock of radius of about 8 inches made of polished wood with a glass cover. The numerals are Roman and word "mouthe" is in gold. There is a wooden lip right round the clock with an enclosed mechanism chamber at the back, about 4" in diameter. 40

I did not seize the clock.

I handed it back to 1st accused.

I did not think the identification was sufficient.

I asked the first accused where she got the clock from. She told me to ask her husband.

I asked her when he would be home. She said at about 4.30 p.m.

I went away then. Inspector Solanky knew where her husband worked. That is the person we saw (witness identifies 2nd accused).

We went then to the Accounts Section, P.W.D. in Tancot House, Dar-es-Salaam.

I went there and saw him.

I told him I was making enquiries about a clock. I told him I had seen this clock in his house and described it to him. I omitted the word "Mouthe" and Inspector Solanky added this name. The accused said "Yes, I know what you mean." He spoke in English.

10 I asked him where he had got the clock and he said he had bought it from the Haideri Company in Dar-es-Salaam.

As I was leaving, I asked him if he had a key to the clock. He said, "No I have lost it." The reason I asked this was because the complainant Mr. Rajey had told me that he still had the key to his clock.

I asked him also about the hole in the back of the clock. He said he had made this hole himself when trying to repair something. He said the clock had been under the bed and the children had played with it and they spoiled it. He said he had painted the back with green paint.

I then left the second accused.

20 Later I told Inspector Solanky to go to the house and come along to my office with the clock so that we could settle the matter.

The second accused came, but not the first and the 2nd accused did not bring the clock. This was about 4.20 the same day that is 17/11/54.

I asked him for a statement about his ownership of the clock.

The 2nd accused then spoke about a table clock, so I said he must be confused and we had better visit his house so that I could show him the clock I meant. We drove to his house and I made a note to this effect on the statement which I had started to write in my office.

30 On arrival at his house, I went into the house with the second accused and I observed that the clock was no longer there. It had been replaced by a photograph of the 1st accused. 1st accused came into the room with us.

I continued the statement. The 2nd accused said he did not know of a wall clock.

At this stage, I now cautioned him. I then asked him if he would give me a statement concerning the clock and would include a reference to the boy whom I had seen the first time. I had seen him again before the statement was taken.

40 I now produce the statement which I took. I read over the whole contents of the paper including my remark to accused. He agreed that it was correct and signed it.

(Statement put in and marked Exh. A.)

The only clock I saw when I came into the room was a table clock on a cabinet to the left of the door coming in from the passage.

I have seen this clock on my first visit. It was in the same place. I had not examined it on my first visit.

In the District Court of Dar es Salaam District at Dar es Salaam. Prosecution Evidence No. 3. Derek Gwynne Cawley Eager, 25th November, 1954. Examination—*continued.*



In the  
District  
Court of  
Dar es  
Salaam  
District at  
Dar es  
Salaam.

Prosecution  
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No. 3.  
Derek  
Gwynne  
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Eager,  
25th  
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Examina-  
tion—  
*continued.*

I took possession of this clock. This is the table clock which I now produce.

(Produced clock put in and marked Exh. B.)

Both accused were in the room. So was Inspector Solanky.

I asked both accused about the clock I had seen on the wall. Inspector Solanky translated for the 1st accused. They both said there never had been a wall clock. The 1st accused said I had examined the table clock.

The table clock was thickly covered with dust.

On the arm of the settee were marks made by the feet of the houseboy who had got the clock down. Just before I cautioned the accused and after seeing the marks on the settee, I called in the boy and asked his name. He said Juma Salum. 10

I asked him in the presence of the two accused whether he had climbed up on the settee to get a clock off the wall. He said he had. I pointed to the place where the clock had been. Neither accused said anything at this time about his statement.

After the 2nd accused's statement had been taken, A. S. P. Godby arrived.

I prepared a Police Search Order. Sent for some witnesses and instructed A. S. P. Godby and Inspector Solanky to search the premises for this clock. 20

I stood by and observed.

They did not find the clock.

I produce the search order. (Put in and marked Ex. C (1).) I also produce the signatures of the witnesses on the report on the search. (Put in and marked Exh. C (2).)

I also took possession of the photograph which I found in the place where the clock had been. I now produce the photograph. (Put in and marked Exh. D.)

I asked the accused how many servants they had. The 2nd accused said they had two and a Kibarua—a casual labourer. 30

I asked the first accused if she would like to make a statement. I warned her that she need not say anything and gave her the usual caution. I spoke in English through Inspector Solanky.

She made a statement which I now produce. I read this over to her through Inspector Solanky and she agreed it was correct and signed it. (Statement put in and marked Exh. E.)

Before I left the house I drew a rough plan of the premises and from it and my observation I made a plan which I now produce. (Put in and marked Exh. F.) 40

On the following day I obtained a search warrant from the Court. On this occasion I had the sewer cleaned out and a man sent down to look for the clock. He did not find the clock.

On the 19/11/54 Mr. Ramji brought me a "Mouthe" clock. I now produce this clock. (Put in and marked Exh. G.) I have seen a clock similar to this once before. The similar clock I saw was the one hanging on the wall in the house of the accused.

I mark in pencil on Exh. G the area where I found gouged out on the clock in the house of the accused.

From the appearance of the hole, I would have thought it might have been made in an attempt to reach the works. There is no apparent way of getting to the mechanism enclosed at the back.

The whole of the back, except for the mechanism container and this hole was painted green.

The clock I saw was above the window marked " Y " on the plan.

The clock (Exh. B) was on the glass cabinet marked Z on the plan.

10 I have made other endeavours to find the clock but I have been unsuccessful.

192 (2) and 204 C.P.C. complied with.

(Sgd.) J. A. SCOLLIN.

XXD. MANDAVIA.

(Shown Passport.) I look at Tanganyika Passport No. 25437. (Put in and marked Exh. 1.) This looks like 1st accused. She is a little thinner in the face now. The first accused, that is the woman in the dock here said that we should ask her husband.

It was Inspector Solanky pointed out the husband.

20 I have also met the 2nd accused before. I know him to husband of or live with first accused.

I also look at passport No. 17039. The photograph appearing here appears to be the photograph of the 2nd accused. (Passport put in and marked Exh. 2.)

Before I made the enquiries I had been informed that these two persons were married.

There was no number visible on the clock which I saw on the wall.

Mr. Ramji did not produce a key to me.

30 (Shown a key and after using it on Exh. G.) This key winds the clock. (Key put in and marked Exh. 3.)

I do not know Gujerati.

I do not know the standard of Inspector Solanky's Gujerati. He was recommended to me at the station when I wanted to take someone who could speak Gujerati.

I did not suggest that the 1st accused should climb up and get the clock. She said I could not see it. I know her reply was short. I cannot remember what she was wearing at the time.

40 I got to the accused's house with 2nd accused about ten minutes to five. I did not make my mind up to take proceedings until I discovered that the clock had gone.

We have made strenuous efforts to recover the wall clock which I saw.

For all I know they might have thrown the clock away.

(Sgd.) J. A. SCOLLIN.

In the District Court of Dar es Salaam District at Dar es Salaam.

Prosecution Evidence

No. 3. Derek Gwynne Cawley Eager, 25th November, 1954. Examination. Cross-examination.

In the  
District  
Court of  
Dar es  
Salaam  
District at  
Dar es  
Salaam.  
—  
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No. 3.  
Derek  
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Eager,  
25th  
November,  
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Re-examin-  
ation.

No. 4.  
Vrajlal  
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25th  
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1954.  
Examina-  
tion.

RXD. I do not think the clock was going when I found it. I can't remember.

(Sgd.) J. A. SCOLLIN.

XD. COURT. There is a window on the street marked W on the plan. The shop sells foodstuffs mostly. There is only one support on the clock Exh. G. There were two on the one I saw in the house. One was fitted at the top of the mechanism chamber at the back. The boy who took the clock down and gave it to me came from the yard. He left two blurs of dust on the settee. I saw no children.

(Sgd.) J. A. SCOLLIN. 10

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No. 4.

Evidence of Vrajlal Shivji Ramji.

P.W. 2. VRAJLAL SHIVJI RAMJI, Hindu, affirmed :

I am proprietor of Vaju Raj. Vaju Raj is a picture framer and glass shop.

In August 1953, I bought a clock from Abdultayab Adamjee.

It was a wall clock—a German "Mouthe."

In February of this year I bought two more clocks from the same 20  
firm of the same type.

I kept the first one I bought in my office, the second one I kept in my house, the third I gave to a friend as a present.

They were all the same.

On 13th April of this year, I had a theft in my shop. All that was stolen was the clock from the wall.

It was during the day I missed it.

I reported to the police.

On 19th November 1954, I gave a clock to Superintendent Eager 30  
similar to the one stolen.

This is it. (Shown Exh. G.) This is the same as the one in my house and the one stolen.

On the stolen clock there were two hooks: in this one (indicating Ex. G) there is only one. One was at the top as on this one : the other was above the mechanism box. (Witness indicates.)

My clock also had a small scratch on the dial. It was made when I was polishing it.

The scratch was right across from other 9 to 4 or 10 to 3. (Witness indicates numerals on clock face.)

I have seen my clock since it was stolen. 40

I saw in Mkunguni Street in the house of that man. (Witness points to 2nd accused.)

In the middle October at about 11.30 at night my friend told me there was a music party at the accused's house.

I accompanied him but I did not go in. I went in my friend's motor car.

Both of us sat in the car outside. After some time I was tired waiting so I requested my friend to take me home. My friend reversed the car and I saw the clock hanging on the wall through one of the windows.

I know there is a shop in front of the premises.

10 We stopped that night along the side of the shop, not in Mkunguni Street but round the corner about 12 paces away from the door.

When I looked through the window I saw clock on a wall at right angles to the wall in which the window was that I looked through.

I could see only two walls.

(Shown Exh. F.) I make a mark on this plan to show where the car was. The window I looked through is this one. (Witness indicates window marked W on Exh. F.)

When the car reversed down the street, I could see the clock at this point. (Witness indicates point Y on Exh. F.)

I just saw it as the car went past the window.

20 I asked him to halt the car and take it forward so that I could see more clearly. He did this.

The window of the house is low and I could see clearly into the room while sitting in the car.

I did not see anyone in the room.

The room was lighted.

After I looked at the clock we went away.

I later reported this to Inspector Solanky who is a friend of mine.

The clock is valued 140/-.

I do not know either of these two accused personally.

30 I do not know the name of the shop.

I know they have a shop. I know it was this place I saw that night.

192 (2) and 204 C.P.C. complied with.

(Sgd.) J. A. SCOLLIN.

XXD. MANDAVIA :

I saw no other clock in the room that night.

After having a second look at it that night I could have sworn it was my clock.

The window was a normal window. A man can see through it.

40 I don't know whether there was mosquito gauze or not. I think there were iron bars.

The window doors were opened inside. I don't know how many doors there were. I don't know these things. My attention was down to the clock I saw through the window and not to the window itself.

My clock had been stolen 6 months before.

I think the whole window was open but I saw no one inside.

My friend did not go inside. We both waited outside.

He told me he wanted to go there.

In the District Court of Dar es Salaam District at Dar es Salaam.

Prosecution Evidence

No. 4. Vrajlal Shivji Ramji, 25th

November, 1954

Examination—*continued.*

Cross-examination.

In the  
District  
Court of  
Dar es  
Salaam  
District at  
Dar es  
Salaam.

I do not know whether he was invited or not.  
(Shown a card.) I have not seen a card like this before. (Invitation card put in and marked Ex. 4.)

Some of our friends were also waiting outside. The person who took me there was Mr. Maganlal Kanji Nanji. There were three or four other cars. Three of these were, Vithal, Akber Joshi and Harji. I did not notice anything else in the room.

Prosecution  
Evidence

No. 4.

Vrajlal  
Shivji  
Ramji,  
25th  
November,  
1954.  
Cross-exam-  
ination—  
*continued.*

The music was also coming from the yard. It was played on Indian instruments, including a harmonium. There are two kinds of harmoniums, one of which is played while sitting down on the ground. I could not tell which was being played. 10

(Shown Ex. F.) There is a shop. I see this plan says the next room is a bedroom. Behind this is the room where I saw the clock.

Indian use the bedroom for music.

I don't know whether any of the windows in the bedroom were open.

My car was parked about 10 or 12 feet from the gate of the yard on the road.

I could not know where they were sitting, which of these two rooms marked on the plan. If there is little space they could sit out in the yard.

As we were going away, people were coming out of the yard to take tea. 20

I bought all the clocks at the same price 140/-.

(Shown invoice.) This is my invoice from Abdultayab Adamjee. It says one wall clock—German 120/-. It does not mention name "Mouthe" (Invoice put in and marked Ex. 5).

(Shown another invoice.) This is another invoice for the two clocks I bought later. This does not say German Clocks, nor does it say wall clocks. The price of the second two is not the same as the first. I could not remember. (Invoice put in and marked Exh. 6.)

There is another man who has one of these clocks. He is a tailor by profession. I do not know his name. 30

I have seen the tailor's clock from a distance. His shop is on the main road.

I believe no one else has them except that this man and the one which I gave to my friend.

I do not know whether the sale of these clocks has been retained to one person.

I did not see the scratch on the face of the clock when I looked it through the window. It is a very slight scratch.

The clocks all have golden figures and a wooden rim. Apart from this I could not tell. 40

Inspector Solanky is a friend of mine. He has been a friend for one or two years.

I made the complaint at the end of October or beginning of November.

I reported the theft in April right after it was stolen about 10 minutes later.

I showed the police the similar clock which I also had. I showed the

clock to a police-man who was with Inspector Solanky here today. The police told me to bring the other clock.

I never mentioned the fact to Inspector Solanky that I had made a report about the theft.

Two or three weeks after seeing the clock in the house I reported to Sub Inspector Solanky about it. He met me on the road so I told him there. I did not think fit to go to the police station immediately after seeing the clock again.

10 I saw the police about 3 times after this report. The first time Solanky told me Mr. Eager wanted to see me. The second time I again saw Mr. Eager. The third time I saw Inspector Solanky when he told me I was to come to Court on 25/11/54. Inspector Solanky suggested we should go to see the premises where I had seen the clock but we never went. We could have gone.

I would have gone if Inspector Solanky had come to collect me as he arranged.

I say the clock was mine.

I was very busy at my work so I could not report to the police. That is why I told Inspector Solanky when I met him on the street.

20 It is true I went to the music party. I was not invited. There is a custom where we can go to anyone's music party. We could have gone inside. I saw my clock on the wall but I did not go inside just went away. I was not going to do nothing about the matter.

XD. COURT. I know of no markings on the back of the stolen clock that the taker or someone else might want to hide. I could not have mistaken the clock for that one (indicates Exhibit B) or for this (shown Exh. D).

(Sgd.) J. A. SCOLLIN.

In the District Court of Dar es Salaam District at Dar es Salaam.  
 Prosecution Evidence  
 No. 4. Vrajlal Shiva Ramji, 25th November, 1954.  
 Cross-examination—  
*continued.*

No. 5.

Evidence of Juma s/o Salum.

30

P.W.3. JUMA s/o SALUM. Mohamedan, affirmed :—

I am a cook.

I work for Mr. Mawji.

I see Mrs. Mawani here. This is her (witness indicates 2nd accused).

I work for her at Chura Street. Her shop—Eros Stores is there.

I remember seeing some police officers at the store.

I cannot remember when. It was not long ago.

I was called in to see them in the room nearest the compound.

40 There was a European Inspector and an Indian Inspector and that woman Lela (Witness indicates 1st accused).

No. 5. Juma s/o Salum, 25th November, 1954. Examination.

In the  
District  
Court of  
Dar es  
Salaam  
District at  
Dar es  
Salaam.

Prosecution  
Evidence

No. 5.  
Juma s/o  
Salum,  
25th  
November,  
1954.  
Examina-  
tion—  
*continued.*

I was told to take down a wall clock. I was told to climb on the couch.

This wall clock was just above a window.

The couch was already there and I had to climb on it.

It was a round clock.

I see one like it here. This is like it (Witness indicates Exhibit G).

I took the clock down.

I gave it to the European Inspector.

I went out after handing it over to him.

I have worked for these people for a year.

The first time I saw the clock was about a month before the Inspectors came but I spend most of my time in the kitchen.

I saw the Inspectors again on the same day about five o'clock.

I was in the compound and an Indian Inspector called me into the same room.

The same European Inspector was there and 1st and 2nd accused were also there.

When I got in I was asked by the Inspector whether when they had come there it was I who had taken down the clock. I did not see the clock on the wall this time.

I have not seen it since. I still work there.

(Shown Exh. B.) I have seen this clock on top of the cupboard on the wall near the door of the bedroom. This cupboard is in the same room as the wall clock was hanging.

I had seen this clock for a long time.

I am sure this clock (indicating Exh. B) is not the clock I took down from the wall.

I and three other boys work for the accused.

192 (2) and 204 C.P.C. complied with.

(Sgd.) J. A. SCOLLIN. 30

Cross-exam-  
ination.

XXD. MANDAVIA.

I do not clean the room in which I saw the wall clock. I do not go into this room.

I spend my time in the kitchen.

When friends of the accused come they occupy both rooms, the first and the second one. The first room coming in from the compound is the sitting room.

The name of the boy who cleans the sitting room is Asmani Haji.

The accused have one child.

I do not know what age it is.

I could not be definite how long anything has been in this room.

I have seen a harmonium there. It is about 3½ feet high in the sitting room. A person playing it sits on a chair.

I know there is a window opening onto Chura Street. This window has four doors or flaps on it, two above and two below. It also has mosquito gauze wire.

When the windows are open, one cannot see people sitting inside if one is outside. The height of the window is about 3 feet. This window can open completely onto the street.

(Sgd.) J. A. SCOLLIN.

In the District Court of Dar es Salaam District at Dar es Salaam.

RxD. I have not heard any other music than the harmonium. It is played by hand.

(Sgd.) J. A. SCOLLIN.

Prosecution Evidence

10 Xd. COURT. I remember the party for the accused's son. I prepared the cakes. I saw the visitors outside. It was before this that I saw the clock on the wall.

No. 5. Juma s/o Salum, 25th November, 1954.

(Shown Exh. D.) I have seen this before too in the same room in the house and the clock. I left a mark on the couch when I climbed up. It was a foot mark. There was no mark there before I climbed up.

(Sgd.) J. A. SCOLLIN.

Cross-examination—continued. Re-examination.

No. 6. Evidence of Asmani Abdalla.

No. 6. Asmani Abdalla, 25th November, 1954. Examination.

P.W.4. ASMANI ABDALLA. Mndengereko, Mohamedan, affirmed :—

20 I am a houseboy for Mr. Mawani. I see him here (Witness indicates 2nd accused). Mrs. Mawani is also my employer. This is Mrs. Mawani (Witness indicates 1st accused).

I started working on the 10th of this month.

(Shown Exh. B.) I have seen the clock before. It was on top of the cupboard in the house where I work. The house is at the corner of Mkunguni Street and Chura Street.

This clock was kept on the cupboard in the room which is the first one at the left (sic) when one comes in from the yard.

I have seen another clock there. This other clock I saw was on the wall. It was a round clock. I see one like it here. That is the one. (Witness points to Ex. G.)

30 I still work for the accused. I do not see the round clock. The last time I saw it was the day when the police came.

(Shown Exh. D.) I have seen this before. It was on the wall in the same room on the wall clock—on a different wall.

I have never seen anyone doing anything to the clock.

192 (2) and 204 C.P.C. complied with.

(Sgd.) J. A. SCOLLIN.



In the  
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Court of  
Dar es  
Salaam  
District at  
Dar es  
Salaam.

ORDER. Adjourned to Saturday 27/11/54 at 9 a.m. Accused's bail continued.

(Sgd.) J. A. SCOLLIN.

27/11/54. Cor : J. A. Scollin.

Pros : Accused and Counsel as before.

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Prosecution  
Eviduucc

—  
No. 6.  
Asmani  
Abdalla,  
27th  
November,  
1954.  
Cross-exam-  
ination.

ASMANI ABDALLA, reaffirmed :

XxD. The accused have one child. I do not know what age the child is.

I know they are married because they live in one house.

Two policemen came—one was a European Inspector, the other was 10 an Indian.

The Indian Inspector came first. I was in the shop at the time. This was about 10 a.m. He came alone.

He went away inside with first accused. I heard them talking.

He did not stay long. When he went out he was talking to the first accused. They were talking in the normal way.

I did not see any car outside.

I was sitting outside the shop. I did not see him coming up to the shop.

I saw him again that day at 3 o'clock. He was with another Inspector 20 in a car.

The room in which I saw the wall clock has two windows. One window faces Chura Street, the other one faces the compound.

The one facing Chura Street has gauze wire on it. The window is about 4½ feet above the floor.

If the window is open persons outside can see the people inside.

They had no musical evenings while I have been there.

The two accused get many visitors.

I work all day at the premises. I work in the yard.

There is a bamboo staircase in the yard.

I live on the premises. I sleep in the yard.

I sometimes go out with messages.

(Sgd.) J. A. SCOLLIN.

30

No. 7.  
Franklin  
William  
Solanky,  
27th  
November,  
1954.  
Examina-  
tion.

No. 7.

Evidence of Franklin William Solanky.

P.W. 6. FRANKLIN WILLIAM SOLANKY, Xtian, sworn :

I am sub inspector of police attached to Central Police Station.

I know Mr. V. S. Ramji of Vaju Raj.

I received a report from Mr. Ramji on 4th November, 1954.

He met me on the road and reported to me that in early 1954 a wall clock was stolen from him and that he had seen it in the house of Mr. and Mrs. Mawani.

I reported the matter to Superintendent Eager. He asked me to get more information before taking any action.

Later I accompanied Superintendent Eager to their house. This was on 17th November, 1954, at about 3 p.m.

We saw Mrs. Mawani at the premises. That is Mrs. Mawani. (Witness indicated 1st accused.) She was in the shop.

10 We spoke to her from outside the shop at first. Superintendent Eager told me to ask her if we could enter. The 1st accused does not speak English—I spoke in Gujerati. I speak Gujerati fluently.

She said “ You can come in ” and we went into the sitting room. This is the last room on the left hand side behind the shop. The three of us were there.

Superintendent Eager told me to explain to her in Gujerati whatever he said. I did so thereafter during the interview.

20 I told her that a person reported to me that a wall clock which had been stolen in early February had been seen in her house. I asked her to let me see it if this was so. I told her that there were many clocks of this type in town and that it was up to the person making the complaint to prove it.

She said “ I will not show you the clock.”

We could see the clock on the wall at this time. The clock is above the window on the right hand wall as one enters the room.

I recognized this clock from the description given to me.

I told her that if she did not show us the clock we would seize it. I also told her that it was a police enquiry only.

30 She then called “ Juma ” and a houseboy came. She told him to get down the clock from the wall.

Juma climbed on the settee and then on the window and got the clock down and handed it over to Superintendent Eager.

I examined the clock with Superintendent Eager.

It was a round wooden clock marked “ Mouthe.” It was similar to this one. (Witness points to Exh. G.)

The clock had a scratch between the figures IV and V—a very light scratch on the glass.

The wooden part behind was painted green, that is the back of the clock.

40 There was a very small hole behind the clock. The hole was not painted green. (Witness indicates by direction to prosecutor spot on clock held up at such a distance as to mark the pencil mark made on it during course of evidence invisible.) The hole was beneath the mechanism chamber.

The clock was hanging on a nail on the wall. There are two hooks at the back, one on the rim, the other on the top of the mechanism chamber.

We returned the clock to the first accused and asked her when her

In the District Court of Dar es Salaam District at Dar es Salaam.  
 —  
 Prosecution Evidence  
 —  
 No. 7. Franklin William Solanky, 27th November, 1954. Examination—  
*continued.*

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Examina-  
tion—  
*continued.*

husband would be home. She said he would be home at 4.30.

We then left.

Everything I said was translated from the Superintendent's words. I interpreted all the time. I held no conversation with the first accused myself.

I then went away with the Superintendent. It was 3.30 p.m. We went straight to the office of the second accused.

Superintendent Eager spoke to him in English. I was present.

He said, "We had been to your house and seen your wife. Now we have come to see you." 10

He said "A certain person has reported to us regarding one wall clock which is now in your house. We have seen your wife regarding it and your wife has told us to see you."

Mrs. Mawani had said when she refused to show us the clock "I know nothing about it my husband can tell you everything about it."

Mr. Mawani said "There is a wall clock in my house which has green paint on the back. I painted it myself. It has a hole in it. I made the hole while repairing it." These were the actual words used by him.

I told him it was a "Mouthe" clock we were talking about.

Superintendent asked him where he bought the clock. He said he had bought it in early 1952 from Messrs. Haideri. 20

Superintendent Eager asked Mr. Mawani to give him the Inspector, his phone number and told him we would see him later.

It was about 3.50 when we left the 2nd accused's office.

At about 4.10 I got instructions from Superintendent Eager to go and get Mr. and Mrs. Mawani and the clock and bring them to the office.

I went there.

I saw Mr. and Mrs. Mawani in the shop.

I asked Mr. Mawani to take Mrs. Mawani and the clock to the Central Police Station as Inspector Eager wanted to see them. 30

Mr. Mawani finished the tea which he was taking in the shop and came straight out and got into his car. I had been outside the shop and I stayed there until Superintendent Eager and Mr. Mawani came back in the car.

When they came back, we all went into the same sitting-room. Mr. and Mrs. Mawani were there and the Superintendent and myself.

I noticed then a photograph had replaced the wall clock. (Shown Exh. D.) There is the photograph.

I did not see the clock.

Superintendent then asked Mr. Mawani in English, "Where is the wall clock which we were talking about in your office." 40

The second accused replied, "I was talking about a table clock not a wall clock." I saw a table clock there. This is it. (Witness points to Exh. B.)

Superintendent Eager told me to ask Mrs. Mawani where the wall clock was which he had seen that afternoon.

Mrs. Mawani said, "I did not show you a wall clock. I showed you

this table clock" and she pointed to the table clock. (Witness points to Exh. B) which was standing on a cupboard.

The Superintendent told me to pick up the table clock and the photograph and asked Mr. Mawani to produce the wall clock. Mr. Mawani said he knew nothing about a wall clock but knew only of a table clock.

The Superintendent then asked me to call the boy Juma. I did so and he came.

10 Superintendent asked Juma "Do you remember at 3 o'clock we came here and you were asked by Mrs. Mawani to get down the wall clock which was above the window?" and he pointed to the window.

Juma said "Yes, I remember."

The Superintendent then pointed out a mark on the arm of the chair and the window, the chair which Juma had climbed up on that day.

He said to Juma, "Is this the footprint made by you to-day" or words to that effect. Juma said "It is."

Superintendent Eager told me to tell the 1st accused that Juma said this was his footprint.

I cannot remember what she said but she agreed that the footprints were made by Juma.

20 The second accused said "The footprints might have been made by the children."

A statement was taken from Juma and written down by Superintendent Eager. I stood by.

After the statement was taken I read it over to Juma and then I got instructions from Superintendent Eager to get a search order and search the house. I did so but we did not find anything.

Mr. Eager and I then left.

30 During the search I saw a harmonium in the sitting-room and a loud-speaker also in the sitting-room. It was an extension of the radio which I also saw. I saw only one extension.

I have seen the two accused several times before.

I believe that they are Ismailis. I do not know.

I acted as Interpreter in the statement taken from the 1st accused. I gave her the caution that she did not have to make any statement and that anything she said would be taken down in writing. She made a statement which I translated to Superintendent Eager. He wrote down and I translated it. (Shown Ex. E.) This is the statement which I read back to her in Gujarati and which she signed.

40 On 25/11/54 I went to premises of Taherali Sulemanji. From there I got a repair book, which I now produce. (Put in and marked Exh. H.) 192 (2) and 204 C.P.C. complied with.

(Sgd.) J. A. SCOLLIN.

XXD. MANDAVIA.

I did not see anyone make the entry in this book.

I do not know the handwriting of the clerk who said to me he made the entry in this book.

I have known both accused for the last 10 years.

I know them by their names as Mr. and Mrs. Mawani. I have known

In the District Court of Dar es Salaam District at Dar es Salaam.

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No. 7.

Franklin William Solanky, 27th

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Examination—*continued.*

Cross-examination.

In the District Court of Dar es Salaam District at Dar es Salaam.  
 Prosecution Evidence  
 No. 7. Franklin William Solanky. 27th November, 1954. Cross-examination—  
*continued.*

them as this since they got married about 3 years ago. I have known them as married for the last 3 years.

I did not give particulars of their names and address to Superintendent Eager. On 4th November I told him that they were Mr. and Mrs. Mawani.

I do not know the first name of either of the accused persons. I know their first name. The first accused is known as Miss Laila or she is known as Mrs. Laila I do not know her father's name. The second accused's first name is Kassum. I do not know his father's name.

I agree that as a matter of general reputation over the last 3 years the two accused have been known as Mr. and Mrs. Kassum Mawani. 10

If I had framed the charge sheet I would have called them Mr. Kassum Mawani with the other names added before his surname and Miss Laila Mawani with the other name added before her surname.

I know V. S. Ramji by name.  
 He is not a friend of mine.

I take reports from people in the road.

I asked Mr. Ramji to come to the police station the next day. He came on 5th November to see me at the police station. I had already reported to Superintendent Eager on 4th November.

The information I tried to get from Mr. Vaju Ramji was what type of clock his was, where he got it and whether such clocks were available in the town. 20

He said they were not available at the time but he showed me the shop where he bought it.

He told me that there has only been 4 clocks of this type imported by the firm from whom he got it.

He said he knew where the other 3 were.

I saw these other 3 clocks. One was held by complainant, the second is with Mr. Pranlal Dewani on Windsor Street and the third one is at the shop of a tailor called "Liberty Tailors" in Steer Street. These clocks were all there on 7th November. I saw Mr. Dewani's on his cupboard: the one the tailor has is fixed in his cupboard also. I saw them while I was out walking in the evening. I did not enquire anything about them. 30

I spoke to the shopkeeper whom Vaju Raj said he got the clock from. He did not show me invoice or books. From what he told me I considered it worth continuing the investigation.

The supplier did not tell me where the clocks were. Vaju Raj told me about the one at the Liberty Tailors.

Mr. Vaju Raj brought me this clock. I did not see it in his house. I did not go into his house. When we spoke to the 1st accused we said that there might be more clocks than the one we saw. I know there were only 4 in Dar-es-Salaam. There might be more in Tanganyika. 40

If I had been at a distance of some 5 or 6 feet away from the outside of the house, I could have said only that the clock I saw on the wall was similar to the one which was described to me.

The scratch I saw between the figures IV and V extended about 1½ inch up from the rim. There were several scratches. I could not say whether there were twenty or not. I can't say how many there were.

I did notice whether the scratch extended from 4 to 10 or 3 to 9. Such a scratch would cover a distance of about 10 inches.

I did not try to count the scratches. I just stood at the side of the Superintendent and watched him. He held the clock.

I would not have been surprised in the light of the information I had from Vaju Raj about this clock to have discovered that it did not belong to Vaju Raj.

10 I never went to the premises of the accused at any time before 3 p.m. on that day the 17th November. I did not go there at 10 o'clock that morning.

I did not have a coca cola there before 3 p.m. I had one when I went there with Superintendent Eager.

I have never been at those premises on any other previous date. I had never been there at all.

Before 17th November 1954 I did not know who was attending the shop.

20 I had heard before that date that the accused's shop was known as Eros Store. Before 17th November I had never seen the facia board of Eros Store. I might have passed the shop before the 17th November but I never noticed the signboard. During the last 3 years I may have passed along Mkunguni Street about four or five times. The last time before this incident that I passed along it would be in October 1954. I noticed no signboard with the words " Eros Stores " on it.

Before the time of getting the report from V. S. Ramji on 4th November and going there on 17th November, I did not pass along Mkunguni Street.

30 I may have seen Mr. and Mrs. Mawani near the premises sometime during the last three years. I have seen them in Mkunguni Street. I thought they would be near their premises but I did not know that Eros Stores was their shop.

I have never talked to Mr. and Mrs. Mawani at any place in Dar-es-Salaam before 17th November, 1954.

I know Mr. Mawani worked for the P.W.D. I knew he was working in P.W.D. Stores. This was a couple of years ago.

I knew that there was a shop at the corner of Mkunguni Street. I have known of the existence of this shop for about a year. I knew beer was sold there. I had seen bottles of beer when passing the shop. I usually pass in the car. I saw the notice advertising I.P.A. beer.

40 The bottles are behind the person in attendance. I did not notice who was serving but I saw someone. It was an Asian. Sometimes it was a man, sometimes a woman was serving. I did not recognize the person.

Mkunguni Street is a narrow street. It is not very busy. I travel about 20 m.p.h.

My friend did not tell me that his clock had a hole at the back of it.

I have not checked at any time the written report made by Mr. V. S. Ramji. When he spoke to me he told me he had given full particulars to the police when the clock was stolen.

Superintendent Eager said he would look up the particulars. I did not look up these particulars in the report.

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Cross-exam-  
ination—  
continued.

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1954.  
Cross-exam-  
ination—  
*continued.*

I knew of only the scratches as identification marks when I went to the house of the two accused.

I have been to musical parties. The last one I attended was at my own house. People park their cars outside and come in. I issue only verbal invitations.

I did not try to see if I could look in the window and see the clock on the wall.

The first time I went to accused's house on 17th I did not take a search warrant with me.

It was I who pointed out the clock to Superintendent Eager.

I could have taken the clock off the wall myself. She called the boy. She was wearing a frock at the time.

She did not suggest that it would be improper being dressed as she was to climb up on the sofa.

(Shown Exh. H.) This is the book of a Watch Repairer. His name is Ambubhai. I got this book on 25th November.

I did not ask the watchmaker about the entries after 6th October to the date I took the book. I noticed that certain entries preceding 6th October are not in chronological order.

I did not have a quarrel with 1st accused on the morning of 17th November and that I used my friend's report of 4th November as a lever to put certain pressure on her.

Between 4th and 17th November, we were trying to get more information about the stolen clock. We completed our enquiries on 17th November. Superintendent Eager was engaged in the investigation with me.

I did not press Superintendent Eager to take the clock away when we were going at 3 o'clock.

When I left the premises of the accused I was satisfied the clock I had seen was my friend's clock. The reason I did not seize it was that Superintendent Eager said we were merely making a police enquiry. I would not be surprised to hear that Superintendent Eager did not share this conviction that the clock was V. S. Ramji's clock.

Superintendent Eager had more information than I had about the clock. I did not conclude that the clock belonged to V. S. Ramji because he is my friend. He is not my friend. It would not be true to say he had been my friend for the last two years.

The first accused had to depend on me to translate what Superintendent Eager was telling her.

She was angry when she was first asked to show the clock. She refused. I remember her refusing once. She became frightened when the Superintendent told her that he would seize the clock. She did not remain frightened until we went. While Superintendent Eager was holding the clock she looked frightened. When he handed it back she looked pleased.

I knew that Mr. and Mrs. Mawani had previously been in trouble over a case in the Court and that they were acquitted. (Answer in reply to leading questions by accused's counsel.)

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30

40

I agree that they might not wish to go through a lot of trouble and expense again.

At 3 p.m. when I left the premises of the accused I would not have been surprised to discover that this clock had been legitimately obtained. I would not be surprised if she had been frightened about what happened that afternoon and threw the clock away.

My friend did not tell me of any markings on the back of clock which might have been obliterated by the paint.

(Sgd.) J. A. SCOLLIN.

- 10 *Order* : 1. Adjourned until 10/12/54 at 9 a.m. for continued cross-examination.  
 2. Accuseds' bails continued to that date.

(Sgd.) J. A. SCOLLIN,  
 27/11/54.

10/12/54. Cor : J. A. Scollin, Resident Magistrate.  
 Pros : Connolly.  
 Accused both present and represented.

XXn. *continued* : It is true that I visited Rajey Tailoring Mart since I was last in the witness box in this case.

- 20 (Shown a photograph.) This is a photograph of the shop I visited (Put in and marked Exh. 7).

This shop is near the house where I live near Asia Street. I know the proprietor of this shop by sight.

I do not know whether or not there is now in Dar-es-Salaam a firm known as "Liberty Tailors."

(Shown photograph.) I know a shop between Prabhat studio and Liberty Cold Drink House. It is a tailor's shop I mark the tailor's shop in ink on the photograph (Photograph marked with X by witness put in and marked Exh. 8).

- 30 I know the proprietor of Rajey Tailoring Mart by sight. I visited the Rajey Tailoring Mart about 5.45 in the evening on a day I can't remember.

I saw one of the tailors, not the proprietor. I did not visit the shop as a police officer investigating this matter. I asked this tailor about this sort of clock. (Witness points to Exh. G.) I did not ask to see the proprietor of the shop.

It might have been the same evening as I passed Counsel for the accused. It may have been Thursday 2nd December. It was about 5.45 p.m.

- 40 I cannot agree that to get authentic information about a clock similar to this one in this case I should see the proprietor.

I did not send my friend Mr. Vaju Raj to see the proprietor of this shop.

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No. 7. Franklin William Solanky, 27th November, 1954. Cross-examination—*continued*.

10th December 1954. Cross-examination—*continued*.



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I do not know whether after being greeted on this evening by Counsel for accused, my friend Vaju Raj went to see the proprietor of this shop. I would not be surprised if he had done this.

The shop of Rajey Tailoring Mart is near junction of Steer and Selous Street.

I saw a round-faced clock like the one here (Witness points out Exh. G) in Rajey Tailoring Mart before 25th November.

I also approached the importer of the clocks and I ascertained from him that he had sold one of the clocks to a tailor.

Before 25th November I knew that the proprietor of this Rajey Tailoring Mart had bought such a clock. I knew the proprietor only by face, but not by the name of his shop, nor his own name. 10

The importer told me he had sold a clock to a tailor who had a shop in the Liberty Building along Steer Street. That is how I knew his face. I did not try to find out from the importer when the tailor had purchased this clock. He might have purchased it the day before I made the enquiries. He did not say he sold all the four clocks together. I assumed he had sold it about the same time as he sold the clocks to Vaju Raj.

I did not think it material to enquire when the clock was sold to the tailor. 20

I did not go to the shop because I had reason to believe that this tailor would not if he were called to give evidence support my evidence that I saw the clock there on 7th November. I had no reason to believe this.

I agree as a Police Officer that the evidence of this man as to when he bought the clock and installed it in his shop would be better than the evidence of the man who merely sold it.

I did not attempt in the course of my investigation to have this man available as a witness. My sole object was to find out where the clocks were. This was the scope of my authority.

I had completed my investigation on the 17th November. 30

The reason I went into Rajey Tailoring Mart and saw the Assistant was that I normally pass this shop and see the clock every day but on this occasion after leaving the witness box and before coming here today, I did not see the clock on cupboard as usual. So from the footpath I asked one of the tailors where the clock was. He told me it had gone for repairs.

I don't remember whether or not I saw the clock there on the previous day.

I have been looking at this particular shop to see the clock each day since the importer told me he had sold it to the tailor. I do not remember on which date between 4th and 17th November I saw the importer. I did not make any note in my diary of the date I visited either the importer or the tailor's shop. 40

I do not remember at any time speaking with Vaju Raj about the tailor's clock.

I do not remember what was the last occasion, previous to speaking to the tailor's assistant, when I saw the clock there.

I did not ask any other possessor of one of these round-faced clocks to produce it. I did not ask Pranal Dewani to produce his. I have seen it from outside on the street. I was told by the complainant it was there. I did not notice Dewani's clock from day to day.

I do not know Pyarali Hassanali Damji (man brought into Court). I know this man by sight. I do not know his name (man gives name Pyarali Hassanali Damji).

I have known this man by sight since I was young. I know only his first name Pyarali, but not his second and third names.

10 He is a passing acquaintance only. He is not an enemy of mine. I do not greet him.

If this man said he saw me at the accused's shop at 10 o'clock on 17th November, this would not be accurate.

He was never in my class at school but he studied at the same school once. I never played with him or went about with him.

I do not know whether or not the clock was at Rajey Tailoring Mart each of the three days before the day on which I spoke to the tailor's assistant. I can't remember the last date on which I saw it before speaking to the assistant when I saw it was not on the cupboard. I can't remember  
20 any *particular* day before this one when I did see the clock.

I have known Pranal Dewani since I was young. I did not talk to him about the clock.

I don't remember whether I have seen Vaju Raj since he gave evidence here or not. I might have seen him passing. I have not spoken to him since then.

I have not been into the shop marked " X " by me on the photograph Exh. 8.

I have never seen a clock in that shop.

30 I do not remember where it was that Vaju Raj met me when he made his complaint about seeing the clock. He did not at this time give me particulars of where the other clocks were. He just said he had seen a clock similar to the one which had been stolen from him and he said it was in the house of accused. He said he had seen it when he went to a musical party held at the house of accused. He did not say what was the occasion of the music party.

I believe the accused are Ismailia Khojas. I had no specific reason to believe they were anything else.

I knew the accused by their names and their faces but I had not come into contact with them.

40 I did not know they had a child, nor that the music party was for the child's birthday. I came to know both of these facts after the investigation had begun.

I have not pursued my investigations in this case in a spirit of vindictiveness. I have only done my duty.

I did not tell superintendent Eager that I was in a position to produce V. S. Ramji of the Rajey Tailoring Mart as a witness. I showed no police

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officer the clock in Ramji's shop. Several people have reported in the street to me, cases of theft.

I took my instructions from the superintendent where to go and investigate the matter.

I have kept a note in regard to this case in my police diary.

RXD. Rajey Tailoring Mart is in Liberty House on Steere Street.

There is only one Tailor's shop in Liberty House.

I reported this matter to Mr. Eager on 4th November. I followed instructions in everything after that date. 10

On morning of 17th November I was on duty at Central Police Station.

I started at 7 a.m. and my hours of duty were from 7 a.m. to 3 p.m.

This was the day I went to accuseds' premises.

I was on counter duty at the Police Station.

This involves receiving reports from the public, dealing with them and investigating any report that comes in.

I am not allowed to leave except to make an investigation.

I do not have a car.

I use Government Transport when I am on duty.

There is a vehicle available for my use at the Police Station. If I leave my place of duty during the hours of duty I make an entry in the Occurrence Book (The Duty O.B.). There is one other occurrence book, the Crime O.B. 20

The Occurrence Book contains details of personnel movements.

I left the Police Station on the morning of 17th November. I left only once in the morning.

This was about 9.50.

I went to Windsor Street to Messrs. Vaju Raj.

I went by Government Transport in a landrover GT2887.

I was driven by a driver called Zacharia. I went to Vaju Raj on the instructions of the officer in charge to pay his bill and collect the photograph of H.M. the Queen for use in the station. 30

I was nearly an hour at Vaju Raj.

When I left I came straight back to the Police Station.

The Government vehicle waited for me at Vaju Raj.

When I came back I wrote an entry in the Duty Occurrence Book.

I produce the duty occurrence book. The entries which are made are 1712 and 1716. (Book produced and marked Exh. J.)

Entry 1712 was made by Constable Upton and entry 1716 was made by Inspector Fernandes. These entries were made on my instructions.

The reason I was an hour at Vaju Raj for an hour is that because I went first I could not find him. He was in the workshop. He came in about 10 or 15 minutes. I asked him for the photograph and he went back into the workshop to get it. I waited till he returned with it. 40

The premises of the accused at Mkunguni Street are not near Windsor Street.

The route from the Police Station to Windsor Street would not pass the accuseds' premises. It did not pass them on this occasion.

Pyarali went to the Government Indian Central School with me, both the junior and the Senior school.

There might be about 500 pupils or more at each of these schools.

I visited a number of watch shops and repairers to make enquiries about this sort of round faced clock to see if they import them or know who does and to see whether they ever had this sort of clock brought to them for repairs.

10 I went to approximately 4 shops. Only one shop gave me information about Mouthe Clocks. This was the one along Harding Street. I can't remember the name now—Tayabali Ismail or some such name.

MANDAVIA. I apply to put questions to the witness myself on the ground that new matter has appeared in re-examination. This new matter is in regard to his visit to Vaju Raj's shop and being there for an hour, the existence of an occurrence book and his visit to 4 shops which he did not mention in examination in chief.

20 CONNOLLY : I say no new matter has been introduced and that the matter of the occurrence book and the visit to Vaju Raj's shop were simply put to detract from the truth of the suggestions put in cross-examination.

The visit to the 4 watch shops was brought up by the defence themselves.

Section 138 applies—Commentary on Rattanlal and Thakar 10th Edition quotes Powell on Evidence.

MANDAVIA. The reason I did not object to the introduction of new matter was that I thought I would have a right of questioning after re-examination was completed.

#### RULING.

30 Re-examination of this witness was not confirmed merely to qualifying and explaining evidence elicited in cross examination. With the permission of the Court it was in effect directed to rebutting by anticipation one line of evidence in the defence case for which a foundation was being laid in cross. It is quite proper that the earliest possible opportunity should be taken to rebut an evident defence such as this which involves grave imputations on the credibility of the witness and his character. In so far, however, as fresh material is introduced and the evidence-in-chief modified or qualified or added to, the accused must have a right to cross-examine further as they would in any event have in respect of any rebutting evidence. I therefore hold that accused has a right to cross-examine.

40

(Sgd.) J. A. SCOLLIN.

XxD. MANDAVIA.

Entry 1712 was made by an African constable on my instructions : Cross-examination. entry 1716 was also made on my instructions.

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Prosecution Evidence

No. 7. Franklin William Solanky, 10th December, 1954. Re-examination—*continued.*

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I merely had to collect the photograph. Vaju Raj said: "Wait and I will bring it."

Then he went to his workshop.

He has an office in front. I would not see from there where he was. The showroom of the office looks into an opening off Windsor Street.

I do not know how long the premises are. There are a number of buildings between Windsor Street and the next parallel street.

I can drive but I am not allowed to use Government Vehicle. Zacharia could but would not have taken me. He might have to say where he was.

Windsor Street is about 1 mile from Police Station, is some distance 10 from Mkunguni Street.

I do not know how far the premises in Mkunguni Street are from the Police Station. I went from the Court to Mkunguni Street on 18th November, 1954. I have never been on my own to Mkunguni Street.

A note is kept of the vehicle and the driver in the Occurrence Book. Zacharia is always my driver. He is on duty when I am on duty.

I have talked to him about this visit to Vaju Raj since it was suggested that I was telling lies about where I was at 10 a.m. on 17th November.

The driver told me when I asked him about the matter that he had waited but did not say how long. 20

I have not spoken to Vaju Raj about the visit since I gave evidence before.

XD. COURT. I was in uniform this morning.

When on the 17th November I went back to the house of accused on Superintendent Eager's instructions to bring the 2 accused and the clock to his office, I spoke, in Gujerati to the second accused. The first accused was present and heard what I said. I said "Mr. Mawani, you and your wife and the clock which I and Superintendent Eager saw in your house to-day at 3 p.m. are wanted at the Police Office."

Mr. Mawani got excited and said "Will you let me drink my tea." 30

I told him he could have a cup of tea and then come.

He was taking the tea in the shop. He was at the counter.

I stood outside the shop.

Mr. Mawani came round behind me and got into his car and drove away. I did not say anything to him. He did not say anything to me. I reported the matter by radio which was fitted in the car I had come in to Inspector Eager. I did not see Mr. Mawani all the time. I stood on the other side of the road outside the shop after transmitting the message. When Mr. Mawani passed me I was just outside the shop door. The car was on the other side of the street.

(Sgd.) J. A. SCOLLIN.

40

## No. 8.

## Evidence of Hamid Bin Saleh.

P.W.7. HAMID BIN SALEH, Mohamedan, affirmed :—

I am Liwali of Dar-es-Salaam.

I am authority on Muslim Religion Law.

The Koran lays down how many wives a man may have.

I read from the Koran Section I—Regarding the wife—a man can have 2, 3 or 4 wives.

10 The Koran is binding on all Muslims. There are various sects of the Muslim Religion.

Koran binds every Muslim.

The Ismailia Khojas are a sect of the Mohamedan religion.

XXD. I never read books of Ismailia Khojas.

I know they believe in a Hazar Imam or incarnation of God.

Imam is used in the Koran : it means the Koran itself.

(Shown a marriage certificate.) This is the first time I have seen this certificate or a certificate of this type. (Marriage certificate put in and marked Exhibit 9.)

20 I have married some Ismailia Khojas myself but I do not know what is used as evidence of the ceremony.

Some Africans are Ismailia Khojas.

I am an expert in Mohamedan Law so far as my knowledge goes.

I know something about Muta marriages.

Muta marriages are not mentioned in my Koran.

Muta marriages apply to the Shias. Muta marriages are not accepted by the Sunnis.

The Ismailia Khojas are a sub branch of the Shia Sect.

30 Those who follow Muta marriages are not considered proper Mohamedans. They are in breach of the Koran. They are dissenters and are called Aswi-Mohamedans.

A pure Mohamedan widow gets a fixed share of the estate of her deceased husband.

Not an Ismailia Khoja widow.

In Mohamedan law, a proper Mohamedan widow has an ascertained share : fixed, depending, at  $\frac{1}{8}$  or  $\frac{1}{4}$  :  $\frac{1}{8}$  if there are children,  $\frac{1}{4}$  if there are none. And if there are 4 widows they still have a joint right to only  $\frac{1}{8}$  or  $\frac{1}{4}$  and share it.

Ismailia Khojas have an indefeasible right to a life interest but this is not Mohamedan Law.

40 (Quoted Privy Council decision Privy Council Appeal 38 of 1927.)

These Khojas have rules according to their sect which are not in the Koran.

I do not know the laws of the Ismailia Khojas.

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**XD. COURT:** There is in the Koran no rule that husband and wife are one person or are regarded as such. I refer to part XXVII Sections 3 and 38.

There is however a statement that each of the married couple is like a garment to the other.

It is a condition of a Mohamedan being allowed to marry more than one wife that he can support them.

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(Sgd.) J. A. SCOLLIN.

No. 8.  
Hamid Bin  
Saleh,  
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*continued.*

No. 9.

**Evidence of Haiderali Dawoodbhai Sulemanji Alibhai.** 10

No. 9.  
Haiderali  
Dawood-  
bhai  
Sulemanji  
Alibhai,  
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1954.  
Examina-  
tion.

**P.W. 8. HAIDERALI DAWOODBHAI SULEMANJI ALIBHAI:**

Mohamedan, affirmed:—

I am the Manager of Haideri Stores.

It sells watches and clocks, optical goods and so on.

(Shown Exh. G.) We have never stocked any clocks like that.

I have never seen a clock like this before.

I do not know accused.

I have never sold any clock like this to accused.

192 (2) and 204 C.P.C. complied with.

(Sgd.) J. A. SCOLLIN. 20

Cross-exam-  
ination.

**XXD.** My father, who was an old man, died in December 1952. He used to be in the shop. His name was Dawoodbhai Sulemanji Alibhai.

He used to repair clocks and watches. He stopped doing this about 10 years ago because of blood pressure and heart trouble.

Since I gave up my schooling in 1947 I have known everything that went on in my shop.

I have a stock ledger.

It would not show whether if we had received 13 clocks like Exh. G and sold 2, then there were 11 clocks of this type remaining on hand.

It is not really a stock ledger. It could not tell how many of any particular make and description had been received or issued. We would have to look to our correspondence and invoices to see what particular kind. The ledger would show the amount of any particular type or make 30

we have received, but I would have to check stock to see how many I had sold.

I am assisted by my younger brother. He is 19 or 20. I am 26.

We had an Indian assistant who left us in September 1953. We dispensed with his services then. He was not a good repairer. We did not lose any clocks or watches while he was employed with us.

RxD. Nil.

10 X<sub>D</sub> Cont.: The reason I know we have never had a clock like the Exh. G is that we have regular importers. We only import two types of clock. Smith from England and Kienxle Urhen Bagrick from Germany. I know the make "Mouthe." It is another firm. We do not import from them. I have never seen a clock of Mouthe in the shop.

(Sgd.) J. A. SCOLLIN.

No. 10.

Evidence of Ambaram Vallabh Mistry.

P.W. 9. AMBARAM VALLABH MISTRY, Hindu, affirmed :

I am a watch repairer.

I work for Lavingia and Parikh.

Before I worked for them I worked with Taherali Ebrahim.

20 I repaired watches for them. I worked for them for 1½ years.

I started for them on 7th May 1953. This was my first work in Tanganyika.

I finished with them on September 1954.

(Shown Exh. G.) I have repaired a clock similar to this. I repaired it on 21st July 1954. It belonged to A. Mawani. He brought it to the shop I see him here. That is the man. (Witness points to 2nd accused.)

I keep a note of the orders I do in a book.

(Shown Exh. H.) This is the book in which I keep the note.

30 The note here in the book about the repair says " A. Mawani is indebted " to this firm Shs. 25/- for repairing an 8 day Key clock and another clock." That entry was made in respect of this clock. (Witness indicates Exh. G.)

I repair a lot of clocks.

I remember this one. I have repaired only one of this make. That is the one referred to in the book.

X<sub>D</sub>. There is no mention anywhere else in the book of this repair. It is mentioned on the second last page. Cross-examination.

40 (Shown pages 9 and 10 of Exh. H.) The entries appear here is a regular form. The first column is date, the second is the label number, the third is the name and the fourth is the address of the owner. The fifth is a description of the work to be done. The sixth sets out the number of watches or clocks on which I am to work. The seventh column refers to the amount of cash received as charges for repairs. The eighth column

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Prosecution Evidence

No. 9. Haiderali Dawoodbhai Sulemanji Alibhai. 10th December, 1954. Cross-examination—continued.

No. 10. Ambaram Vallabh Mistry, 10th December, 1954. Examination.



In the District Court of Dar es Salaam District at Dar es Salaam.

Prosecution Evidence

No. 10. Ambaram Vallabh Mistry, 10th December, 1954 Cross-examination—  
*continued.*

refers to monies outstanding. The ninth column refers to the date of delivery of the repaired article to the customer. The tenth column is left in case the article should be returned to me for further attention i.e. if it should not be properly repaired. The eleventh and last column is for the date on which the cash is received. On pages 9 and 10 there are 30 entries between 1/7 and 17/7/54 and on pages 11 and 12 there are 25 entries between 17/7 and 31/7/54. These 25 entries contain 2 relating to 21/7/54.

For August pages 13, 14, 15 and 16 are used for the day to day entries in correct chronological order.

The reason the entries about the accused's clock does not appear on 21st July in the book in its proper place is that sometimes I forget to enter them. 10

My note on the second last page says "Shs. 25/- balance outstanding " on two clocks for 21st July, 1954." The word used is "balance."

No other book shows the account on which this balance has been struck.

I repaired the two clocks on different days.

I have no other note or memorandum to show that I have received a clock from Mr. Mawani on a particular day.

The last page contains entries for July: the one before it contains 20 notes for August: the one before is July: and the one before that is September and October.

The entries for August, July, September, and so on back through the book contains the job number put in opposite the entry.

I have not made job number entries on this page on which the entry about Mr. Mawani occurs.

I was working for the firm in October.

I did not send an account to Mr. Mawani.

The clock was repaired in July. I am quite sure about this. I made this entry for my memory. 30

I made the note when I handed the clock back.

I did not see any bills or invoices about this job.

I do not remember doing any other job for accused but these two.

There are no further entries after July.

This entry was done by mistake.

RXD. Nil.

XD. COURT: I don't remember what kind of clock the other one was that accused gave me.

I cannot remember whether the round clock was plain wood or painted. I saw no markings on it. 40

I just cleaned the round clock.

(Sgd.) J. A. SCOLLIN.

## No. 11.

## Magistrate's Ruling on Conspiracy Charge.

In the  
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No. 11.  
Magistrate's  
ruling on  
conspiracy  
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The two accused in this case are charged on two counts. The first alleges that they conspired to obstruct, prevent, pervert or defeat the course of justice c/s 110 (a) of the Penal Code by concealing a wall-clock which they knew was required for the purposes of an enquiry into a criminal offence. The second count charges that they retained this clock knowing or having reason to believe it was feloniously stolen or obtained. The prosecution case having closed it has been submitted that there is no case

10 to answer against either accused on either count.

On the count for conspiracy, the accused are charged as husband and wife and it is also averred that they are Ismailia Khojas. Their Counsel argues that it is incompetent to charge a husband and wife alone with conspiracy ; there must be two persons at least for conspiracy and husband and wife are one person only ; this is the common law and it has been held in England that they cannot conspire—1 Hawk c. 72, s. 8 ; by Section 4 of the Penal Code, expressions used in it shall be presumed, so far as is

20 “ consistent with their context, and except as may be otherwise expressly provided, to be used with the meaning attaching to them in English

“ criminal law and shall be construed in accordance therewith ” ; in this case there is nothing inconsistent with this meaning in the context of the words “ person ” or “ conspire ” in Section 110 (a) and there is no other express provision ; the facts that they are Mohammedans of a particular sect and that by the religious laws of this sect marriage is polygamous does not matter for the purposes of the criminal law ; the application of their personal law is limited to marriage and succession.

The prosecution argued that since it was the Indian Penal Code and not the common law which was in operation in the territory until 1930 it is that code which should be looked to where there was a deviation from

30 English Law and under that Code no exception as regards husband and wife was recognised in the sections dealing with conspiracy—Gour's Penal Law of India, 2nd Ed. Vol. 1 p. 666, paragraph 1042. It was also argued that local conditions should be looked to in construing the Penal Code ; monogamous marriage is the exception here and is so treated in Section 164 of the Penal Code (dealing with bigamy) and Section 155 of the Criminal Procedure Code. Further, expressions are to have their common law meaning only “ so far as consistent with their context ” (Sec. 4 of the Penal Code) and both these sections are inconsistent with the words in question having such meaning ; the English criminal law assumes

40 monogamy.

I am satisfied that I cannot go behind the specific direction in Section 4 about how expressions are to be construed. The Indian Penal Code was repealed so far as this Territory is concerned by Section 2 of the present Code and it is only competent to refer to the Indian Code and decisions under it when there is a similar or the same section reproduced in the

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present Code. There is no counterpart in the Indian Penal Code to Section 110 (a); and conversely Chapter XLII of the present code differs from Chapter VA of the Indian Code which defined conspiracy. No preponderance of local conditions, either, can justify ignoring Section 4; and I do not think Section 164 of the Penal Code and still less Section 155 of the Criminal Procedure Code can be said to be the "context" of Section 110 (a).

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Magistrate's  
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*continued.*

It may be that in the absence of any specific exception limiting the normal meaning of the word "person," in the case of husband and wife, in the same manner as Section 5 of the Code extends its meaning, "person" 10 means an ordinary individual, man or wife, and excludes any need for special construction at all, in which case the nature of the marriage would not matter and husband and wife even in a monogamous marriage could properly be charged with conspiring with each other in Tanganyika. The only specific provision about a wife's criminal responsibility, as distinguished from a joint provision, is Sec. 20 of the Penal Code following Section 47 of the Criminal Justice Act 1925 and dealing with coercion and not with unity of person which the accepted basis of the English rule about the competency of a charge of conspiracy.

However on the assumption that the terms "person" and "conspire" 20 in Section 110 (a) require to be construed in accordance with the meaning which they have in English Criminal Law, I think this charge must be sustained. In *Warrander v. Warrander* 2 Cl & F. 532, Lord Brougham said: "'Marriage' is one and the same thing substantially all the Christian 'world over. Our whole law of marriage assumes monogamy.'" The accepted common law definition of marriage is reproduced in Section 3 of the Divorce Ordinance (Cap. 110 of the Laws): "The union of one man and one woman for 'life to the exclusion of all others.'" 30 Though subject now to dissolution and annulment, the essence of marriage at common law, that a man can have only one wife at a time, still remains. Despite exceptions at common law and an increasing number of exceptions by statute, it is still an accepted principle of English Law that husband and wife "are 'esteemed but one person in law, and are presumed to have but one will'"— (1 Hawk c. 72 S. 8). It is quite clear, however, that the husband and wife envisaged by this are the husband and wife in a monogamous marriage. No authorities were cited and I have found none to show that in English law this unity of person is accredited to any other union, and in the absence of such authority I cannot assume that this specialised conception of unity extends in English jurisprudence to a potentially polygamous union which has none of the features which are involved in the legal unity. 40 The marriage of an Ismailia Khoja woman does not affect her legal personality (Vesey-Fitzgerald—Abridgement of Mohammedan Law, p. 87); it is not coverture, the woman enters into no disabilities in respect of her property; it is purely contractual and it is polygamous (ibid p. 37). And as far as Tanganyika is concerned the spouses are competent witnesses for the prosecution in all cases (sec. 155 of the Criminal Procedure Code) and a Mohammedan

marriage cannot be made legally monogamous (Marriage Ordinance, Cap. 109, Sec. 3, which is not affected by Section 4 of Cap. 112).

In these circumstances, I hold that the word "person" given the meaning it has in English criminal law does not mean or include the husband and wife in a polygamous marriage nor, since the nature of the union is fixed at the outset does it include a potentially polygamous marriage. Cases were quoted by counsel for the accused to show that for the purposes of English criminal law the personal law of the parties was ignored e.g. Aesop 1836 7 C. & P. 456. Their personal or religious law is not being applied in this case either: it is relevant only in construing the meaning of the word "person" in English criminal law; and I am not concerned with the fact that if construction under sec. 4 is necessary and this construction is correct, Mohammedan spouses can be charged in Tanganyika under sec. 110 (a) for an offence for which Christian spouses are not answerable.

As to the charge of retaining, it was submitted by counsel that the prosecution had not adduced sufficient evidence to show that the wall clock (if any) in the possession of the accused was the one stolen from the complainant; even the senior police officer who inspected it could not say it corresponded exactly to the description of the stolen clock. As to this, specific identification is not essential—*R. v. Burton* 23 L.J.M.C.; Arch. 33rd Ed. pp. 422, 782. In any event there is adequate prima facie evidence that a round wall clock was in the house of the accused to their knowledge and that it disappeared a short time after the police made enquiries about it. "If an accused person suppresses or destroys evidence which he ought to produce . . . the strongest presumption will be drawn against him. So strong is the presumption in such a case that the ordinary presumption of innocence may be overthrown and a presumption of guilt raised." (Woodruffe and Ameer Ali's Law of Evidence, 7th Ed. p. 752). The prosecution have adduced sufficient prima facie evidence of such suppression or destruction. I hold that the prosecution have discharged the burden on them in these circumstances of showing prima facie that the property was stolen.

Counsel also submitted that if in view of *Abdallah s/o Talib v. R.* (Law Report Suppt. 5 of 1954) the doctrine of "recent possession" applicable to receiving applied also in the case of retaining (as "retaining" was understood in that case) the possession of the accused here was too long after the theft to justify them being called on to give an account. As to this, in a later case of *R. v. Kitembo s/o Shija* (Crim. Rev. 198 of 1954) the High Court quashed a conviction for receiving on a charge of retaining (and did not change the conviction to one of retaining as charged) pointing out that Sec. 187 of the Criminal Procedure Code did not permit this alternative conviction. On a charge of retaining, therefore, I do not think this court can convict the accused of either receiving or retaining if the evidence shows the accused knew the property was stolen when they got it. The face of recent possession in cases of retaining is therefore only relevant as

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showing e.g. opportunity of discovering after getting the property that it was stolen. I am satisfied there are sufficient criminative circumstances in this case apart from possession to call for explanation.

I hold that on both counts a case has been made out against both accused sufficiently to require them to make their defence.

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16/12/54. Cor : J. A. Scollin, R.M.

Pros : accused and counsel as before.

Ruling delivered.

(Sgd.) J. A. SCOLLIN. 10

MANDAVIA.

I would ask for some time to digest the ruling since there are made matters in it on which I may wish to call certain evidence.

I also apply for court to call witness Rajey referred to in connection with the Tailors. He is not a willing witness.

CONNOLLY. It is no part of prosecution case that another clock disappeared or was not where it should be. The evidence in this was entirely the result of the cross-examination by the defence. If he proves to be a hostile witness then the defence can make the appropriate application after he has been called and shown himself hostile. 20

As to the adjournment, this case has carried on for some time already and Mr. Mandavia has known the precise case he has to meet. I would not object to an adjournment for  $\frac{1}{2}$  hour. I am not available until after Christmas.

MANDAVIA. I need until tomorrow. As to the witness I am only asking that a summons should be issued from the Court.

COURT. It is difficult to see the validity of the grounds on which counsel for the defence makes this application for an adjournment.

The ruling delivered has not added anything to the case which Counsel for the accused had to meet. The case was either made out or it was not. 30  
If it was, then counsel for the defence must be prepared to meet it if his submission that it was not so made out is rejected.

I am prepared to allow counsel for the defence sufficient time to enable him to consider the ruling with a view to calling evidence on any specific point in it not previously referred to. I think  $\frac{1}{2}$  hour is adequate for him to come to a decision on this point. His witness will be summoned to attend.

(Sgd.) J. A. SCOLLIN.

## DEFENCE EVIDENCE

No. 12.

## Evidence of Laila Jhina Mawji.

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D.W.1. LAILA JHINA MAWJI, Mohammedan, affirmed :—

I am wife of Kassamali Karim Mawani, 2nd accused.

I was married to him at H.H. Agakhan Ismailia Jamat Khana in Dar-es-Salaam in 1948.

I was issued with a marriage certificate by the local Provincial Council of H.H. Agakhan. (Shown Exh. 9.) This is certified copy of the entry  
10 in the marriage book of the Jamat.

We have one child by this marriage. It is a male child called Shirez. I produce the birth certificate of this child issued by the Registrar General (Put in and marked Exh. 10).

It was this child's birthday that we celebrated on 16th October 1954 (Shown Exh. 4.) This is a specimen of the card we issued to friends.

On his birthday my child received certain gifts. He received toys, clothes and a wall clock.

(Pointing to Exh. G.) The clock was similar to that one.

I was not present when the clock was brought to my premises.

20 The clock was received on 12th October, the child's actual birthday, and my child and my husband were present when it was received.

The first time I saw it was on the evening of the 12th, his birthday. I saw it hanging on the wall. This was when I came back from the mosque.

I did not invite Vaju Raj Vrajlal Ramji to this party.

The clock was not working properly, so my husband repaired it.

It was on the wall on the day of the birthday party.

We had a large number of persons in the house on the evening of the birthday party.

30 Apart from the occasion when my husband took the clock down from the wall to repair it, it has always been there.

I remember 17th November.

I saw a member of the police force for the first time on that day at 10 a.m. I saw Mr. Solanky there. He came to my shop.

He spoke to me. He was alone.

He started to talk. He said "I have some business with you."

I asked him if he wanted to discuss with me there or inside the house? I was in the shop at the time.

He said "inside."

40 I told the boy to look after the shop and we went inside. We went into the sitting room.

He told me to call a Hindu girl who is our neighbour. He said he had some business with her.

I said, "I am not your broker. How can I call her here?"

He said "In the absence of her husband she is pregnant and I being "a member of the police force want her."

She is married but her husband has deserted her.

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tion—  
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I said to him "Get out. Why should I take an interest in someone else's affairs."

He became angry and started to go out.

Before he actually got out he said "If you don't call her I will show you what I can do." I replied to Inspector Solanky "Do your worst."

This was just outside the door. The boy was there at the time so was another man who had come to the shop about then. His name is Pyaraly. I do not know his full name. (Man brought into Court.) That is the man (gives name Pyarally Hassanali Damji). He is an Ithnashari. He works in the Customs. He was nearby. 10

Inspector Solanky came to my premises later in the day. He came with Superintendent Eager.

I have heard through the interpreter what Superintendent Eager said that day.

I did not refuse to let the Police have the clock down from the wall. When I was asked to let the Police see the clock I said to Inspector Solanky "How can I get it. I have a short frock on. If you want it take it." He then said "You get it down for us."

I then called my boy and told him to get the clock down.

I understood from what Superintendent Eager said through Inspector 20 Solanky that they suspected the clock was somebody else's property.

When they inspected the clock Inspector Solanky said to me "A friend of yours has reported that the clock belongs to him."

I said "this clock is ours not his."

I did not know what friend was being referred to.

Interpreter agrees that in Gujerati.

"His" means "any persons." I was not asked anything further by them.

My husband was not mentioned.

I offered them coca-cola and they took it and they left. It was free. 30

In the morning Mr. Solanky purchased coca-cola before we had our discussion.

The police did not ask me when my husband would be coming home.

They asked me where I got the clock and I said "I do not know : my husband knows."

The next time I saw a Police Officer was at 4.30. Solanky came with 3 policemen who were Africans. This was about 4.30.

My husband was home. He took his tea as soon as he came home He took it in the shop.

This was approximately 4.30 when my husband came home. He came 40 about 3 minutes before Inspector Solanky came.

The police officers left about 30 minutes after they came. They came about 3.0 o'clock. I am speaking of the visit of Superintendent Eager and Inspector Solanky.

The police officer left the clock in the house.

I was so angry, I was almost mad. This was because Inspector Solanky had told me in the morning that he would show me what he could

do, that is, he had threatened me in the morning, and the visit from him and Superintendent Eager visited me that afternoon.

I was angry with both Inspector Solanky and the clock. I thought that after they left my premises Inspector Solanky would create some trouble about the clock, as they had said it belonged to one of my friends.

Inspector Solanky never mentioned the description of my friend to me.

Two months before this incident I had been in trouble about some article found in my house. I was acquitted of the charge brought against me. That case concerned moveable property also.

10 I became angry with the clock because I thought it was going to be a source of trouble. I was almost mad.

I carried the clock out to the yard, went up the ladder which we have in the yard and threw the clock over the wall. I went near to the wall which is at the bottom of the yard, on the back, parallel to Mkunguni Street and which separates our premises from the premises of certain Africans. I climbed up the ladder and threw the clock over.

Over this wall are African huts. It is against the wall which the ladder leans.

I threw the clock soon after the police officers left.

20 This was an hour before my husband came home.

I calmed down about  $\frac{1}{2}$  hour after throwing it away and I went down to look for the clock. It was not there.

When my husband came I said I had thrown the clock away and he scolded me but nothing could be done. I had not a chance to communicate with my husband between throwing the clock away and his coming home.

I told my husband why I was angry and why I threw the clock away. I told him I wanted to avoid trouble.

As I was talking about throwing the clock away, Inspector Solanky came. My husband was scolding me when Inspector Solanky came and 30 Inspector Solanky said to my husband, "You are wanted by Superintendent Eager." This is all he said. My husband left the premises without finishing the tea, so I had no chance to speak to my husband at this time about the arrival of the police in the afternoon.

I now know who made the gift of the clock. It was Mr. Dayalji, the proprietor of Prabhat Studio (man brought into Court). This is the man (gives name Dayalji Sukhabhai Patel).

I do not know where Mr. Patel got the clock. He told my husband after the case began where he got it. If I had known where Mr. Patel had got the clock I would not have thrown it away. My husband has 40 since told me what Mr. Patel told him.

I did not wish to make a statement to the Police when Superintendent Eager came back later in the day.

When I was asked at that time for a statement, the clock was not mentioned. I was just asked if I would give a statement. I said I did not wish to do so.

(Sgd.) J. A. SCOLLIN.

192 (2) C.P.C. complied with.

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ination,

XXD. I have known Solanky for approximately the last 12 months.

He is not a friend.

I do not have him to my house.

His sister often greets me in the street. He is with her.

I had never spoken to him before 17th November.

The Hindu woman next door is not a friend of mine. She is noticeably pregnant.

He said he wanted me to call her into my house.

I thought he might have some business with her. I asked him what he wanted with her. He said he had some business with her as she was 10 pregnant in the absence of her husband.

I did not ask him what business.

I did not ask him why he came to me.

I was not surprised that he should come to me because Inspector Manikham had asked my husband about this woman.

I thought he wanted me to act as a pimp or procurer of this woman. He came to the house of a stranger to ask this.

Inspector Solanky was wearing police uniform. Asmani was sitting outside the shop.

He stopped his car in front of the shop—not actually in front but 20 a little bit away.

It was a police jeep.

I could not see whether anyone was with him.

The talk took place in the sitting room. He was there about 5 or 10 minutes. He looked round the room but he did not say anything.

The wall clock was there. It had been there since 12th October apart from the time it was down for repairing.

Solanky then went out into the street.

It was near the door of the shop that he said he would get me into trouble. He was still inside the shop. 30

He did not speak to me once he got out into the street.

Pyarali was standing in the shop at this time—he was actually standing inside the shop.

(Shown Exh. F.) I do not understand this plan.

The door is about 3 feet wide. There is only one door in the shop. The door is at the other end of the front of the shop from the end at the corner of Mkunguni and Chura Street. Customers do not have to come through the door at all to be served.

Pyarali had come in through the door. As Solanky went out Pyarali was inside the shop. 40

Solanky threatened me as he was walking through the shop. The first time he threatened me was when he got into the shop after coming through the passage.

Pyarali is an acquaintance of ours.

After Solanky had gone I told Pyarali about what Solanky had said.

Solanky said Insp. Eager wanted to look at the clock.

Solanky did not say why he would not get the clock down.

He said, "As the clock is yours, you get it down."

Superintendent Eager spoke in English to Insp. Solanky. Mr. Eager would speak some words and then Inspector Solanky would speak to me.

Then they went away. I got angry. I thought Mr. Solanky was going to "frame" me, that is make a false case against me.

Then I went out and up the ladder and threw the clock away. I did not change my frock for this. I was alone. The kitchen is in the yard. The cook was in the shop.

10 I was born in Tanganyika. I speak Swahili well. The reason I did not tell Supt. Eager in Swahili about Inspector Solanky's visit was that I did not know if Supdt. Eager speaks Swahili or not. He had brought a Gujerati interpreter. My husband came home at 4.30.

The boy brought the tea to me. Just as he did so my husband came in.

He did not mention about the police seeing him at the office. I did mention that I had thrown away the clock and he took me to task but then Inspector Solanky came.

20 Between the time Inspector Solanky and Supdt. Eager went away until my husband came home, I did not speak to my husband. I have no phone. I agree that my premises are only about 100 yards from the Post Office.

My husband was away about 15 minutes and came back with Inspector Eager. Inspector Solanky and Supdt. Eager and my husband and myself went into the sitting room.

I was asked where the clock was. I replied, "I do not know anything about the clock."

I showed the police officer this clock (witness points to Exh. B). I told them that was the clock they looked at.

I did this because I did not want to involve myself into this trouble.

30 I was there when Juma was called into the room. Inspector Eager spoke to Mr. Solanky and Mr. Solanky asked Juma if he had climbed up on the settee that afternoon to get down the clock.

I was present in the shop and I knew they were searching the house. I knew what they were looking for. I still did not say where the clock was.

40 The reason for me not saying where I had hid it was that Mr. Eager had told me that a friend has reported this clock is his. It was given to us as a present by a friend. I thought it might be a trap. I had been told by my husband on the day of the birthday that a friend gave it to us. I had not enquired by the 17th who gave it to us. Many gifts were given by friends. It was not necessary to enquire.

I was in the shop the next day when the municipality came to clear the cess pit. Mr. Eager was with them. I still did not mention what I had done with the clock. I thought it would keep me out of trouble not to mention about what I had done with it. The presents were of cloth, money, toys and one wall clock.

The most valuable present was a train. I do not know who gave this. We got a lot of presents from guests at the door—a lot of clerks of the P.W.D. gave presents.

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*continued.*  
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ination.

Mr. Patel is a Hindu ; we are Mohammedans.  
The clock was the first birthday present we got. I did not ask my husband about it.

My husband repaired the clock himself. My husband would be wrong if he said he knew nothing about the clock.

(Shown Exh. D.) This is my picture.

I replaced the photograph in place of which the clock had been because I did not want to get into trouble. I was not trying to hide anything. I put it up on the wall because there was an empty place on the wall.

I had no knowledge that the clock was stolen property.

I did not put the photograph up there to hide the fact that I had had the clock.

10

RXD. I was being harassed by the Police. That is why I was angry about the clock. My husband denied knowledge of the clock only after it was put away.

(Sgd.) J. A. SCOLLIN.  
16/12/54.

ORDER Adjourned until 22/12/54 at 9 a.m.  
Accuseds bail continued :

20

(Sgd.) J. A. SCOLLIN.

No. 13.  
Kassamali  
Karim  
Mawani,  
22nd  
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Examina-  
tion.

No. 13.

**Evidence of Kassamali Karim Mawani.**

22/12/54. Cor. Pros. accused and Counsel as before.

D.W. 2. KASSAMALI KARIM MAWANI, Mohamedan, affirmed :

I am clerk employed P.W.D. Accounts Section, Tancot House.

I never worked in Stores Department P.W.D.

I am husband of first accused.

We were married in Dar-es-Salaam at the Jamat Khana, the Ismailia Mosque. We were married by our President and were issued with a marriage certificate.

30

(Shown Ex. 9.) This is the marriage certificate.

We have a male child by the marriage called Shiraz. He was born in Dar-es-Salaam and the birth registered at the Government Registry. We were issued with a certificate by Registrar General (Shown Exh. 10). This is the certificate. The child was born on 12th October 1949.

Its fifth birthday on 12/10/54 was celebrated by a musical party for which we issued invitation cards (Shown Ex. 4). This is one of the cards.

At about 4.30 on the 12th October I took my child for his photograph in Prabat's Studio. His photograph was to be taken.

40

- I do not remember the name of the street where the Studio is. It is near Patel's Stores.
- The studio is owned by Mr. Patel.
- Mr. Patel's full name is Dayabhai Sukhaibha Patel.
- 4.30 is not a convenient time for me or for the photographer to take the photograph. Usually I am working until 4.30, and the photographer did not agree to take the photograph then. He said he was very busy after 4.30 but he took the photograph when I said it was the child's birthday.
- I know Mr. Patel. He is my friend.
- 10 He did not know at that time that it was my child's birthday. A card had been issued to him but at the time when we went for the photograph the card had not been delivered.
- I had to wait for half an hour before the photograph was taken.
- I met Mr. Patel that evening at my house. He came with a birthday present. This was between 6 and 6.30 p.m. I was at home at the time. Shiraz was also at home.
- The first accused was at the Mosque.
- Mr. Patel brought as a present a round wall clock. It was just like that (witness points to Exh. G).
- 20 I asked him how he got the clock in such a short time and why it was not in a carton. After a short time he told me that he had bought it from Haideri Stores and that it was not a secondhand one.
- The clock was in good condition. It was second hand (*sic*). It appeared to me to be secondhand.
- Mr. Patel had a coca-cola and went away. My wife had not come back by the time he went away.
- I fixed the clock on the wall on a nail. I fixed the clock above the window in the sitting room.
- The clock was there on the day of the musical party.
- 30 I took it down for repair on the day after the music party. It was not keeping proper time and I made an adjustment to it.
- When the clock was lying down, my son had spoiled it with a nail so I painted it at the back. It was greenish paint.
- The clock had two hooks.
- My marriage was in the mosque at Jamat Street, Dar-es-Salaam. It was in accordance with the constitution, Rules and Regulations of H.H. Aga Khan Ismailia Council of Africa. I produce a copy of these regulations which can be purchased locally.
- My marriage is governed by these rules and not by the Koran. The Supreme Council passes these rules with the approval of H.H. Aga Khan.
- 40 I can marry only one wife under these rules I cannot give her a talak or divorce as laid down in the Koran.
- Under certain circumstances, an Ismailia Khoja, man or woman can have a second spouse. If the bride is lame blind or has any serious physical defect, the man can apply to the Supreme Court for permission to marry a second wife and this can be granted on him making provision for the maintenance of his previous wife. Another ground is that the wife has no issue.

In the District Court of Dar es Salaam District at Dar es Salaam.

Defence Evidence

No. 13. Kassamali Karim Mawani, 22nd December, 1954. Examination—*continued.*

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tion—  
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The council gives a hearing to both parties.

The rules relating to marriage are in Chapter IX, at page 55 of the book of Regulations which I now produce. (Put in and marked Exh. 11.)

The first wife is divorced and only one wife, the second one remains, when the permission is given.

There is a provision in these rules for Mohr which is the amount in money settled by the husband on the wife on the occasion of their marriage. This becomes the property of the wife.

On 17th November Supdt. Eager and Inspector Solanky called at my office. Supdt. Eager told me he had seen a clock at my house that he suspected was stolen. He did not say whose property it was said to be. The charge sheet in this case did not say whose it was supposed to be either.

When Supdt. Eager and Inspector Solanky came to my office, I did not have an invoice for the clock because it was a present and it was not possible to have an invoice.

I had no writing or complimentary slip to show who gave it.

I was asked where I had got it from. I told him that I had bought it from Haideri Stores.

The reason I made this answer was that when Mr. Patel brought this clock to me he said he had bought it from Haideri Stores. Had Mr. Patel reported to the Police information could be got from Haideri Stores as to its purchase, I thought Mr. Patel might have reported, because he was the man who gave the thing.

I did not at that time suspect that it might be someone else's property and not Mr. Patel's. I did not at that time suspect that the property was that of anyone except Mr. Patel.

By report I mean complaint to the police by a person that someone else has his property.

The first time I discovered that it was not Mr. Patel who had reported the matter to the police was when I came into Court. The case was first brought before Mr. McPhillips on Saturday the 20th November, 1954.

Mr. Patel met me on the sea-shore the next day and greeted me. I did not reply.

He asked me the reason for not replying. Then I asked him why he reported the matter to the police after giving me the clock. Mr. Patel then told me that he had not reported to the police.

I then asked him if he had bought the clock from Haideri Stores. He said he had not done so, but that he had purchased the clock from a tailor named Rajey.

On the 17th November I was again interviewed by the police.

Inspector Solanky came to the premises at 4.30 as I was having my tea. I had just started to take my tea.

He told me that Mr. Eager wanted me. During the few minutes between my arrival home and the time I left to go to the police, my wife told me she had thrown the clock away. I said nothing in reply. I went straight away to the Police.

(CONNOLLY objects to some form of communication which he says 1st accused has made to 2nd accused at this point. First accused denies making any communication. She is warned about doing or repeating such act.)

I took my wife to task before I went away for throwing away the clock. I had already finished my conversation with her and I was just trying to take my cup of tea when Inspector Solanky came.

I went to Superintendent Eager straight from my shop. I reached the police station in about 4 or 5 minutes time.

10 Superintendent Eager told me he was not satisfied with the information I gave him in the office and he asked me to give a statement. I did so and he started to write it down. When the reference to the clock came, I told him that I did not have a similar clock to this one (witness points to Exh. G) in my house. He was referring to a wall clock.

My reason for saying this was that my wife had thrown away the clock and in her defence I had to say this otherwise the police would have harrassed her.

I remember Mr. Vaju Raj gave evidence on the 25th November and said a clock like this wall clock which was in my house was his property.

20 The first time I knew he was claiming it was when he gave evidence in Court.

As far as I know the clock did not come from the premises of Vaju Raj. Mr. Patel told me he had purchased the clock from Rajey.

The original key of the wall clock I had was lost and I used the key of the table clock, which fitted the clock (Witness points to Exh. B).

My son lost the key of the clock when I got it down from the wall for repair.

The key is a common one. It fitted the two clocks.

I never had a first name starting with the letter "A."

30 I do not know Ambaram Vallabh, who gave evidence in this case. I never had this wall clock repaired by him.

I have heard the evidence of Vaju Raj and Maganlal Manji Babu. I did not invite either of these people to the musical evening on 16th November. They might have been served with tea which was served outside. As far as I know this wall clock was not stolen property at all.

At the time I got it I had no reason to suspect it was stolen.

It was kept on the wall in public in the sitting room.

40 I have never had any reason at any time to believe it was stolen. I never entertained the slightest desire to throw the clock away. I had no reason to throw it away. My wife did not communicate with me by telephone or otherwise before she threw the clock away.

I had no reason to conspire with anyone to throw it away.

192 (2) and 204 C.P.C. complied with.

(Sgd.) J. A. SCOLLIN.

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Defence  
Evidence

No. 13.  
Kassamali  
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XxD. Mr. Patel is a friend of mine. We walk together and we take food together and go for recreation together. We are firm friends. He did not know about my son's birthday because we had not informed anybody. We have parties every birthday but a person would not recall the birthday. He, Mr. Patel, attended every party. He knew they were birthday parties.

There were some small articles which were presented on the same day the 12th, by neighbours.

On 16th, we got many other presents, toys, a cycle, a train and pieces 10 of cloth. These were all given to my son.

I did not ask all the people who gave them where they got them from. The reason I asked Mr. Patel was that when he brought the clock it was a bit old but it was of good appearance. I do not mean it was valuable.

Mr. Patel did not get very annoyed but I felt that he took the question ill and was hurt. The clock was wrapped in a paper.

The key was also wrapped in the paper between the paper and the clock. I did not particularly mark it but it was with the clock.

I thought when the police first made the investigation that Mr. Patel might have reported to the Police. It is not surprising that after giving 20 me the present he should have reported to the police.

I had a high opinion of Mr. Patel but I was not surprised that he might have complained to the Police.

I did not go to the Mosque on that day. I do not always go with my wife. We do not go together.

Before she came back I had put the clock up on the wall.

She said "That clock is good." She knew it had come as a present because there were other presents there. She thought it was a present.

On 17th November I got home about 4.30 p.m. I usually get back 30 from the office at 4.30 or 4.45. I come straight back from the office.

The office closes at 4 o'clock, but if anyone wants to work he can work up to 6 o'clock. If there is work in arrears, I stay on.

My wife said she had thrown the clock away. She did not tell me why.

At that time my wife only knew the clock was one of the presents. I told her when she came back from the Jamat Khana that it was a present.

I showed her all the presents together. All the presents came in while she was at the Mosque. I did not tell her who they came from. It is not the custom to thank the people at the time.

It was not necessary to thank them afterwards.

The reason I did not say earlier that I told my wife the clock was 40 a present was that I did not say the clock specifically was a present. The clock was on the wall. The other things were on the harmonium. I pointed to the clock as well.

When my wife told me she had thrown the clock away, she knew only that it was a present and that it must have been given by a friend.

NOTE BY COURT. This witness appears most reluctant to answer the questions as put to him.

She had not said before that she was suspicious about the clock. I was not suspicious of it. I am not suspicious of it now. I told a lie at the Police station because Patel might have reported about it.

When I was told by the Police that there were investigations about the clock I became suspicious. But now I know that Mr. Patel got the clock from Rajey because he told me so.

I said to the Police that there was not such a clock in the sitting room or the bedroom. I said this to defend my wife. She became suspicious about it when the police came. She did not mention this to me at tea, but because the police had come it was understood.

At the office, I told Superintendent Eager that I bought the clock at Haideri Stores. Perhaps Patel might have told me this in a joke. When I asked Patel on 21st November, he said he had got it from a tailor name Rajey. Mr. Patel told me that he had said he got the clock from Haideri Stores because it was not a custom to ask where presents had been got and in order to show that it was not secondhand.

I said a few moment ago that it might have been a joke because when the things were brought to my house, I thought he might have told me it came from Haideri Stores in a joke. I believed it came from Haideri Stores.

I asked Mr. Patel laughing "where did you get this?" but he was not laughing. I did not think at that time that he was joking when he said he got it from Haideri Stores.

When I spoke about a joke I was referring to the occasion in the office at Tancot House on 17th; at that time, before I met Mr. Patel, I thought he might have told me about Haideri Stores in a joke.

I first suspected Mr. Patel had told the police about the clock on 17th November. I was in my car on 21st November and he was coming towards me. I was not going to speak to him. I thought he might be a crown witness and I was afraid that if I spoke to him I might get into trouble.

I thought he might have said to the police that the wall clock in my house was stolen from him. He had given it as a present.

I was arrested in my office between 3 and 3.30 on 18th November. At that time I suspected Mr. Patel might have framed me.

(Certain questions are asked of the accused at this point about the type of marriage. It is clear he is not properly conversant with the rules in Exh. 11 and Mr. Connolly is advised that this matter can be left to the Court.

(Sgd.) J. A. SCOLLIN.

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I mentioned to Mr. Patel when I went to get the photograph taken that he had been invited to the musical evening.

(Sgd.) J. A. SCOLLIN.

RXD. Nil.

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I had lunch with my wife between 12 and 1 on the 17th. My wife the first accused did not say anything about Inspector Solanky. She did not say she had been threatened by him. It is a usual thing for us to get threats from people. She told me in the afternoon when I came home that she had thrown away the clock for which the police had come. Because the thing was already done I did not ask her the reason. I did not ask where the clock was. Inspector Solanky came before I had the opportunity of asking her. 10

(Sgd.) J. A. SCOLLIN.

No. 14.  
Pyaraly  
Hassanali  
Damji,  
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No. 14.

**Evidence of Pyaraly Hassanali Damji.**

D.W. 5. PYARALY HASSANALI DAMJI, Mohammedan, affirmed :

I am employed by Landing & Shipping Company at the Customs Wharf.

I know Inspector Solanky of the Police Force. We were at School together for about 6 years. 20

I saw him on many occasions. I do not remember seeing him in the middle of November in Mkunguni Street. I know Mrs. Mawani's shop in Mkunguni Street.

I remember visiting that shop about the middle of November.

I do not remember what day of the week it was. It was the end of the week.

It was about 10.30 to 10.45.

I saw nobody in the shop that day. I saw only Mrs. Mawani. This was about 10 to 10.30.

Mrs. Mawani was there when I first came along to the premises. She was serving in the shop. 30

I do not remember seeing anyone else there. I do not remember.

I did not see anyone come out of the shop before I reached it and I did not see anyone coming out of those premises.

I visited the premises about 3 times during that week.

I remember Wednesday of that week. I went on Wednesday of that week.

On Wednesday I went there between 10.15 and 10.30.  
I did not see anyone coming out of or near the shop on that Wednesday morning.

I do not remember meeting Mr. Solanky at all that Wednesday in Dar-es-Salaam.

I think I might have seen him and forgotten about it.  
192 (2) and 204 C.P.C. complied with.

(Sgd.) J. A. SCOLLIN.

XxD. Nil.

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10 Xd. COURT. Mrs. Mawani told me on Friday of that week that Inspector Solanky had been to see her that week.

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#### No. 15.

#### Evidence of Abdulla Hassam Kassam Tejpar.

D.W. 6. ABDULLA HASSAM KASSAM TEJPAR, Mohammedan, affirmed :—

I am honorary Secretary of H.H. Aga Khan Ismailia Provincial Council. (Shown Exh. 11.) This is the latest edition, amended to date of the law governing the members of the Ismailia Khoja community.

They are a subset of the Shia Sect of Mohammedans.

20 I know the first and second accused in this case.

(Shown Exh. 9.) This is the certificate of the council relating to the marriage of the two accused.

I know second accused is husband and first accused is wife. The form of the certificate provides for recording the marriage of only one man and one woman.

I am a High Official of the community.

Our marriage is monogamous.

Rule 19a and b of Chapter IX governs the right to marry a second time.

30 But when a man remarries under this rule, he has then two wives, although the first wife can get a divorce on the very ground of the man getting permission to remarry. She cannot marry again until she has got this divorce.

After the second marriage the woman who was the first wife cannot demand before the Council that her husband should sleep with her as distinct from providing maintenance.

XxD. Nil.

(Sgd.) J. A. SCOLLIN.

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## No. 16.

## Judgment.

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The two accused in this case are charged on two counts. The first charges that they conspired to obstruct, prevent or defeat the course of justice c/s 110 (a) of the Penal Code by concealing a wall clock which they knew was required for the purposes of an enquiry into a criminal offence. The second count charges that they retained this clock knowing or having reason to believe it to have been feloniously stolen or obtained c/s 311 (1) of the Penal Code.

Before dealing with the evidence on the first count, I must dispose of the objection by the accused that since they are husband and wife they cannot in law be charged with conspiracy. In ruling against this submission at the close of the case for the prosecution, I held that marriage in Mohammedan law was not monogamous and did not possess certain features which I considered inseparable from the kind of marriage which English law has in mind when it says that husband and wife are one person and therefore cannot conspire unless there is also a stranger to the agreement. The accused have adduced evidence designed to show that as members of the Ismailia Khoja sect their marriage *is* monogamous. Tejpar (D.W. 5) Honorary Secretary of H.H. Aga Khan Ismailia Provincial Council of Dar-es-Salaam, thought it was and he produced the Constitution, Rules and Regulations of the Ismailia Councils of Africa (Exh. 11) and founded on Chapter IX particularly rules 19 (a) and (b). After considering these rules and his evidence I see no reason for saying this marriage of the accused is monogamous. On the grounds set out in 19 (a), a husband can marry a second wife with the permission of the Council and must deposit a minimum sum with the Council, the income from which is paid to him for the maintenance of the first wife if she continues to live with him and direct to her if she leaves him. This taking of a second wife does not operate as a divorce of the first wife—if she wants to remarry she must apply for divorce and then wait 4 months—and she can choose to continue to live with her husband. There is nothing to say that she can enforce full conjugal rights but equally there is nothing to say the husband cannot exercise them with impunity. However close to monogamy the Ismailia Khoja sect are coming, I am satisfied that this situation of one wife and another optional or semi wife is not monogamous and not the kind of union to which legal unity is accredited in English Criminal Law. On a proper construction of Section 4 of the Penal Code, I think the accused are excluded from the benefit of claiming they are one person in Law. The fact that it may be difficult to bring home a charge of conspiracy against two persons who can take advantage of Section 122 of the Evidence Act does not make it incompetent to charge them. In this case the accused themselves put the communications made between them in evidence.

So far as the charge of conspiracy is concerned, the prosecution have proved that (1) Between 3 and 3.30 on 17th November at the house-cum-shop

premises occupied by both accused at 37 Mkunguni Street, Dar-es-Salaam, two Police Officers Suptd. Eager (P.W. 1) and S./Inspector Solanky (P.W. 6) examined a wall clock in the sitting room. The first accused only was present. (2) With Solanky interpreting from English into Gujerati. Eager told the first accused that they were conducting an enquiry about this clock because they had received information that it was the property of another person. (3) The officers left the premises at 3.30 and went straight to the office at Tancot House in Dar-es-Salaam where the second accused works as a Government Clerk. They told him they had been to see his wife and the clock and told him why. (4) He clearly knew what clock they were talking about and gave certain information about it. They left about 3.30 and went back to the Police station. (5) At about 4.10 Eager sent Solanky to the accuseds' premises with the request that both accused should come to the police station and bring the clock with them. I am satisfied from Solanky's evidence that he gave this message as he got it in Gujerati in the presence of the first accused. He found the accused together in the shop which forms the front part of the building. (6) The second accused went off to the Police station in his own car. Solanky remained in the vicinity of the shop. At the police station the second accused started to give Eager a statement which clearly referred not to the wall clock but to a table clock on a cupboard in the same room as the wall clock. At the suggestion of the Police officer he and the second accused went back to 37 Mkunguni street, arriving about 4.50. (7) The two police officers and the two accused then went together into the sitting room. The wall clock was no longer there. In its place was a photograph of the first accused (Exh. D). On a cabinet was a table clock (Exh. B) which the Police officers had seen there earlier that day. (8) In the presence of each other the two accused denied that there had been a wall clock in the house; the first accused said the officer had examined the table clock that afternoon and the second accused said it was this table clock he had been referring to at the first interview that afternoon. In his statement under caution (Exh. A) the second accused persisted in this story. The first accused under caution had nothing to say (Exh. E). (9) The house was then searched in the presence of both accused. No wall clock was found and no explanation was offered by either accused. (10) On the following day, in the presence of the first accused only the premises were searched again and the cess pit drained by the Municipal authorities at the request of the police. The wall clock was not found and no explanation was offered.

40 The two accused were arrested that day. I may say that I think in the light of this evidence in their possession a proper charge for the prosecution to have made was under Section 109 of the Penal Code in addition to or in substitution for the present charge.

The first accused says in her defence that after the two police officers went away at 3.30 she threw the wall clock over the wall of the yard at the back of the house. The reason for doing this was : " I was angry with " both Inspector Solanky and the clock. I thought that after they left " my premises Inspector Solanky would create some trouble about the

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“ clock as they said it belonged to one of my friends ” (p. 37). I thought “ Mr. Solanky was going to frame me ” (p. 39). Ans the reason she gives for thinking this is that earlier that day she had been threatened by Inspector Solanky. Her evidence is that at about 10 o'clock in the morning of 17th Solanky came to the shop, leaving the police jeep further down the street, and asked her, as she understood, to procure for him a pregnant Hindu girl living next door by calling this girl into her house. She says she refused to do this and told him to get out, whereupon he said (p. 36) “ If you don't call her, I will show you what I can do.” Asmani Abdullah (P.W. 4) said in cross that he saw Inspector Solanky at the premises that morning. He is houseboy to the accused. Pyarally Hassanali Damji (D.W. 5 at pp. 46-47) whom the first accused said was in the shop when she and Solanky came through from the living quarters behind, denied seeing Solanky there that morning and said he was told on Friday 19th by the first accused about this alleged occurrence. Solanky denied having been at the house before 3 o'clock on the 17th and evidence was called by the prosecution to rebut the allegations. Solanky was on counter duty at the Central Police Station that morning but was absent between 9.50 and 10.45. He says he was at the shop of Vaju Raj (the complainant in this case) who frames photographs, waiting for two photographs (both of Royalty—one of the Queen) ordered for use at the police station. He went straight there in police transport and came straight back. Vaju Raj confirms that Solanky was at the shop and was already waiting when he (Vaju Raj) came through to the front shop from the workshop behind. The explanation of the delay was that there had been some mishandling of the two photographs which had been ready for a fortnight and Vaju Raj had to put them right. He estimated the time at 15-20 minutes. Thereafter the framing was paid for and a receipt was given (Duplicate was produced—Exh. K). The entries to the time of departure and return in the Duty Occurrence Book (Exh. J) were spoken to by P.W. 12 Njondo and P.W. 13 Fernandes. The driver of the vehicle, P.W. 11 Zacharia, says that he took Solanky straight to the shop and straight back waited for him at the shop and did not see him come out until they left for the station.

The truth of this allegation is important to the first accused at least as otherwise her alleged actions are unexplained. It was alleged that the enquiry in this case was pursued in a spirit of vindictiveness and the only reason suggested is this quarrel. I fail to see how a quarrel on 17th November, the day on which the matter was brought to a head, could affect enquiries started on the 4th November and it is clear that it was Superintendent Eager and not Sub-Inspector Solanky who was in charge of the investigation. And there are improbabilities about the story. If it is true a police officer in uniform went to a woman whom he only knew as a friend of his sister (and then only to “ greet ” her), in daylight in police transport and out with his duty on that morning and asked her to get for him a woman whom he could apparently have seen next door anyway,

with a possible immoral purpose in mind, and made a statement that as a police officer he had some business with her as she was pregnant in the absence of her husband. And this and the threat which followed (apparently within sight and earshot of a customer inside the shop and the house boy) occurred with a person whom he knew would in all probability be interviewed by a senior officer of the police force. Further, the first accused did in fact make no mention of this extraordinary incident in the afternoon to Superintendent Eager. She cannot speak English but when asked why she did not speak to him in Swahili which she knows her reply was that she did not know whether this Superintendent of Police could speak Swahili. She did not even mention it to her husband when he came home about two hours later. I do not need to decide the issue on improbabilities. I am quite satisfied that the prosecution witnesses Solanky and Zacharia and Vaju Raj are telling the truth and I do not accept the story of the first accused. Damji (P.W. 5) was clearly expected to corroborate the story of the first accused and called for that purpose only. He failed miserably. He appeared to be a shifty and unreliable witness but the fact that he did not say what he was called to say does not make his supposed story true. I am satisfied it is not. If the clock was disposed of it must have been—with some definite intent and not for this reason.

The second accused is not necessarily affected by the falsity of this story. He says he was told by his wife when he came home that she had thrown the clock away. His evidence as to what happened when he came home varies, however. He says first that he did not ask the reason for her throwing the clock away because the thing was already done and that she did not tell him why. He did not ask her because Inspector Solanky came before he had an opportunity. At p. 43 he says he took his wife to task for throwing it away and he had already finished his conversation with her and was just trying to take his tea when Solanky came. The first accused says she was still being taken to task when Solanky came. I do not think in view of this and his later statement to the police that the first accused did tell the second accused that she had thrown the clock away. His statements were not the statements of a man whose clock for all he knew might have been lying at some spot which could easily be identified by asking his wife or at least giving the police a guide as to what had happened to it.

By 3.50 o'clock on 17th both accused knew the police were carrying out investigations about the wall clock in their premises. By at least 4.30 the two accused had had the opportunity of communicating with each other. By 4.50 the second accused had denied knowledge of the clock and was talking of a table clock. Without a further opportunity of communicating with her husband, the first accused was also denying knowledge of the wall clock and suggesting the officers had examined the table clock. I see no reason to think that the second accused did not have a hand in the actual removal of the clock, but the essence of this charge is the intent to obstruct and the common preconceived purpose to obstruct. Even the motives are immaterial. The charge might have been better

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framed, but even if the clock *had* gone by the time the second accused returned from work I am quite satisfied that he and the first accused came to definite agreement to conceal by agreed falsehoods the fate of the wall clock from the police with intent to obstruct the course of justice. I accordingly convict the accused on the first count.

On the count for retaining, the only evidence produced by the prosecution to identify this wall clock with the stolen one is (1) it is of the same type and make "Mouthe" (2) it has scratches on the dial (the complainant said his had "a small scratch") (3) it has two hooks at the back as the complainant's stolen clock had. This would not be enough 10 normally. But I am satisfied on evidence which would be admissible apart from the conspiracy count that it is due to the default of the accused that the proper evidence that should be before this Court, the clock which was at the accuseds' premises, has not been produced. Sufficient identifying evidence has been produced to raise a strong suspicion in this case that the missing clock was the stolen one and I think that under section 114 of the Evidence Act the wilful non-production of this evidence goes to supplement what is lacking in identification, until the accused can prove otherwise.

So far as the first accused is concerned the case against her rests mainly 20 on (1) her refusal to show the clock willingly and (2) her lies about it.

She denies refusing to show the clock to the two officers when they first came at 3 o'clock. I am satisfied from the evidence of Superintendent Eager and Inspector Solanky that she had to be asked three times before she let them examine it and the third request was in fact a threat that they might seize it. When the clock was no longer on the wall, her photograph hung there instead. She said she put it there because there was an empty place on the wall and denies that she was trying to hide anything. The reason for telling lies to the police was (at p 39) "I thought it would keep 30 "me out of trouble not to mention—what I had done with it." This seems to me an odd way of keeping out of trouble.

The first accused has given certain explanations about the clock and the circumstances in which she first saw it. I will deal with the direct evidence about the receipt of the clock subsequently. On the evening of the 12th October of this year her son's fifth birthday she went out to the mosque, leaving her husband at home, the clock was not on the wall. When she came back it was. She was told by her husband that "a friend gave it to us" (p. 39). She did not enquire who this friend was—she says it was not necessary to enquire. It was the first or among the first few presents for the child, all of which had arrived in her absence at the mosque. Within 40 5 days it was down off the wall for repairs scratched with a nail by the child and painted at the back. Even after this and up to 17th November she was not told nor did she enquire who gave it. The other presents for the child were things such as a train, a cycle and clothes. The evidence of the second accused is that when she returned from the Mosque he pointed out the presents on the harmonium in the room and the clock on the wall and

she said : " That clock is good." She did not say to the police even that she thought it was a present.

The prosecution case as regards the second accused's guilty knowledge is based mainly on (1) a false explanation about where he got the clock and (2) his further lies about it later in the day.

When interviewed at his office by Superintendent Eager and S/Inspector Solanky, the second accused said he had bought the clock at Haideri Stores. Evidence was called by the prosecution to show that Haideri Stores had never had such a make in stock (and the witness was cross-examined).  
 10 The accused however admitted in evidence that he had told a lie to the police when he said this and he offered an explanation for telling it (at p. 42). His evidence is that a Mr. D. S. Patel (D.W. 4) brought the clock as a present for the child on the evening of 12th October. Apparently, looking a gift-horse in the mouth, he asked Mr. Patel where he got the clock " because it was a bit old " and Patel replied that he had got it at Haideri Stores. This evidence is confirmed by Patel who in turn says *he* told a lie about where he got it because he had in fact got it second hand from a Mr. Rajey (D.W. 3). Patel according to the accused is a " firm friend." In spite of this the reason the second accused gives for  
 20 saying that he bought the clock at Haideri Stores is that he thought Mr. Patel might have reported to the police that he (the second accused) had stolen the clock. He says he did not think it surprising that his friend of whom he had a high opinion should do this. But because he thought Patel might have turned on him and " framed " him in this wicked manner, he apparently played right into the hands of this suspected Judas by concocting highly incriminating explanation instead of telling what according to him was the plain truth, viz. that far from being stolen from Patel the clock was a gift to his child only a month before from the hands of Patel himself. This explanation of the lie is indigestible.

30 As to the further lies about the clock at the police station and at his home, the explanation of the second accused is that he told them in defence of his wife " otherwise the police would have harrassed her." This seems to me to be a case where if what he says is true the cure was quite obviously worse than the disease. Even when it was clear before the time of their arrest that they were both going to be harassed he still thought fit to keep what knowledge he had to himself. In the middle of lies and counter lies I find it difficult to believe that he was not well aware at the very least of what had happened to the clock.

40 The defence has however tendered evidence to show that the clock given by Patel was the one he bought, in September from Rajey (D.W. 3) and removed at that time from Rajey's premises. Solanky's evidence was that he saw a wall clock in what is clearly this tailor's shop on 7th November. In cross his recollection of the exact date was much less precise but I am satisfied that he saw such a clock there after the investigations started on 4th November. He admitted in cross that when he got the information from the supplier of the clocks after 4th November that one had been sold to the tailor then at this time for all he knew the tailor

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might have got that clock the day before. I have paid particular attention to the witnesses on this question of the sale of Rajey's clock, particularly as this officer had already been the subject of one vigorous attack in this trial and I prefer the evidence of the prosecution. Apart altogether from the linking of this clock of Rajey's with the clock in the accused's house, I am quite satisfied that in July of this year, long before these alleged transactions with Rajey's clock, the second accused was in possession of a wall clock of the same make as exhibit G in this case. P.W. 9 Mistry, a watch repairer was very dull in his evidence but he identified the second accused as the person who brought him two clocks to repair. He remembered the round wall clock because it was the only one of its make he had repaired. He produced the repair book of the firm he worked with (Exh. H) and was cross examined at length about the fact that the entry for July appeared on one of the last few pages of the book and out of chronological order and referred to A. Mawani. He was quite clearly skilled at nothing but his watch repairing but I was impressed with the way he gave his evidence and with his identification. I have no hesitation in preferring his evidence and I am satisfied there is no substance in the tortuous explanations of the accused about his lies nor in the most unimpressive story of Patel.

There is nothing to show that the first accused knew of the clock in July, but her acts and statements to the Police in November are in my opinion consistent only with guilty knowledge about the property. I see no reason to credit the second accused with exclusive possession of the clock nor is there any evidence of compulsion for the purposes of Section 20 of the Penal Code.

Even as against the second accused the prosecution produce no evidence to show when he did get the clock first but I do not think it is necessary to prove as against the accused that the original receipt was innocent. If there is no evidence to the contrary, I am entitled to presume it. I am satisfied that whatever their original knowledge about the clock, they both had more than a mere suspicion by 17th November and in fact by then knew or had reason to believe the property was stolen.

I accordingly convict both accused on the second count as charged.

3/1/55. Cor : J. A. Scollin, R.M.

Pros : Connolly.

Accused present represented by Mandavia.

Above judgment read in presence of accused.

(Sgd.) J. A. SCOLLIN.

PROS. Nothing.

MANDAVIA. The two accused are first offenders. I think a probation order might meet with the case. 2nd accused is employed by Government. He has a clear record. He has been clerk for 10 years. He will be sacked



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of Dar-es-Salaam hereby appeal against the said conviction and sentence on the following, amongst other, grounds :

1.—The learned Resident Magistrate erred in holding that the Appellants are excluded from the benefit of claiming that they are one person in law.

2.—The learned Resident Magistrate should have held that the prosecution had failed to prove any agreement between the Appellants to conceal the wall clock.

3.—(a) The learned Resident Magistrate erred in finding that the Appellants had come to definite agreement to conceal by agreed falsehood 10 the fate of the wall clock from the Police.

(b) In the alternative to (a) the learned Resident Magistrate should have acquitted the Appellants of the first charge on his said finding.

4.—There is no evidence to support the finding of the learned Resident Magistrate that both the Appellants had more than a mere suspicion by 17th November and in fact by then knew or had reason to believe the property was stolen.

5.—The learned Resident Magistrate should have held that the Appellants had not retained the property after the 17th November, 1954.

6.—The Judgment is against weight of evidence. 20

The Appellants, therefore, pray :—

- (a) That the conviction be set aside or
- (b) The sentence reduced.

Dated at Dar-es-Salaam this                      day of January, 1955.

(Sgd.) K. A. MASTER.

(Sgd.) N. R. SAYANI.

(Sgd.) G. R. MANDAVIA.

*Advocates for the Appellants.*

Presented for filing this 7th day of January, 1955.

(Sgd.) S. SINGH, 30  
*Court Clerk.*

Drawn and Filed by :

(Sgd.) K. A. Master, N. R. Sayani and G. R. Mandavia.  
K. A. Master, Satchu & Satchu and G. R. Mandavia,  
Advocates for the Appellants,  
Dar es Salaam.



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or having reason to believe the same to have been feloniously stolen or obtained. The particulars in this charge were amended at the beginning of the trial and for the words "during 1954" there were substituted the words "on a date unknown between 13th April and 17th November, 1954."

(iii) The Appellants were each sentenced on the 3rd January, 1955, to two months' imprisonment with hard labour on the first count and to four months' imprisonment with hard labour on the second count, the sentences not being specified to run concurrently they will of course run consecutively. In sentencing the Appellants the learned Resident Magistrate stated that he took into account that they were both first offenders and that the second Appellant, who was a clerk in Government service with ten years' service to his credit "will in all probability lose his job." The Magistrate also took into account that the Appellants have been subjected to a long trial. 10

(iv) During the trial the Appellants were both on bail as has been the first Appellant pending the appeal.

3.—During the trial the point was taken that the two accused being husband and wife were one person in law and thus they could not be charged with the act of conspiracy alleged in the first count, a conspiracy necessitating an agreement between two or more persons, one person being unable to conspire with himself. The learned Magistrate overruled this objection holding that the two accused in this case were not one person in law but two separate individuals and thus could be charged with the offence of conspiracy. A similar point of law formed the first ground of appeal which is in the following terms :— 20

"The learned Resident Magistrate erred in holding that the Appellants were excluded from the benefit of claiming that they are one person in law."

As that ground is a point of law going to the very root of the first count I will consider it first. 30

4.—At the close of the case for the prosecution Mr. Mandavia, who appeared before the Magistrate on behalf of both accused, took the point *inter alia* that the accused were at common law in England and thus in this Territory one person and thus could not be guilty of the offence of conspiracy with which they were charged. The Magistrate gave his decision on this and other submissions after an adjournment and held that the accused were not one in law insofar as the offence was concerned and called on them for their defence. The Magistrate's ruling on the submission in respect of the first count was exhaustive, covering no less than three pages of close typescript. Following on that the Defendants led certain evidence to substantiate their submission but the Magistrate in his judgment when convicting the accused said, insofar as this question is concerned :— 40

“ Before dealing with the evidence on the first count, I must  
 “ dispose of the objection by the accused that since they are  
 “ husband and wife they cannot in law be charged with conspiracy.  
 “ In ruling against this submission at the close of the case for the  
 “ prosecution, I held that marriage in Mohammedan law was not  
 “ monogamous and did not possess certain features which  
 “ I consider inseparable from the kind of marriage which English  
 “ law has in mind when it says that husband and wife are one  
 “ person and therefore cannot conspire unless there is also  
 10 “ a stranger to the agreement. The accused have adduced evidence  
 “ designed to show that as members of the Ismailia Khoja sect  
 “ their marriage *is* monogamous. Tejpar (D.W. 5) Honorary  
 “ Secretary of H.H. Aga Khan Ismailia Provincial Council of  
 “ Dar-es-Salaam, thought it was and he produced the Consitution,  
 “ Rules and Regulations of the Ismailia Councils of Africa (ex. 11)  
 “ and founded on Chapter IX particularly rules 19 (a) and (b).  
 “ After considering these rules and his evidence I see no reason  
 “ for saying this marriage of the accused is monogamous. On  
 “ the grounds set out in 19 (a) a husband can marry a second wife  
 20 “ with the permission of the Council and must deposit a minimum  
 “ sum with the Council, the income from which is paid to him for  
 “ the maintenance of the first wife if she continues to live with  
 “ him and direct to her if she leaves him. This taking of a second  
 “ wife does not operate as a divorce of the first wife—if she wants  
 “ to remarry she must apply for divorce and then wait four  
 “ months—and she can choose to continue to live with her  
 “ husband. There is nothing to say that she can enforce full  
 “ conjugal rights but equally there is nothing to say the husband  
 “ cannot exercise them with impunity. However close to  
 30 “ monogamy the Ismailia Khoja sect are coming, I am satisfied  
 “ that this situation of one wife and another optional or semi wife  
 “ is not monogamous and not the kind of union to which legal  
 “ unity is accredited in English Criminal Law. On a proper  
 “ construction of section 4 of the Penal Code I think the accused  
 “ are excluded from the benefit of claiming they are one person  
 “ in Law. The fact that it may be difficult to bring home a charge  
 “ of conspiracy against two persons who can take advantage of  
 “ section 122 of the Evidence Act does not make it incompetent  
 “ to charge them. In this case the accused themselves put the  
 40 “ communications made between them in evidence.”

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5.—At the appeal, which was most ably and persuasively argued by Mr. Master who had the support of Messrs. Sayani and Mandavia, it was urged upon this Court that the two Appellants are in fact one “ person ” in law. It was argued that in English law a husband and wife could not be charged with committing the offence of conspiracy as they are one person. At Common Law husband and wife are one. It was therefore

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submitted that it did not matter what was the form of the marriage, that it need not be monogamous, a marriage being a marriage so long as the marriage was subsisting and in support of this reference was made to the Indian Evidence Act, Section 122, and attention was also directed to section 126 and the proviso thereto and it was argued that as communications between such spouses are protected that means that they are one in law. Argument was also directed to the rules governing the Ismailia Khoja sect and it was stated that an Ismailia Khoja marriage is monogamous by custom and certain rules were referred to. Mr. Master in the course of his argument very properly admitted that under the rules in certain conditions there could be two wives at the same time, but submitted that the marriages under the Ismailia Khoja regulations were more in the nature of monogamous than non-monogamous marriages. As against that it was argued by Mr. Summerfield, Acting Solicitor General, who appeared for the Crown, that irrespective of the Common Law this was specific statutory offence and that ordinary words in ordinary statutes had to be given their ordinary meanings and that the statute was so framed, particularly when section 4 of the Penal Code was taken into account, that the section referred to "any person," meaning thereby any individual and not restricted to the position of "person" at law, common or otherwise, and in support of that interpretation cited many sections of the Penal Code. e.g. sections 384-386 relating to conspiracies and sections 388 and 389 relating to accessories in all of which sections the opening words are "Any person" while in section 387 in which special provision is made in respect of a spouse, the opening words are different. The words "A person" are used in section 387 which words are more restrictive than "any person" and yet statutory provision is considered necessary to ensure that a spouse does not become an accessory after the fact to an offence of which the other spouse is guilty by doing certain acts which render a person not a spouse of the guilty person liable to prosecution as an accessory after the fact. The need for this special legislation in this instance it is argued, clearly shows that where in the Penal Code effect is to be given to the fiction that husband and wife are one it is made clear in the section in question and thus the words "Any person" used elsewhere in the Penal Code does not permit of any interpretation other than the word "person" so used means any individual. Mr. Summerfield also cited sections 195 and 196, manslaughter and murder respectively, wherein the words "Any person" are used and suggested that as a man can be charged with the manslaughter or murder of his wife they must indeed be separate persons.

6.—A consideration of the evidence and an examination of the rules of the Ismailia Khoja community, a copy of which was considered in the case, satisfies me that a marriage between two persons both belonging to the Ismailia Khoja sect is a marriage closely approximating to a monogamous marriage as understood at common law but is not in fact such a marriage. That being so I am satisfied that the Magistrate's finding that this marriage

is not a monogamous marriage is correct, irrespective of whether or not had the answer been in the affirmative that would have had any material bearing on the ultimate decision as to their individual liability under the Penal Code. That finding that the marriage is not monogamous at Common Law does not fully dispose of the matter because in the recent decision in the Eastern African Court of Appeal, namely Tanganyika Civil Appeal No. 72 of 1954, *Mawji Damji v. Ayalbai Damji Devraj and Dhanji Damji*, which is not yet reported, the Court of Appeal held that in a community such as this it may be inequitable that the strict Common Law should

10 be applied in all cases and for that reason there is some restriction put upon its application by the Tanganyika Order in Council, 1920. The Court of Appeal pointed out that in certain cases persons in this Territory bring with them to this Territory their personal law. That, however, does not really affect the issue in this case because the question at issue is not a matter in dispute as between two parties both being subject to their own personal law, a question for example, as to whether or not a second woman can be married during the subsistence of a marriage, a matter which would in the present case as between the two Appellants be governed by the rules of the Ismailia Khoja sect. But the question at issue is one between the

20 two individuals and the Crown, the individuals endeavouring to use the Common Law fiction of the unity of husband and wife in a monogamous marriage while their marriage is not in fact monogamous within the meaning of the Common Law. In any event the question is not really one of personal law or of the Common Law but of the interpretation of the criminal statute under which the two individuals are charged.

7.—It is interesting to see an example of an eastern sect, namely, the Ismailia Khoja sect, a sub-sect of the Shia sect of Mohammedans, moving towards western ideas and endeavouring to claim the benefit of an out-moded Common Law fiction. I say “out-moded” because while the Common

30 Law fiction was doubt based on reasonably good grounds when in the old days a woman on marriage became in effect the property of her husband and all her property became his property, those days have gone as there has been much legislation relating to the independent status of women and to the reservation to wives of their separate estates.

8.—In the result I am satisfied that the two Appellants are separate persons within the meaning of the word “person” where that word appears in the first line of Section 110 of the Penal Code and in paragraph (a) of that section and thus they can properly be charged as separate individuals as was in fact done in the first count. That being so the first ground of appeal

40 fails.

9.—The next four grounds of appeal, namely grounds 2 to 5 can be divided evenly between the two counts, while ground No. 6 namely, that the judgment was against the weight of evidence, is common to both. The two grounds specifically relating to the first count are as follows:—

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2. The learned Resident Magistrate should have held that the prosecution had failed to prove any agreement between the Appellants to conceal the wall clock.
3. (a) The learned Resident Magistrate erred in finding that the Appellants had come to definite agreement to conceal by agreed falsehood the fate of the wall clock from the Police.  
(b) In the alternative to (a) the learned Resident Magistrate should have acquitted the Appellants of the first charge on his said finding.

10.—It appears that a clock of a particular design and make of which 10  
there were only four in all in Dar-es-Salaam, if not indeed in the Territory,  
was stolen from off the wall in its owner's house. It was the only thing  
stolen as a result of a burglary and the theft was reported to the Police  
on the 13th April, 1954. Unsuccessful investigation resulted but on or  
about 4th November, 1954, the owner of the clock, V. S. Ramji, reported  
to the Police that he had seen it on the wall of the living-room of the house  
occupied by the two Appellants and that he had seen it through the window  
opening on to the road. Evidence to that effect was given subsequently.  
The Police on the 4th November, the date of the report, started making 20  
further inquiries, the inquiries being conducted by Superintendent Eager  
who considered the information somewhat vague, the report of the clock  
having been seen having been made to Inspector Solanky in a street by the  
owner of the clock. Inspector Solanky carried out his instructions, made  
further inquiries and as a result of those inquiries Superintendent Eager  
went to the premises of the Appellants at 3 p.m. on the afternoon of  
17th November, 1954, taking Inspector Solanky with him to interpret  
from English into Gujerati and the reverse. A search warrant had not  
been obtained at that time as Superintendent Eager did not consider that  
the information received up to that time justified the obtaining of such  
a warrant and he went to make further personal inquiries. 30

11.—On the Police arriving at the house of the two Appellants,  
No. 37 Mkunguni Street, Dar-es-Salaam, the first Appellant was present  
and on being informed by Superintendent Eager through Inspector Solanky  
that he had received certain information which he wished to discuss with  
her she led the two Police officers into the living-room. In the living-room  
Superintendent Eager saw on the wall a clock which answered the rough  
description of the stolen property. Superintendent Eager informed the  
first Appellant that he had received information that a clock in her house  
was the property of another person, that the information he had received  
was very vague and it would be up to the other person to prove that the 40  
clock was his. Superintendent Eager then indicated the clock which was  
on the wall above a settee and asked if he could examine it but the first  
Appellant refused permission. Superintendent Eager then pointed out that  
the clock was the subject of Police inquiries and he wanted to see it but

permission was again refused. When, however, Superintendent Eager informed the first Appellant that he would be obliged to seize the clock for the purposes of the inquiry he was making she changed her mind, called a servant boy from the back of the house and told him to climb up and get it, which he did. Superintendent Eager then examined the clock and gave in evidence in detail what he saw as a result of that examination. Superintendent Eager returned the clock to the first Appellant, as he was not then fully satisfied with its identification, and it was replaced on the wall from whence taken by the same boy, Juma Salum, who in getting  
 10 up to take down and return the clock made certain dirty footmarks on the arm of the settee. Superintendent Eager asked the first Appellant where she had got the clock from and she said that her husband must be asked that and in answer to a further question said that her husband would be home about 4.30 p.m. Supt. Eager and Inspector Solanky then left.

12.—As the second Appellant was working as an accountant at the Public Works Department Headquarters, Dar-es-Salaam, the two Police officers after leaving his home went there and interviewed him in English. Superintendent Eager informed him that he was making inquiries about a clock which Superintendent Eager described and said he had just seen at  
 20 the second Appellant's house. In describing the clock Superintendent Eager omitted to mention the word "Mouthe" but that was added by Inspector Solanky and the second Appellant said: "Yes, I know what you mean." In answer to a question he said he had bought it from the Haideri Co., Dar-es-Salaam, and in answer to the further question if he had a key for the clock he said: "No, I have lost it." This last question was asked because V. J. Ramji, who said the clock was his stolen clock, still retained the key. Superintendent Eager asked the second Appellant certain questions about the clock and the various marks on it, the paint and about  
 30 a certain hole in the back, to all of which the Appellant gave answers or explanations. The Police then left.

13.—Later Superintendent Eager directed Inspector Solanky to go to the house of the Appellants, tell the two of them to come to his, the Superintendent's office and to bring the clock. The second Appellant arrived about 4.20 p.m. but without the clock. The second Appellant was asked by the Superintendent for a statement about the ownership of the clock and he proceeded to give his statement, but it was obvious that he was referring to a table clock and not to the wall clock of which the Superintendent was asking. As the Superintendent thought there must be some confusion he said they had better go to the Appellants' house so  
 40 that the Superintendent could show the second Appellant the clock of which he was asking and having recorded a note to that effect on the statement which he was recording they all three went to the house of the Appellants'. On arrival at the house Superintendent Eager went into the living room with the Appellants and then saw that the wall clock was no longer there and that in its place was a photograph of the first Appellant.

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Superintendent Eager asked both Appellants through Inspector Solanky about the clock he had seen on the wall but they both said there had never been a wall clock there and the first Appellant said that Superintendent Eager had examined the table clock—a clock which at that time was thickly covered with dust and one which Superintendent Eager on his earlier visit had seen on the top of a cabinet elsewhere in the room and which was still in the same place. On the arm of the settee Superintendent Eager saw the dirty marks made by the feet of the boy who had climbed up to get down and replace the wall clock and in the presence of the two Appellants the boy was called and then asked if he had climbed up on the settee and taken the clock down from the place pointed out to him by Superintendent Eager and replaced it later. He said he had. At that stage Superintendent Eager cautioned the Appellants and asked the second Appellant if he would give a statement concerning the clock and also reference to the boy who said he had taken down the clock and replaced it. The second Appellant agreed. The statement was taken and then read over to him (including the observations by the Superintendent) and he said it was correct and signed it. A statement was also taken from the first Appellant who having been cautioned simply said : “ I have nothing to say. If you wish to take “ this clock you can. I do not know anything about anything else.” 10 20

14.—The second Appellant's statement which he gave and signed including the observations made by Superintendent Eager is as follows :—

“ 17.11.54. 1645 hrs.

“ Statement of : K. K. Mawani.

“ Residing : 37 Mkunguni Street. Religion Ismailia Khoja.

“ Occupation : Accountant P.W.D.

“ I purchased a clock—that is the clock which is in my sitting room. I mean that clock on my cupboard. (Here Mr. Mawani states that he does not know what the other clock is to which I am referring i.e. the ‘Mouthe’ clock). I proceed with Mr. Mawani to his house to indicate which clock I mean. On arrival I find that the clock in question has been removed. 30

“ D. G. Eager.

“ This round faced clock to which you refer has never been in my house.

“ (At this stage I officially cautioned Mr. Mawani as follows :—

“ It is my duty to warn you that anything you say will be taken down in writing and may be used in evidence).

“ K. K. M.

D. G. Eager S.P. ‘ C.’

“ I deny ever having seen this round faced clock in this room or in the bedroom or in any other part of this house. You have informed me that you saw such a clock in this room and I say that there was not such a clock.

“ I heard Juma give a statement. Whatever he said is incorrect. I do not know why he should say something that is incorrect. It remains for me to investigate this. You have told me that the marks on the arm of the settee were made by Juma. I have nothing to say to this.

10

“ Statement read over to Mr. Mawani who understands it and agrees that it is correct.

“ K. K. M.

D. G. Eager S.P. ‘ C.’ ”

15.—After the statement had been taken A. S. P. Godby arrived and Supt. Eager ordered him to prepare a Police order to search and that having been obtained ordered A.S.P. Godby and Inspector Solanky to search the premises for the clock. That was done but without success. The Police officers then left taking the photograph of the first Appellant and the table clock with them. On the next day, the 18th, the alleged owner of the missing clock brought to the Police for comparison one of the other three clocks similar to that which had disappeared off the wall. This clock was entered as an exhibit in the case, and marked “ G.” Strenuous efforts were made by the Police to find the missing clock but without result and it has never been produced. The table clock which was produced is a large clock with a base longer than its height and face of about 6” in diameter with a striking gong though in this Court the clock was not working. The clock produced similar to that which is alleged to have been stolen and then removed on the 17th November was a strikingly handsome round wall clock and there cannot be any possibility of any misunderstanding as to which clock was being spoken of.

20

16.—The next day, 18th November, armed with a search warrant issued by a Magistrate, Supt. Eager returned and a thorough search of the place was made. The search included having the cesspit emptied to see if the clock was there but no clock was found. The two Appellants were charged and appeared before the Court on the 20th November when at their request the case was adjourned, the accused being on bail, until the 25th when Supt. Eager gave evidence covering the incidents to which I have already referred.

30  
40

17.—Supt. Eager was cross-examined as to the relationship of the two Appellants obviously as it turned out, with a view to putting up the legal defence that they were one “ person ” in law. Questions were also put as to Inspector Solanky’s proficiency in Gujerati and the only question put to the Superintendent relating to what might have happened to the clock produced the statement “ For all I know they might have thrown

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the clock away." Now that might have been in answer to the question :  
" Do you know what has happened to the clock," or it might have been in  
answer to a question put directly in the form " For all you know they  
might have thrown the clock away ? " followed of course by the answer  
" Yes."

18.—The next witness called was V. S. Ramji the alleged owner of the  
missing clock who stated that he had bought three of the four clocks of that  
kind in the country and that one had been stolen. He gave details of the  
stolen clock and how he could identify it, his reporting the loss to the Police  
and his later seeing the missing clock through an open window on the wall 10  
of the Appellants' house in the middle of October, when he was with M. N.  
Babu, though he did not report that fact to the Police until early in  
November. This witness also gave evidence as to the then whereabouts  
of the four clocks and his cross-examination was almost wholly directed  
to challenging his evidence that he saw a clock on the wall of the Appellants'  
house and that he could identify it at that distance as his.

19.—The Appellants' two houseboys were next called and they gave  
evidence of the existence of the wall clock. The boy who had taken it  
down said that he first saw it before the musical party given by the  
Appellants in October. These two boys were next followed by Mr. M. N. 20  
Babu a friend of V. S. Ramji who in October had driven V. S. Ramji in  
his car and stopped outside the house of the Appellants' while the musical  
party was going on inside. When leaving, as he was reversing the car,  
V. S. Ramji sitting with him stopped him, made him go forward again and  
looking through a window of the house of the Appellants and pointing  
to a clock on the wall claimed it as his stolen clock. They were quite near  
the window and this witness also saw the clock which he says was like the  
missing clock, which he had seen before it was stolen, and it was similar to  
the round clock " G " then in Court. This witness was cross-examined  
at length, the cross-examiner endeavouring to test his credibility. The 30  
witness's last statement being " It is true I did see a clock there like  
exhibit ' G '."

20.—Sub-Inspector Solanky was next called and he gave evidence  
corroborating the evidence of Supt. Eager insofar as the matters occurred  
while they were together. He also gave evidence as to reports made to  
him about the missing clock. This witness, whose evidence was spread over  
a Saturday and the next sitting of the Court a fortnight later, was subjected  
to an exhaustive cross-examination, the questions being directed towards  
challenging his credibility, his evidence that the clock was on the wall and  
his own movements as to where he had been on the morning of the day 40  
in the afternoon of which he went with Supt. Eager to the Appellants'  
house, it being sought to show by the questions asked that he had paid  
a previous visit to that house at 10 a.m. that same day, but no suggestion  
was put to him as to what that visit was about. The fact of the visit was

apparently considered enough. The only question put to this witness relating to the state of mind of the Appellants in relation to this charge was in connection with the first Appellant and in cross-examination Inspector Solanky said that the first Appellant was angry when he asked on behalf of Supt. Eager for him to be shown the clock and :

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“ She became frightened when the Superintendent told her that we would seize the clock. She did not remain frightened until we went. While Supt. Eager was holding the clock she looked frightened, when he handed it back she looked pleased.”

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10 The last question put to this witness on the Saturday before adjourning brought forth the statement “ I would not be surprised if she had been frightened about what happened that afternoon and threw the clock away.” Earlier in cross-examination it was established that the other three similar clocks were all at their respective normal places between 4th and 17th November, namely, one was still held by V. S. Ramji, the second with Pranlal Dewani and the third at the shop of a tailor called “ Liberty Tailor ” in Steer Street. The fourth of course was alleged to be at the home of the Appellants.

21.—When the Court re-assembled a fortnight later the extensive  
20 cross-examination of this witness was resumed. Special efforts were made to break down this witness's testimony that he saw a clock similar to exhibit “ G ” at the tailor's during November. In re-examination it was sought to show where the witness had been on the morning of the 17th November, it having been alleged, but denied, in cross-examination that he had visited the first accused and the witness gave detailed evidence of his movements showing that he could not have been there. This led to a demand by Mr. Mandavia to be allowed to cross-examine on the new matter and permission was granted by the Court. Finally, and in answer to the Court, the witness said :

30 “ When on the 17th November I went back to the house of accused on Supt. Eager's instructions to bring the 2 accused and the clock to his office, I spoke, in Gujerati, to the second accused. The first accused was present and heard what I said.

“ I said ‘ Mr. Mawani, you and your wife and the clock which I and Supt. Eager saw in your house today at 3 p.m. are wanted at the Police office ’.”

According to this witness the second Appellant got excited and said :  
“ Will you let me drink my tea.” He was informed he could have his cup of tea and then come. At that time he was taking tea in the shop at the  
40 counter and the Inspector was outside the shop. Then according to the witness :

“ Mr. Mawani came round behind me and got into his car and drove away. I did not say anything to him. He did not

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“ say anything to me. I reported the matter by radio, which was  
“ fitted in the car I had come in, to inspector (sic) Eager. I did  
“ not see Mr. Mawani all the time. I stayed on the other side of  
“ the road outside the shop after transmitting the message.  
“ When Mr. Mawani passed me I was just outside the shop door,  
“ the car was on the other side of the street.”

22.—The Liwali of Dar-es-Salaam was next called on the subject of the status of the marriage between the parties and after him the manager of the shop from whom the second Appellant had originally said at the Public Works Headquarters that he had bought the clock. This witness's examination-in-chief was very brief. He simply stated what was sold in the shop of which he was manager, that they had never stocked any clocks like the wall clock, “ G,” in fact he had never seen a clock like “ G ” before. He did not know the two Appellants and he had never sold any clock like “ G ” to them. He was cross-examined as to his father's death and the fact that his father was an old man and used to be in the shop, that his father used to repair clocks and watches though he stopped doing this about ten years ago because of blood pressure and heart trouble ; that the witness gave up schooling in 1947 but knew everything that went on in the shop. He had a stock ledger and that the stock ledger would not show whether, if they had received thirteen clocks like the round wall clock “ G ” and sold two then there would only be eleven of that type of clock remaining on hand. He explained that the stock ledger was not really a stock ledger, it could not tell how many of any particular make and description of clock had been received or issued. He would have to look up his correspondence and invoices to see what particular kind ; the ledger would show the amount of a particular type or make they had received but the witness would have to check through stock to see how many he had sold. That he was assisted by a young brother aged 19 or 20 ; that the witness was 26 and that they had an Indian assistant who left in September, 1953, when his services were dispensed with. This assistant was not a good repairer but they did not lose any clocks or watches while he was employed with them. I have mentioned that cross-examination in some detail. It was, in typescript, about four or five times the amount of the evidence-in-chief of this witness and I do not see that one single question of those asked had anything whatever to do with the merits of this case. The witness was also questioned by the Court but that was to ascertain how he knew he never had a clock like that particular wall clock “ G ” and he gave the reasons why and added that he had never seen a clock made by the Mouthe people in his shop.

23.—A clock repairer, Ambaram Mistry, was next called who deposed that he had repaired two clocks for the second Appellant, being paid for them on the 21st July, 1954, and that one of the clocks was similar to the round wall clock in Court, “ G,” that is to say a clock similar to the one that was missing. This witness's credibility was severely attacked and his

method of book-keeping shown not to be of the best, the entries not being all made as and when the clocks were brought in for repair. The cross-examination of this witness was necessary and important as he placed the second Appellant in possession of a clock similar to the missing clock in the month of July, 1954. Assistant S. P. Godby then gave evidence of arrest of the two Appellants neither of whom said anything when arrested.

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24.—At this stage evidence was led relating to the movements of Sub-Inspector Solanky on the forenoon of the 17th November, three  
10 additional witnesses being called and one previous witness re-called. These witnesses were called to show that the witness Solanky did not go to the house of the Appellants at 10 in the morning of the 17th November. His movements throughout the day were accounted for in detail. These witnesses were also subjected to extensive cross-examination. This closed the case for the prosecution and then there were extensive submissions made on behalf of the Defendants to the effect that there was no case for them to answer, while counter-submissions were made on behalf of the prosecution. The Magistrate reserved his decisions on these points and  
20 having placed his decisions in writing, delivered them on the 16th December, overruling the submissions made on behalf of the Defendants and calling on them for their defence.

25.—The first Appellant gave evidence and admitted having had a clock similar to the round wall clock in question hanging on the wall of her living-room on the day that Supt. Eager and sub-Inspector Solanky called, that is to say on the 17th November, 1954. She denied having any detailed knowledge of the clock or how it came into the house except for the fact that it had been given to her husband by a friend as a present for her  
30 small son on the celebration of the fifth anniversary of his birthday. That they had received the clock on the 12th October, she saw it first when hanging on the wall that evening but she had never inquired of her husband who the friend was. The first Appellant also said that Sub-Inspector Solanky had come to her house, about 10 o'clock in the morning of the same day in which he returned later with Supt. Eager, and had asked her to procure for him a neighbouring young woman who was pregnant with child in the absence of her husband. The first Appellant stated she indignantly refused to do this and Solanky threatened her. Soon after Supt. Eager's visit and about an hour before her husband came home she says she took  
40 the clock and going up a ladder leaning against the wall at the back of her yard threw the clock over the wall into a place occupied by some Africans. She calmed down about half an hour after throwing it away and went to find it, but it was not there. The second Appellant also gave evidence of the existence of the clock and stated that he had changed his story to the Police when he found what his wife had done.

26.—It is not necessary for me at this stage to touch on the question as to how the Appellants became possessed of this clock as that really forms the subject of the second charge and following grounds of appeal, but I have



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mentioned all this evidence in some detail to show that it was only at the stage in the trial when the two Appellants, who were then the two accused, were themselves giving evidence in their defence that there was any admission in any form whatsoever that the clock claimed to have been in the house in mid October at the time of the musical party as stated by both V. S. Ramji and M. N. Babu was in fact there as also was it stated by the Police. Until giving evidence the Appellants had not only lied but had lived a life of deceit so far as the Court and Police were concerned, a state of affairs which the cross-examination of the witnesses did little to refute.

27.—It was argued on behalf of the Appellants that the essence of the offence on the first count was not the concealing of the goods in question but of obstructing the course of justice and that as the charge was one of conspiracy to attain that end then quite apart from the provisions of the law requiring two or more to conspire it was impossible to convict the two Appellants because they had had no time to conspire even if they had had a mind to do so. It was argued that because the Police officers visited the house of the Appellants and spoke to the first Appellant from 3 to 3.30 p.m., thence to the second Appellant from, say, 3.30 to 3.50 p.m. and that by the time the second Appellant arrived home the clock had already gone and he was, according to his evidence, at home for only three minutes before having to leave for the police station they had not had time to enter into any conspiracy. It was also argued that there had to be in existence a charge before the offence could be committed; that a Court had to be seized of the matter, and in support of this page 351, para. 574 of the 9th volume of Halsbury's Hailsham Edition, was quoted. Now it is quite true that that passage in Hailsham would appear to support that argument, but the position was made clear in *R. v. Sharp* (1938) 1 All E.R. 48 and 26 Cr. App. R. 122 where it was held that once a crime had been committed public justice requires that every attempt to conceal the crime shall be punished. A note that the offences referred to in para. 574 referred to above apply to a conspiracy to conceal and destroy evidence of the commission of a crime and whether or not proceedings are actually pending, is contained in the cumulative supplements to the current editions of Halsbury's Laws of England. Du Parcq, J. who gave the judgment of the Court of Criminal Appeal, stated at page 126 in the Criminal Appeal Reports, after considering the other grounds of appeal—

“ All that is left therefore of the argument before the learned Judge, with which this Court has fully acquainted itself, is that there can be no offence of conspiracy to defeat the course of public justice unless proceedings are pending or have been commenced. In other words, it is said that no crime has been committed by a person who conspires with others to help him to conceal what has taken place and persuades other persons to make untrue statements, unless proceedings have already begun. That seems to this Court to be a hopeless proposition,

“ a proposition so absurd that it cannot form a part of the law  
 “ of this country.

“ Public justice requires not only that people should not  
 “ take steps to conceal a crime or destroy evidence once a summons  
 “ has been served upon somebody, but also that every crime  
 “ should be suitably dealt with, and a man who obstructs public  
 “ justice as soon as a crime is committed and endeavours to avoid  
 “ the consequences of his wrong-doing by conspiracy with other  
 “ is just as much guilty of an offence as if he waits until after  
 “ proceedings are actually pending. It is unnecessary to say more  
 “ on a matter which can be said in a few sentences. It is only  
 “ desirable to say that there is nothing whatever in the contention  
 “ put forward in the argument which has been addressed to this  
 “ Court.”

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And that conclusively answers that argument on this ground of appeal once it is established that a crime has been committed and the evidence required was in respect of that crime.

28.—Mr. Summerfield submitted a further counter-argument, namely, that the offence alleged in this count was not a common law misdemeanour  
 20 but a statutory substantive offence and thus was complete in itself. There may well be considerable merit in that argument especially because even as the law stood before it was clarified in *R. v. Sharp* such an agreement was a conspiracy at common law even if the indictment or other proceedings, preferred or intended to be preferred, were insufficient or that the Court had no jurisdiction. Mr. Summerfield at one stage also used a further argument, namely, that as the Police were searching under a formal written “ Police authority to search ” they were being obstructed by the Appellants, but he abandoned that argument on realising that the time of the issue of the order to search was after the denial as to the existence of the clock in the  
 30 home of the Appellants on the 17th November. I think this abandonment possibly a little generous as it was only an hour or two later and the Police were still about their duty looking for a stolen clock, or at any rate a clock required for police inquiries into the theft of a clock and the two Appellants were still sitting quietly by and seeing the Police search for something which certainly one of them had obstructed the course of justice by removing and which was known to the other to have been so removed. In other words they were allowing the Police to search for something which the Police was aware had been there but which they knew, through the conduct of one of them was no longer there. That conduct might well be  
 40 classed as physical and passive obstruction on the part of the Appellants— though I am not called on to decide that.

29.—It was also argued on behalf of the Crown that in deciding whether or not the Magistrate correctly convicted the Appellants it was possible for him to look at all their actions and the case of *R. v. Patel and Anor.*,

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2 E.A.C.A. 76 was cited wherein it was held that an agreement by two or more persons to do an unlawful act may be inferred from evidence of acts not in themselves unlawful done by them in furtherance of an apparent criminal purpose.

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30.—The Magistrate in considering this charge against the accused touched on various matters in his judgment, dealing with some at length. He considered at length, first of all, the defence put up by the first Appellant when she says that she threw the wall clock over the wall of the yard at the back of her house because, as she says, she was angered with both Inspector Solanky and the clock. She suspected that the Inspector would make trouble for her about the clock as he said it belonged to one of her friends. She said she thought “ Mr. Solanky was going to frame me ” and she gave as her reasons for that the threat which she said was made to her earlier that day when Solanky came to her premises and she refused to procure for him the girl living next door. The Magistrate dealt at considerable length with this allegation, the evidence in support of it, the evidence against it and stated that the truth or otherwise of this allegation was important to the first accused and mentioned that he failed to see how a quarrel on 17th November, the day on which the matter was brought to a head, could affect inquiries started on the 4th November, and continued since, and it was also clear that it was Supt. Eager and not Inspector Solanky in charge of the investigation. The magistrate also referred to the first Appellant's evidence, to which I have not referred, that she did not report either this threat or the visit of the Inspector that morning to her husband when her husband came back for lunch that day, nor did she inform him of it in the afternoon after Supt. Eager and the Inspector had visited her house and examined the clock. The Magistrate assessed the value of the witnesses, did not believe the allegation of the previous visit with the threats, did not believe the first Appellant's reason for throwing the clock away and found that when the clock was disposed of it must have been disposed of with some definite intent and not for the reason the first Appellant had given. 10 20 30

31.—The Magistrate then considered the position of the second Appellant, the second accused, taking care to point out that the second Appellant was not necessarily affected by the falsity of the story told by his wife. Here again the Magistrate analysed the evidence given by the two Appellants as to what happened that afternoon on the second Appellant's return home, and in his judgment he stated :—

“ By 3.50 o'clock on 17th both accused knew the police were  
“ carrying out investigations about the wall clock in their premises. 40  
“ By at least 4.30 the two accused had had the opportunity of  
“ communicating with each other. By 4.50 the second accused  
“ had denied knowledge of the clock and was talking of a table  
“ clock. Without a further opportunity of communicating with

“ her husband, the first accused was also denying knowledge of  
 “ the wall clock and suggesting the officers had examined the  
 “ table clock. I see no reason to think that the second accused  
 “ did not have a hand in the actual removal of the clock, but the  
 “ essence of this charge is the intent to obstruct and the common  
 “ preconceived purpose to obstruct and the motives are immaterial.  
 “ The charge might have been better framed, but even if the  
 “ clock *had* gone by the time the second accused returned from  
 “ work I am quite satisfied that he and the first accused came to  
 “ definite agreement to conceal by agreed falsehoods the fate of  
 “ the wall clock from the police with intent to obstruct the course  
 “ of justice. I accordingly convict the accused on the first  
 “ count.”

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32.—I have analysed the evidence and the arguments on this count at  
 some length and no argument has been adduced before me which satisfied  
 me that the Magistrate's judgment is wrong in law or in fact. In my  
 opinion the learned Resident Magistrate was perfectly right in coming to the  
 conclusion which he did, and, in my opinion, no other conclusion was  
 reasonably possible in view of the evidence. Accordingly these grounds of  
 20 appeal in respect of the first count fail.

33.—The second count, as stated, is one in respect of retaining property  
 feloniously stolen or obtained, it being alleged that the Appellants :—

“ did on a date unknown between 13th April and 17th November,  
 “ 1954, in the Municipality of Dar-es-Salaam, retain property,  
 “ to wit, a German made wall clock bearing the trade mark  
 “ ‘Mouthe,’ knowing or having reason to believe the same to have  
 “ been feloniously stolen or obtained.”

Against their conviction on this second count both Appellants have filed  
 two specific grounds of appeal, namely :—

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“ 4. There is no evidence to support the finding of the learned  
 “ Resident Magistrate that both the Appellants had more than  
 “ a mere suspicion by 17th November and in fact by then knew  
 “ or had reason to believe the property was stolen.

“ 5. The learned Resident Magistrate should have held that  
 “ the Appellants had not retained the property after the  
 “ 17th November, 1954.”

34.—The evidence on which the Crown sought to support the conviction  
 on the second count is of course the evidence already referred to covering  
 the possession and disposal of the clock, the evidence of the clock repairer  
 40 that he repaired such a clock for the second Appellant in July, 1954, and the  
 fact that the second Appellant's version of where he got the clock from was  
 false and the fact that all four clocks were accounted for during the time.

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As against this there is the evidence of the two Appellants to which reference has already been briefly made, and in addition there is the evidence of the witnesses called to substantiate the testimony of the two Appellants, especially as to how they became possessed of the clock.

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35.—The second Appellant, who of course gave evidence after his wife but whose testimony can more conveniently be considered now, stated that the 12th October was the fifth anniversary of the birthday of his son and he took him at 4.30 p.m. to have his photograph taken at Patel's, the photographer. There was some difficulty in having the photograph taken at that particular hour until the second Appellant informed Mr. Patel that it was his son's birthday and asked Mr. Patel if he had not already received his invitation to attend a musical party that night in celebration of the young man's birthday, and an invitation card similar to those sent out was produced in Court. Mr. Patel's invitation, however, had apparently not yet been delivered, but the photographer relented, took the photographs and that evening about 6.40 brought round the clock in question as a present for the small boy. The second Appellant put the clock on the wall where it was seen by his wife when she came in later. She also saw other presents given to the boy. There was some discussion about the clock between the second Appellant and Mr. Patel, the second Appellant apparently not thinking too much of the clock as a present as it was apparently second hand and was not in its own carton. Mr. Patel, in answer to the second Appellant, informed him that he had bought the clock at Haideri's Stores. 10 20

36.—The clock was on the wall of the house on the night of the party, which incidentally was the time and place where it was first seen by V. S. Ramji, who claimed it as his own. V. S. Ramji stated that he saw it through the window but his credibility was severely attacked in cross-examination. The clock was taken down the next day as it was not going properly. While the clock was down the small boy did some damage to it with a nail and the second Appellant did certain work to it and painted its back green. The second Appellant gave his evidence of what happened in the Public Works Department Headquarters between Supt. Eager and himself when he said he had bought the clock at Haideri's and he said he had said so as that was where Mr. Patel had told him he had bought it and the second Appellant already at that time thought that Mr. Patel had reported to the Police that he, the Appellant, had stolen his clock. In fact the second Appellant says he so challenged Mr. Patel when he next saw him the day after his first appearance before the Magistrate. On that occasion Mr. Patel then said that he had not bought the clock at Haideri's but from a tailor, Rajey. The second Appellant also said that he had lost the key which he obtained from Mr. Patel and that he had never had a clock repaired by the clock repairer, A. V. Mistry, who said that he repaired a clock similar to the wall clock in question for the second Appellant in July. The second Appellant denied that he knew the clock repairer at all. 30 40

37.—G. D. Rajey the tailor gave evidence that he bought a clock like the wall clock “G” in Court from Abdul Taib in Acacia Avenue about two years ago and eventually sold it to Patel in September. He also referred to the fact that two bits of wood had been screwed on to the back of the clock so as to be able to fasten it to a cupboard and he denied that the clock was in his shop at Liberty House, Steere Street in November as stated by Inspector Solanky. Patel the photographer gave evidence of purchasing a clock like the one “G” in Court from Rajey in September and giving it to the second Appellant for his son on the 12th October. He also referred to the conversation with the second Appellant as to whether it was or was not a new clock and to the conversation on the 20th November when the second Appellant challenged him with having reported to the Police that the clock had been stolen.

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38.—For the defence further evidence was called relating to the marriage of the Appellants to which I need not further refer, and also a man who knew Inspector Solanky was called obviously to substantiate the fact of Solanky's visit to the first Appellant's shop earlier on the day of November 17th, but he did not substantiate that in any way and I need not refer to his evidence any further.

39.—It was argued before me that the second charge of retaining the clock having reason to believe that it had been feloniously stolen or obtained meant of necessity an innocent first possession then a change of mind in respect of the clock and retention thereafter and thus if there is no change of mind between the two latter moments then there cannot be a “retention” within the meaning of the section. Moreover that as the charge was framed the first and last dates of the period mentioned in the charge, which were not stated to be inclusive, must be excluded and as there is no evidence about the clock at all on the 16th November there could be no conviction. There might possibly have been a change of heart on the 17th followed by immediate dispossession of the tainted article. As the first Appellant threw away the clock and put it out of her control she thus cannot be charged and in fact there is no evidence whatsoever to connect the second Appellant with the clock on the 16th or on the 17th before it was disposed of. It was argued that as the charge was framed the Appellants are not answerable at all for what happened on the 17th November as that date is not included within the charge which is only up to and inclusive of the 16th November.

40.—The original charge was “during the year 1954” which of course included the whole of November up to the date the parties were charged. The charge was amended in Court to read “on a date unknown between the 10th April and 17th November, 1954.” Assume for a moment that the amendment had been to the “18th November 1954” would the Appellants have been prejudiced in any way? Obviously not. Had the prosecution asked for an amendment during the course of the trial to make the date the 18th November and not the 17th would it have been opposed? Obviously

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not. Would the change in date have in any way prejudiced the accused ? Obviously not. If for any reason the Appellants had objected to the amendment, or if it had in any way made the defence more difficult that would not have prevented the amendment. The amendment would have been made and the defence granted an adjournment, that is all. This submission is technical and of no merit. Had the argument been sound I would not allow the appeal on a ground such as this but would call in aid Sections 209 (2) and 346 of the Criminal Procedure Code. Had it been a case such as this in the High Court, judgment, under section 289 of the Criminal Procedure Code, would have cured any defect in the charge. 10

41.—Having considered the question of the date there remains the Magistrate's findings on which he convicted the Appellants of retaining the clock. As the Magistrate's judgment was severely criticised it should be reproduced here and is as follows :—

“ On the count for retaining, the only evidence produced by  
“ the prosecution to identify this wall clock with the stolen ones  
“ is (1) it is of the same type and make ' Mouthe ' (2) it has scratches  
“ on the dial (the complainant said his had ' a small scratch ' )  
“ (3) it has two hooks at the back as the complainant's stolen  
“ clock had. This would not be enough normally. But I am 20  
“ satisfied on evidence which would be admissible apart from the  
“ conspiracy count that it is due to the default of the accused  
“ that the proper evidence that should be before this Court, the  
“ clock which was at the accused's premises, has not been pro-  
“ duced. Sufficient identifying evidence has been produced to  
“ raise a strong suspicion in this case that the missing clock was  
“ the stolen one and I think that under section 114 of the Evidence  
“ Act the wilful non-production of this evidence goes to supplement  
“ what is lacking in identification, until the accused can prove  
“ otherwise. 30

“ So far as the first accused is concerned the case against  
her rests mainly on (1) her refusal to show the clock willingly and  
“ (2) her lies about it.

“ She denies refusing to show the clock to the two officers  
“ when they first came at 3 o'clock. I am satisfied from the  
“ evidence of Superintendent Eager and Inspector Solanky that  
“ she had to be asked three times before she let them examine it  
“ and the third request was in fact a threat that they might seize  
“ it. When the clock was no longer on the wall, her photograph  
“ hung there instead. She said she put it there because there 40  
“ was an empty place on the wall and denies that she was trying  
“ to hide anything. The reason for telling lies to the police was  
“ (at p. 39) ' I thought it would keep me out of trouble not to  
“ ' mention what I had done with it.' This seems to me an odd  
“ way of keeping out of trouble.

“ The first accused has given certain explanation about the clock and the circumstances in which she first saw it. I will deal with the direct evidence about the receipt of the clock subsequently. On the evening of the 18th October of this year, her son’s fifth birthday, she went out to the mosque, leaving her husband at home, the clock was not on the wall.

“ When she came back it was. She was told by her husband that ‘ a friend gave it to us ’ (p. 39). She did not inquire who this friend was—she says it was not necessary to inquire. It was the first or among the first few presents for the child, all of which had arrived in her absence at the Mosque. Within 5 days it was down off the wall for repairs, scratched with a nail by the child and painted at the back. Even after this and up to 17th November she was not told nor did she inquire who gave it. The other presents for the child were things such as a train, a cycle and clothes. The evidence of the second accused is that when she returned from the mosque he pointed out the presents on the harmonium in the room and the clock on the wall and she said : ‘ That clock is good.’ She did not say to the police even that she thought it was a present.

“ The prosecution case as regards the second accused’s guilty knowledge, is based mainly on (1) a false explanation about where he got the clock and (2) his further lies about it later in the day.

“ When interviewed at his office by Superintendent Eager and S/Insp. Solanky, the second accused said he had bought the clock at Haideri Stores. Evidence was called by the prosecution to show that Haideri Stores had never had such a make in stock (and the witness was cross-examined). The accused however admitted in evidence that he had told a lie to the police when he said this and he offered an explanation for telling it (at p. 42). His evidence is that a Mr. D. S. Patel (D.W.4) brought the clock as a present for the child on the evening of 12th October. Apparently, looking a gift-horse in the mouth, he asked Mr. Patel where he got the clock ‘ because ‘ it was a bit old ’ and Patel replied that he had got it at Haideri Stores. This evidence is confirmed by Patel who in turn says *he* told a lie about where he got it because he had in fact got it second hand from a Mr. Rajey (D.W.3). Patel according to the accused is a ‘ firm friend.’ In spite of this the reason the second accused gives for saying that he bought the clock at Haideri Stores is that he thought Mr. Patel might have reported to the police that he (the second accused) had stolen the clock. He says he did not think it surprising that his friend of whom he had a high opinion should do this. But because he thought Patel might have turned on him and ‘ framed ’ him in this wicked manner, he apparently played

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“right into the hands of this suspected Judas by concocting  
“highly incriminating explanation instead of telling what accord-  
“ing to him was the plain truth, viz. that far from being stolen  
“from Patel the clock was a gift to his child only a month before  
“from the hands of Patel himself. This explanation of the lie  
“is indigestible.

“As to the further lies about the clock at the police station  
“and at his home, the explanation of the second accused is that  
“he told them in defence of his wife ‘otherwise the police would  
“‘have harassed her.’ This seems to me to be a case where if 10  
“what he says is true the cure was quite obviously worse than  
“the disease. Even when it was clear before the time of their  
“arrest that they were both going to be harassed, he still thought  
“fit to keep that knowledge he had to himself. In the middle of  
“lies and counter lies I find it difficult to believe that he was not  
“well aware at the very least of what had happened to the clock.

“The defence has however tendered evidence to show that  
“the clock given by Patel was the one he bought, in September  
“from Rajey (D.W.3) and removed at that time from Rajey's  
“premises, Solanky's evidence was that he saw a wall clock in 20  
“what is clearly this tailor's shop on 7th November. In cross  
“(examination) his recollection of the exact date was much less  
“precise but I am satisfied that he saw such a clock there after  
“the investigations started on 4th November. He admitted in  
“cross (examination) that when he got the information from the  
“supplier of the clocks after 4th November that one had been  
“sold to the tailor then at this time for all he knew the tailor might  
“have got that clock the day before, I have paid particular atten-  
“tion to the witnesses on this question of the sale of Rajey's  
“clock, particularly as this officer had already been the subject 30  
“of one vigorous attack in this trial and I prefer the evidence  
“of the prosecution. Apart altogether from the linking of this  
“clock of Rajey's with the clock in the accused house, I am quite  
“satisfied that in July of this year, long before these alleged  
“transactions with Rajey's clock, the second accused was in  
“possession of a wall clock of the same make as exhibit G in this  
“case. P.W.9 Mistry, a watch repairer was very dull in his  
“evidence but he identified the second accused as the person who  
“brought him two clocks to repair. He remembered the round  
“wall clock because it was the only one of its make he had 40  
“repaired. He produced the repair book of the firm he worked  
“with (Exh. H) and was cross examined at length about the  
“fact that the entry for July appeared on one of the last few  
“pages of the book and out of chronological order and referred to  
“A. Mawani. He was quite clearly skilled at nothing but his  
“watch repairing but I was impressed with the way he gave his  
“evidence and with his identification. I have no hesitation in

“ preferring his evidence and I am satisfied there is no substance  
 “ in the tortuous explanations of the accused about his lies nor  
 “ in the most unimpressive story of Patel.

“ There is nothing to show that the first accused knew of the  
 “ clock in July, but her acts and statements to the Police in  
 “ November are in my opinion consistent only with guilty  
 “ knowledge about the property. I see no reason to credit the  
 “ second accused with exclusive possession of the clock nor is  
 “ there any evidence of compulsion for the purposes of Section 20  
 “ of the Penal Code.

10

“ Even as against the second accused the prosecution produce  
 “ no evidence to show when he did get the clock first but I do not  
 “ think it is necessary to prove as against the accused that the  
 “ original receipt was innocent. If there is no evidence to the  
 “ contrary, I am entitled to presume it. I am satisfied that  
 “ whatever their original knowledge about the clock, they both  
 “ had more than a mere suspicion by 17th November and in fact  
 “ by then knew or had reason to believe the property was stolen.

20

“ I accordingly convict both accused on the second count  
 as charged.”

30

The Magistrate's judgment has been attacked in different ways and it was suggested that he had not paid sufficient attention to the evidence given by the houseboys as to when the clock was first seen, but I do not propose to analyse the passages of the evidence referred to in any detail. Let it suffice that if Inspector Solanky saw the clock at the tailor's on the 7th November, or at any rate on a date after the 4th November when he started making inquiries and when he was checking up to see where the other three of the four original clocks were, then any suggestion that the clock missing from the premises of the Appellants on the 17th November was the clock given to them by the photographer about 12th October and bought by the photographer from the tailor during the months of September is obviously false. However, Solanky stated that during the adjournment in the case he saw that the clock in the tailor's shop was then missing and he saw the place in the cupboard where it used to be. If the story as told by the prosecution is correct, and the Magistrate believed it to be correct, this clearly shows a conspiracy between the Appellants, the photographer and the tailor to establish the identity of the clock missing from the house of the Appellants, and it is not without significance that no indication of this defence was given until after the case for the prosecution had been

40

completed.

42.—It was sought on behalf of the Appellants to show that even assuming they had a change of mind about the clock when the Police visited their premises on the 17th, they immediately divested themselves of that clock by throwing it away and it was argued that in such circumstances, owing to a recent decision of the East African Court of Appeal in the case of *Fatma*, Tanganyika Criminal Appeal No. 1 of 1955,

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 Majesty's  
 High Court  
 of  
 Tanganyika.

No. 18.  
 Judgment,  
 17th March,  
 1955—  
*continued.*

In Her Majesty's High Court of Tanganyika.

No. 18.  
Judgment,  
17th March,  
1955—  
*continued.*

there could not be a conviction. I do not consider that the judgment of the Court of Appeal in *Fatma's* case has any material direct bearing on this particular case. The facts in *Fatma's* case were very simple ; a watch was in the possession of the Police, how it got in their possession was not stated, Fatma was called to the Police Station, she claimed the watch as her property and gave details as to when it was given to her. Now that was false, the watch in fact belonged to somebody else and that was clearly proved. Fatma was charged with retaining possession of that watch but there was no evidence whatsoever (other than the fact that when she claimed it and explained how she got it the explanation was false) that she had any idea whatsoever that the watch had been feloniously stolen or obtained. In fact there was no finding at all that she had any guilty knowledge relating to the watch and their Lordships in giving judgment said :

“ The short point taken on the appeal is that neither Court below found it as fact that the Appellant retained this watch in her possession after she had reason to believe that it was stolen property.”

Again—

“ What seems to have been overlooked by both Courts below is that there was also no evidence as to when the Appellant must have known that the watch was stolen property, or evidence that thereafter she retained possession of it.”

And again—

“ The learned Judge in the Court below thought that it (possession) must be held to have ceased once the Police had gained possession of the watch. However, if this be right, then there was no retention of the watch after the Appellant must have known it was stolen because by that time the watch was no longer in her possession. Clearly then the offence of which she was charged was not substantiated.”

43.—Those are very peculiar facts and the judgment was directed as stated with special reference to the facts which are described as “ certainly exceptional.”

44.—It was suggested before me that at the time when *Fatma's* case was decided the East African Court of Appeal could not have had before them Mr. Justice Sinclair's judgment in *Abdallah s/o Talib v. Regina* in Criminal Appeal No. 284 of 1952 which will be found in Law Reports Supplement No. 5 of 1954 published with the Gazette of the 7th May, 1954. Mr. Master, who appeared for Fatma, stated that the Court had had their attention drawn to that judgment. But I do not think the case of Fatma affected the principles enunciated by Mr. Justice Sinclair. Had it been so I feel sure the Court of Appeal would have commented on or criticised *Abdallah's* case. It was held in *Abdallah's* case that the offences of receiving

and retaining are not mutually exclusive and a receiver can be guilty of retaining, but I do not think that the learned Resident Magistrate relied to any great extent on *Abdallah's* case. He simply relied on the facts as he found them.

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of  
Tanganyika

45.—The Magistrate might perhaps have expressed himself rather more clearly than he did with regard to the time at which the Appellant were both aware that the clock had been feloniously stolen or obtained, but I think his finding is clearly to the effect that they had had that knowledge for some time prior to the 17th November, 1954, because he refers to the  
10 tissue of lies upon which the whole defence rests, lies which were ready and available as soon as the Police first appeared on the scene, or at any rate first appeared on the scene to the knowledge of the Appellants. The Magistrate does not believe the first Appellant when she states how disinterested she was in knowing who was the friend who had sent this valuable clock to her small son, as she said in October. I need not reiterate the fact that from the moment when the Police contacted the first Appellant she showed by her conduct misgivings as to the result of their inquiry about the clock—there was an indication of prior guilty knowledge. When the  
20 Police contacted the second Appellant immediately after contacting his wife he also gave a false explanation as to how he obtained the clock. Why? From the moment the Police arrived on the scene the Appellants separately in different places and without any contact with each other immediately suspected, in the case of the first Appellant the unknown friend and in the case of the second Appellant the known Patel of trying to “frame” them. Why this joint and several anticipation of the same individual before the clock had even been identified as one the Police were interested in? From the moment the two Appellants contacted each other that afternoon additional efforts were made to deceive the Police culminating in the insistence, maintained under pressure, that the clock  
30 which the Police themselves had seen never in fact existed. When evidence such as that is supported by other unsatisfactory evidence about the clock, that of the photographer self-confessed in part to be false; that of the tailor found by the Magistrate to be false; that of the clock repairer believed by the Magistrate who placed the clock in question, or another one exactly like it, in the possession of the second Appellant in July. The evidence that four such clocks existed and where they were at the beginning of November, and after the disposal of the fourth from the home of the Appellants the removal and secretion of the third from the tailor's in an effort presumably to make it appear that it was that third  
40 clock which had been in the house of the Appellants on the 17th November. The web of lies and deceit surrounding the whole transaction relating to the clock so far as the Appellants are concerned. With all the above in mind, and more details too to which I have not referred, I am of the opinion that the Magistrate was perfectly justified in finding that the Appellants knew this clock had either been feloniously stolen or obtained and that they retained it and exercised control over it with that knowledge

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*continued.*

prior to the visit of Supt. Eager to their home on the 17th November, 1954.

46.—There is one aspect of this case which stands out very clearly and that is the extraordinary skill and rapidity with which this clock was made to disappear and a portrait hung on the wall in its place. Such a sleight of hand exhibition might be the result of previous practice or be a case of forethought being put into practice. There is no doubt that the bluff put up by the two Appellants might have succeeded but for the fact that, before the Police contacted the Appellants, the Police inquiries had gone much further than the accused could have anticipated; more especially the fact that the Police had already been able to trace and know where all four clocks were. Had it not been for the advanced state of the Police investigation leaving only the detailed identification of the clock on the wall to be established the result following upon the disappearance of the clock might well have been different. The Appellants showed the strength of their faith in themselves and what they had done when they endeavoured to force the Police to believe that a clock which the Police had themselves seen that afternoon was a figure of their imagination, or a hallucination and in fact had never existed at all. 10

47.—No person can be convicted of a criminal offence simply because he lies about certain matters related thereto, but when individuals are self-confessed liars to such an extent as in this case they must not be surprised if the Court does not subsequently accept as gospel truth everything they could wish the Court to believe, especially when that subsequent testimony is itself otherwise contradicted. 20

48.—In my opinion there was ample evidence upon which the Magistrate could come to the conclusion which he did, namely that the Appellants retained this clock knowing it to have been feloniously stolen or obtained, and accordingly the appeal against conviction in respect of that count is dismissed. 30

IT IS ACCORDINGLY ORDERED that the appeal against conviction on both counts is dismissed.

Delivered in Court at Dar-es-Salaam this 17th day of March, 1955.

(Sgd.) H. COX,

*Chief Justice.*

In the presence of:—

For the Appellants, MASTER, SAYANI, MANDAVIA.

For the Crown, SUMMERFIELD.

BY COURT :

At the appeal Mr. Summerfield, Acting Solicitor General, stated that he had served notice of enhancement of sentence but did not pursue that at that stage. The appeals having been dismissed I now call on the Crown to make their representations as to enhancement of sentence.

In Her  
Majesty's  
High Court  
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Tanganyika.

(Intd.) H.C.

No. 18.  
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*continued.*

SUMMERFIELD :

The Crown does not usually press sentences but in present state of lawlessness considers the sentences too lenient.

10 Maximum sentence first count 2 years.

Maximum sentence second count 7 years.

Separate and distinct offences but committed at same time.

In general considers that retention is not as bad as receiving but both Appellants have shown themselves resourceful and purposeful.

First accused has forfeited any sympathy by the way that she conducted her defence—a smear campaign against a reputable officer.

MASTER :

20 The Solicitor-General has given cogent reasons for imposing enhanced sentences.

Cannot add anything else.

Took into account years of service by Government officer.

Dismissal, losing benefit he has earned.

Magistrate has already done all that.

As to first accused Magistrate has taken account of small child.

Length of trial.

BY COURT :

It is with great regret that I cannot support the plea put forward by Mr. Master.

30 The learned resident Magistrate has been extremely generous to both parties treating them the same I assume because of the extra loss which will follow on the second Appellant.

I must, however, take into account all the factors in the case and I must refer to the deliberate bluff put up by the two accused in furtherance of their criminal purpose. I have also to add that while I will not allow myself to be influenced in awarding a long sentence on the first Appellant because of the defence put up by her, I cannot but state that that has prevented me from showing sympathy which might otherwise have been

In Her  
Majesty's  
High Court  
of  
Tanganyika.

No. 18.  
Judgment,  
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1955—  
*continued.*

to her great advantage. I must also take into account the amount of crime at present in Dar-es-Salaam.

I do not consider that the length of trial is a matter for me to take into account in this case and I think the Magistrate was wrong to have done so. The accused were on bail and in this case I am of opinion that if at an earlier stage the fact that the accused was in possession of the clock on the 17th November had been admitted, it would have been possible for the prosecution to have shortened the case by about three-quarters and it would have obviated about three-quarters of what now appears quite unnecessary cross-examination.

10

The length of the trial is entirely due to the defence.

The period of sentence is difficult to decide but I take into account in favour of the first Appellant that she is a young woman, a young mother, and in favour of the second Appellant that he will lose his employment, but as to that he has clearly shown himself quite unfitted ever to have held it.

I set aside the sentences of the resident Magistrate and substitute in their place :—

A sentence of one year's imprisonment on both accused in respect of the first count and one year's imprisonment on the first Appellant on the second count and two years imprisonment on the second Appellant on the second count, the sentences to run consecutively.

(Sgd.) H. COX,  
C.J.,  
17th March, 1955.

The Appellant now on bail to be forthwith arrested.

H.C.,  
C.J.,  
17th March, 1955.

No. 19.

Memorandum of Appeal by Laila Jhina Mawji.

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA  
AT DAR ES SALAAM.

Criminal Appeal No. 169 of 1955.

LAILA JHINA MAWJI ... .. *Appellant*

and

REGINA ... .. *Respondent.*

(Appeal from a Judgment of H.M. High Court of Tanganyika at Dar es  
Salaam dismissing the appeal.)

10

(The Chief Justice Sir Herbert Cox) dated 17th March 1955 in Criminal  
Appeal No. 12 of 1955.

Between

LAILA JHINA MAWJI

and

REGINA.

MEMORANDUM OF APPEAL.

Laila Jhina Mawji the Appellant abovenamed, appeals to Her  
Majesty's Court of Appeal for Eastern Africa against the decision above-  
20 named whereby the conviction of the Appellant was upheld on the  
following grounds, namely :—

1. (a) The first appellate Court erred in holding that the Appellant  
and Co-accused are separate persons within the—meaning of the word  
“ persons ” where that word appears in the first line of section 110 of the  
Penal Code and in paragraph (a) of that section.

1. (b) The first appellate Court erred in holding that a conspiracy  
could exist between a husband and wife married under Ismailia law.

2. The first appellate Court erred in applying the—decisions in the  
cases of *R. v. Sharp* (1938) 1 A.E.R. 48 and *R. v. Patel* 2 E.A.C.A. 76 to  
30 the facts in this case.

3. (a) The first appellate Court should have held that there was no  
admissible evidence of conspiracy between the Appellant and the  
Co-accused and should have held that the acts of each of the Co-accused  
were not admissible evidence against the other to prove the existence of  
conspiracy.

In Her  
Majesty's  
Court of  
Appeal for  
Eastern  
Africa.

No. 19.

Memo-  
randum of  
Appeal by  
Laila Jhina  
Mawji,  
19th May,  
1955.



In Her Majesty's Court of Appeal for Eastern Africa.

No. 19.  
Memo-  
randum of  
Appeal by  
Laila Jhina  
Mawji,  
19th May,  
1955—  
*continued.*

3. (b) The first appellate Court should have held that on the finding of fact by the learned Resident Magistrate did not support a conviction in law on the first count.

4. The first appellate Court should have held that the learned Resident Magistrate erred in holding that it is not necessary for the prosecution to prove that the original—receipt of the clock by the Appellant was innocent and that he was entitled to presume it.

5. The first appellate Court erred in thinking that the learned Resident Magistrate's finding was clearly to the effect that the Appellant and the Co-accused had knowledge prior to the 17th November 1954 that 10 the clock had been feloniously stolen or obtained.

6. The first appellate Court should have held that there was no evidence to identify the clock in possession of the Appellant to be stolen property and that the identity was not established by any presumption under section 114 of the Indian Evidence Act.

7. The first appellate Court should have held that the learned Resident Magistrate erred in placing the burden of proof for identification of the clock on the Appellant.

8. That the first appellate Court should have held that the doctrine of recent possession does not apply to a charge of retaining stolen property 20 and that the prosecution had failed to produce any direct evidence to prove the guilty knowledge of the Appellant.

9. That the conviction on the second count is bad in law in the absence of proof of change of animus.

10. That the first appellate Court should have held that on the finding of fact the conviction on the 2nd Count is bad in law.

The Appellant, therefore, prays that the Judgment and finding of the first appellate Court be reversed and the—Appellant be acquitted.

Dated this 19th day of May, 1955

(Sgd.) K. A. MASTER. (Sgd.) K. A. MASTER. 30  
K. A. MASTER and for B. O'DONOVAN.  
*Advocates for the Appellant.*

The address for service of the Appellant is c/o K. A. Master, Advocate, Dar-es-Salaam.

Filed the 19th day of May, 1955, at Dar-es-Salaam.

(Sgd.) DWARKA DASS,  
*for Registrar.*

No. 20.

## Memorandum of Appeal of Kassamali Karim Mawani.

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA AT  
DAR-ES-SALAAM Criminal Appeal No. 170 of 1955.

Between

KASSAMALI KARIM MAWANI ... .. *Appellant*

and

REGINA ... .. *Respondent.*

10 (Appeal from a Judgment of H.M. High Court of Tanganyika at Dar-es-Salaam dismissing the Appeal.)

(The Chief Justice Sir Herbert Cox) dated 17th March 1955 in Criminal Appeal No. 13 of 1955.

Between

KASSAMALI KARIM MAWANI

and

REGINA

## MEMORANDUM OF APPEAL

20 Kassamali Karim Mawani the Appellant abovenamed, appeals to Her Majesty's Court of Appeal for Eastern Africa against the decision abovenamed whereby the conviction of the Appellant was upheld on the following grounds, namely :—

1. (a) The first appellate Court erred in holding that the Appellant and co-accused are separate persons within the meaning of the word "persons" where that word appears in the first line of Section 110 of the Penal Code and in paragraph (a) of that section.

1. (b) The first appellate Court erred in holding that a conspiracy could exist between a husband and wife married under Ismailia law.

30 2. The first appellate Court erred in applying the decisions in the cases of *R. v. Sharp* (1938) 1 A.E.R. 48 and *R. v. Patel* 2 E.A.C.A. 76 to the facts in this case.

3. (a) The first appellate Court should have held that there was no admissible evidence of conspiracy between the Appellant and the co-accused and should have held that the acts of each of the Co-accused were not admissible evidence against the other to prove the existence of conspiracy.

In Her Majesty's Court of Appeal for Eastern Africa.

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Memo-  
randum of  
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Kassamali  
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Mawani,  
19th May,  
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In Her Majesty's Court of Appeal for Eastern Africa.

No. 20.  
Memo-  
randum of  
Appeal by  
Kassamali  
Karim  
Mawani,  
19th May,  
1955—  
*continued.*

3. (b) The first appellate Court should have held that the findings of fact by the learned Resident Magistrate did not support a conviction in law on the first Count.

4. The first appellate Court should have held that the learned Resident Magistrate erred in holding that it is not necessary for the prosecution to prove that the original receipt of the clock by the Appellant was innocent and that he was entitled to presume it.

5. The first appellate Court erred in thinking that the learned Resident Magistrate's finding was clearly to the effect that the Appellant and the co-accused had knowledge prior to the 17th November 1954 that the clock 10 had been feloniously stolen or obtained.

6. The first appellate Court should have held that there was no evidence to identify the clock in possession of the Appellant to be stolen property and that the identity was not established by any presumption under Section 114 of the Indian Evidence Act.

7. The first appellate Court should have held that the learned Resident Magistrate erred in placing the burden of proof for identification of the clock on the Appellant.

8. That the first appellate Court should have held that the doctrine of recent possession does not apply to a charge of retaining stolen property 20 and that the prosecution had failed to produce any direct evidence to prove the guilty knowledge of the Appellant.

9. That the conviction on the second count is bad in law in the absence of proof of change of animus.

10. That the first appellate Court should have held that on the finding of fact the conviction on the 2nd Count is bad in law.

The Appellant, therefore, prays that the Judgment and finding of the first appellate Court be reversed and the Appellant be acquitted.

Dated this 19th day of May, 1955.

(Sgd.) K. A. MASTER. (Sgd.) K. A. MASTER. 30

K. A. MASTER and for B. O'DONOVAN.

*Advocates for the Appellant.*

The address for service of the Appellant is c/o K. A. Master, Advocate, Dar-es-Salaam.

Filed the 19th day of May, 1955, at Dar-es-Salaam.

(Sgd.) DWARKA DASS,

*Registrar.*

**No. 21.**  
**Judgment.**

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA  
AT DAR-ES-SALAAM.

Criminal Appeals Nos. 169 and 170 of 1955.

Between

1. LAILA JHINA MAWJI } (*Original Accused Nos.*  
2. KASSAMALI KARIM MAWANI } *1 and 2 respectively*) *Appellants*

and

10 REGINA ... .. (*Original Prosecutrix*) *Respondent.*

(Appeal from a Judgment of H.M. High Court of Tanganyika at Dar es Salaam dated 17th March, 1955 in Criminal Appeals Nos. 12 and 13 of 1955.

Between

1. LAILA JHINA MAWJI } ... .. *Appellants*  
2. KASSAMALI KARIM MAWANI }

and

REGINA ... .. (*Respondent.*)

**JUDGMENT.**

20 Prepared by NIHILL—President.

30 These two appeals, which were consolidated, concern the case of a husband and wife who are members of, and were married in accordance with, the rites of the Ismailia Khoja community. They were charged and tried together before a Resident Magistrate in Dar es Salaam on two counts. The first count alleged that they had conspired together to obstruct and defeat the course of justice contrary to section 110 (a) of the Tanganyika Penal Code and on the second count they were charged jointly with retaining property knowing or having reason to believe that it was stolen. The property in question was a wall clock of German manufacture bearing the trade mark "Mouthe." Both the Appellants were convicted and on appeal to the High Court of Tanganyika their appeals were dismissed. The High Court at the instance of the Crown substantially increased the sentences imposed by the Magistrate so that the wife is now serving two years and the husband three years' imprisonment. As a second Court of Appeal we cannot concern ourselves with the question of sentence since the ones imposed by the Court below are not unlawful. We only mention the matter to show the importance of the case to these Appellants. Both

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In Her Majesty's Court of Appeal for Eastern Africa.

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1955—  
*continued.*

Courts below have written long judgments in which the evidence has been set out at length and carefully examined. We do not propose therefore again to refer to the facts of this somewhat exceptional case in detail, and we shall only do so when it is necessary for our consideration of the point of law involved.

The first point in this appeal, and it is a very important one, is whether these two Appellants as a lawfully married husband and wife could be charged with conspiracy at all. If the doctrine of the English Common Law that husband and wife are one person is applicable to these two Appellants there can be no doubt that count one was ill-founded. The learned Magistrate addressed his mind very carefully to this problem. He found as a fact, on the evidence before him, as did the Appellate Court below, that a marriage according to the rules of the Ismailia Khoja sect cannot be classed as a monogamous one. We cannot say that there was not evidence to support this finding. The Secretary of the Ismailia Provincial Council in Dar-es-Salaam was a witness for the defence and he described himself as a high official of his community which he said was a sub-sect of the Shia Sect of Mohanmedans. He stated categorically that marriage in his community was monogamous but he produced and put in evidence what he said was the latest edition of the Constitution, Rules and Regulations of the Ismailia Council of Africa. It was on his study of these rules that the learned Magistrate based his conclusion, and if the definition of a monogamous marriage as given by Lord Penzance in *Hyde v. Hyde* (1866 L.R. 1 P. & D. 130) is accepted as the test, there can be no doubt that he was right.

“I conceive that marriage as understood in Christendom may for this purpose be defined as the voluntary union for life of one man and one woman to the exclusion of all others.”

The Appellants are both members of the Khoja sect, they were married in Dar es Salaam and their matrimonial domicile is there. It is unquestionable therefore that the law applicable to their marriage is their personal law as laid down in these Rules.

Having looked at the Rules ourselves we see no reason to question the correctness of the Magistrate's analysis which he set out in the following passage :—

“After considering these rules and his evidence I see no reason for saying this marriage of the accused is monogamous. On the grounds set out in Rule 19 (a), a husband can marry a second wife with the permission of the Council and must deposit a minimum sum with the Council, the income from which is paid to him for the maintenance of the first wife if she continues to live with him and direct to her if she leaves him. This taking of a second wife does not operate as a divorce of the first wife—if she wants to remarry she must apply for divorce and then wait 4 months—and she can choose to continue to live with her husband. There is nothing to say that she can enforce full conjugal rights but equally there is nothing to say the

“ husband cannot exercise them with impunity. However close  
 “ to monogamy the Ismailia Khoja sect are coming, I am satisfied  
 “ that this situation of one wife and another optional or semi  
 “ wife is not monogamous and not the kind of union to which  
 “ legal unity is accredited in English Criminal Law.”

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 Court of Appeal for  
 Eastern Africa.

The interesting question therefore which arises is, whether a conception of the common law based on a monogamous marriage system has any relation to a system of marriage which permits polygamy even although under stringent conditions? Both the Magistrate and the learned Chief  
 10 Justice were of the opinion that the possibility that a husband could take unto himself more than one wife at one time ousted the common law fiction that husband and wife are one person in the eyes of the law, and after much consideration we have come to the same conclusion. Mr. Summerfield who has argued this appeal for the Crown with his usual ability has submitted that the matter is governed by the wording used in section 110 of the Tanganyika Penal Code, and that the question of the application or non-application of any common law principle does not really arise. The section makes it an offence for “ any person ” to conspire with “ any other  
 20 person ” and since there is no exception or provision covering married spouses, the word “ person ” must be construed in its ordinary meaning. The argument is an attractive one because if it could be accepted it would place the law as regards conspiracy between spouses in Tanganyika on the same footing no matter what the nature of the marital union. In view however of section 4 of the Tanganyika Penal Code we consider the submission is unsound. This section reads as follows :—

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 Judgment.  
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*continued.*

“ 4. This Code shall be interpreted in General rule  
 “ accordance with the principles of legal inter- of construction.  
 “ pretation obtaining in England, and expres-  
 “ sions used in it shall be presumed, so far as is  
 30 “ consistent with their context, and except as  
 “ may be otherwise expressly provided, to be  
 “ used with the meaning attaching to them in  
 “ English criminal law and shall be construed in  
 “ accordance therewith.”

This is a section laying down by local statute that as a general rule of construction expressions used in the Code shall be presumed to have the meaning attached to them that they would have in English criminal law unless inconsistent with context. Nothing can be more certain than that  
 40 in England a husband and wife cannot alone be found guilty of conspiracy “ for they are considered in law as one person and are presumed to have “ but one will. 1 Hawk. c. 72 s. 8 ” (33rd Archbold at p. 22). Under English criminal law the expression “ any other person ” could not be applied to either spouse of a union recognized as a marriage under the English common law, for both spouses are regarded as one person. We are fully persuaded therefore that spouses of a monogamous union resident

In Her Majesty's Court of Appeal for Eastern Africa.

No. 21.  
Judgment,  
1st August,  
1955—  
*continued.*

in Tanganyika cannot commit an offence under section 110. The position where the union is polygamous is not the same, because a union of this kind would not be recognizable as a marriage at all within the framework of the English common law. We are aware of course that in modern times a tendency has manifested itself to include within the term "marriage" forms of marital union of a character wholly unchristian in concept, and that such unions have been and can be considered valid marriages under English law for certain purposes; it is a different thing however to extend, as we are now asked to do by these Appellants, the common law fiction that husband and wife are one person and possess one will, to a form of union where the female spouse is not limited to one. We have not the library here at our disposal to enable us to trace the precise source from which the common law doctrine has sprung, but that it was Christian in character we have little doubt. To apply a doctrine based on the principle that the sacrament of marriage constitutes the parties "bone of one bone and flesh of one flesh" to forms of marital union based solely on a contractual conception would to our mind be entirely wrong. In the recent case of *Nyali Ltd. v. Attorney General* in the Court of Appeal 1955 1 A.E.L.R. 646 Lord Justice Denning when considering the proviso to Article 15 of the 1902 Kenya Order-in-Council spoke of the great task entrusted to Judges in these Territories to prune and cut away the offshoots of the common law uncongenial to the soil of the African Continent. Fortunately here our task is not so onerous, because we have not to consider the cutting away of a principle which would *prima facie* be applicable. We are merely refusing to extend a doctrine to a set of circumstances to which under the common law the doctrine could never have been applied. It may be that Mr. Summerfield would like us to regard the application of the doctrine to monogamous marriages between spouses in Tanganyika as an offshoot to which the pruning knife should now be applied. This we cannot do however by reason of section 4 of the Penal Code which must govern the construction of section 110. On this part of the appeal accordingly we approve the view taken in the Courts below that the Appellants were properly chargeable under count one.

The next point for consideration is whether, granted that the Appellants could conspire to defeat the course of justice, there was evidence on which the Magistrate could find that in fact they did so. To constitute a conspiracy there must be an agreement between two minds to do an unlawful act, so here it was not enough for the prosecution to prove that the female Appellant hid the clock and that the male Appellant subsequently told lies in an attempt to shield her. The matter is not free from some difficulty because it is conceded that the time interval between the return of the male Appellant to his house from his place of employment and the arrival of the police must have been a short one. However, the learned Magistrate considered every aspect of the evidence before him with the greatest care and we cannot say that he was not justified in concluding that a definite agreement was reached by the two Appellants to conceal by agreed falsehoods the disappearance of the wall clock with intent to

obstruct the course of justice. On the first count therefore the Appellants were properly convicted. We feel constrained, however, to add this, that we are surprised that the prosecution thought this was a fit case for preferring a charge of conspiracy against two persons who were undoubtedly lawfully married and living together in a common matrimonial home under conditions in all respects similar to a monogamous union. Nor was it necessary to do so, for on the evidence available to the prosecution the wife could certainly, and the husband probably also, have been charged individually with offences against section 109 of the Penal Code. As it was,

10 the course adopted by the prosecution turned a relatively simple case into a most difficult one which has occupied a great deal of judicial time and was, perhaps, scarcely fair to these Appellants.

We now come to the conviction of the Appellants on the second count which again raises issues of some complexity. So far as the female Appellant is concerned, one point appears to have been overlooked by both Courts below, namely, whether a wife living with her husband in a matrimonial home can properly be convicted of receiving or retaining stolen property unless there is evidence that she acted independently of her husband. In English law it is clear that wife charged jointly with her

20 husband for receiving may be convicted where there is evidence that she has acted independently in receiving the stolen goods but it would seem not otherwise (*R. v. Baines* 69 L.J. Q.B. 681). This is because there is a natural presumption, in the absence of evidence to the contrary, that the goods and chattels gathered together in the matrimonial home are the property of the husband and in his possession. To support the charge against the female Appellant on this count therefore, what was needed was evidence establishing some independent act by her of retaining the clock knowing or having reason to believe that it was stolen property. As we have already pointed out, neither Court below looked at the matter

30 from this aspect and had the Magistrate done so we are satisfied that there was no evidence before him on which he could have found or inferred any independent act of retention by the female Appellant. The fact that she acted in a suspicious manner when the Police Officer first visited the house may be indicative of an uneasy conscience or even a guilty mind, coupled with a desire to shield her husband from embarrassing and inconvenient enquiries; it does not, in our opinion, constitute proof that she had appropriated the clock to her own special use and possession independently of her husband's possession. So far then as this Appellant is concerned, we allow her appeal in respect of her conviction on the second

40 count.

We are now left with the first Appellant. It is submitted on his behalf, firstly, that there was no evidence to identify the clock as stolen property at all. As the clock was never recovered from the place where it had been thrown by the female Appellant it was never identified by the complainant as his property. The Magistrate in his judgment has stated that the evidence which was led to show that the clock seen on the wall of the Appellant's house was of a similar type to the complainant's clock would

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1955—  
*continued.*

not have been enough normally, but he considered that he should take into account the fact that the cause of the clock not being available as evidence in the case was the accuseds' default and that therefore he should apply a presumption against them under section 114 of the Indian Evidence Act.

Mr. O'Donovan has submitted that a presumption under this section could only arise against the party throwing the clock away, namely the female Appellant. We have now held that there was no evidence of independent possession by her of the clock. Does it follow that the presumption made by the Magistrate is no longer valid against the male complainant because it was not his hand which threw the clock away? 10 We do not think so because the evidence clearly established that when he heard from his wife what she had done, his subsequent conduct thereafter amounted to an adoption of her act as his own. The Magistrate was therefore correct, in our opinion, in assuming that it was as much his default as hers that the clock was not available. Nor can we say that the Magistrate made a wrong use of the presumption because there was evidence which made it so highly probable that the clock seen on the wall was the complainant's clock, that its non-production in evidence consequent on the male Appellant's act, rendered it safe to apply the presumption that had the clock been in evidence its production would have been adverse 20 to the defence.

We now arrive at the last point in this appeal. It is said that the conviction of retaining is bad in law because, as the prosecution was not in a position to prove that the original receipt of the clock was not an innocent receipt, there should have been some evidence pointing to the fact that the accused acquired guilty knowledge that the clock was stolen property at some time subsequent to its receipt.

We are not prepared to support the proposition that because the prosecution was not in a position to prove the state of this Appellant's mind at the time the clock came into his possession an onus lay on the 30 Crown to show exactly when the Appellant acquired guilty knowledge. We have had occasion to construe the meaning of the wording used in section 311 (1) of the Tanganyika Penal Code in another very recent case of "receiving or retaining" from this Territory (see Criminal Appeal No. 1073 of 1954) and we adopt here what was said in that judgment. There can be no doubt that when the Police Officers first visited this Appellant's house on the 17th November 1954 the clock on the wall was being retained in his possession. If then the prosecution had evidence from which it could be reasonably inferred that in so retaining the clock the Appellant had guilty knowledge that it was stolen property, the offence 40 of retention under the section was made out. The learned Magistrate found that by the 17th November the Appellant in fact then knew or had reason to believe the clock was stolen property. As a second appellate Court it is impossible for us to say that there was no evidence on which he could reasonably so find. Accordingly the appeal of the male Appellant on count 2 must fail and his conviction be upheld.

The appeal of both Appellants against their convictions on count one

is dismissed but the appeal of the female Appellant on count two is allowed. In the result the term of imprisonment to which she has been sentenced by the High Court is reduced to one year's imprisonment with hard labour. The sentences passed on the male Appellant must stand.

In Her Majesty's Court of Appeal for Eastern Africa.

J. H. B. NIHILL,  
*President.*

N. A. WORLEY,  
*Vice-President.*

A. G. LOWE,  
*Judge.*

No. 21.  
Judgment,  
1st August,  
1955—  
*continued.*

10

Nairobi.  
1st August 1955.

10th August 1955.

Before H. R. F. Butterfield, Deputy Registrar.

MASTER for Appellants.

TELLIS for Respondent.

Judgment of the Court read in open Court at 11 a.m.

(Sgd.) H. R. F. BUTTERFIELD,  
*Deputy Registrar.*

20

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

R. M. PATEL,  
*For Registrar.*  
16.8.1955.

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No. 22.

Order of Her Majesty in Council Granting Special Leave to Appeal.

AT THE COURT AT BUCKINGHAM PALACE.

The 1st day of June, 1956

Present

THE QUEEN'S MOST EXCELLENT MAJESTY.

30

LORD PRESIDENT.

EARL OF MUNSTER.

MR. SECRETARY LENNOX-BOYD.

MR. THORNEYCROFT.

SIR MICHAEL ADEANE.

MR. MOLSON.

In the Privy Council.

No. 22.  
Order of Her Majesty in Council granting Special Leave to Appeal,  
1st June, 1956.

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 7th day of May 1956 in the words following, viz. :—

In the  
Privy  
Council.

No. 22.  
Order of  
Her Majesty  
in Council  
granting  
Special  
Leave to  
Appeal,  
1st June,  
1956—  
*continued.*

“ WHEREAS by virtue of His late Majesty King Edward the Seventh’s Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Laila Jhina Mawji and Kassam Ali Karim Mawani in the matter of an Appeal from the Court of Appeal for Eastern Africa between the Petitioners and Your Majesty Respondent setting forth that in the Court of the Resident Magistrate at Dar-es-Salaam on the 3rd January 1955 the second Petitioner was convicted of conspiring with the first Petitioner to obstruct prevent or defeat the course of justice by concealing a wall clock which they well knew was required for the purposes of an enquiry 10 into a criminal offence contrary to the provisions of Section 110 (a) of the Tanganyika Penal Code and of retaining the said wall clock knowing or having reason to believe the same to have been feloniously stolen or obtained contrary to the provisions of Section 311 (1) of the Tanganyika Penal Code and the first Petitioner of conspiring with the second Petitioner and of retaining as aforesaid : that the Petitioners were sentenced to a term of 2 months imprisonment (hard labour) on the charge of conspiracy and to a term of 4 months imprisonment (hard labour) on the charge of retaining : that the Petitioners appealed to the High Court of Tanganyika and that Court on the 17th March 20 1955 dismissed the Appeal and upon the application of the Respondent the sentences of the two Petitioners for conspiracy were increased to one year and the sentences for retaining were also increased that of the first Petitioner to one year that of the second Petitioner to two years : that the Petitioners appealed to the Court of Appeal for Eastern Africa which Court on the 1st August 1955 quashed the conviction of the first Petitioner for retaining but otherwise upheld the decision of the High Court : And humbly praying Your Majesty in Council to grant the Petitioners special leave to appeal from the Judgment of the Court of Appeal for Eastern Africa dated the 1st day of August 30 1955 in so far as it upheld the convictions and sentences on the 3rd day of January 1955 by the Court of the Resident Magistrate at Dar-es-Salaam as increased by the decision of the High Court of Tanganyika on the 17th day of March 1955 and for further or other order as to Your Majesty may seem just :

“ THE LORDS OF THE COMMITTEE in obedience to His late Majesty’s said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave limited to the Count of conspiracy ought 40 to be granted to the Petitioners to enter and prosecute their Appeal against the Judgment of the Court of Appeal for Eastern Africa dated the 1st day of August 1955 and that otherwise the Petition ought to be dismissed :

“ AND THEIR LORDSHIPS do further report to Your Majesty that the authenticated copy under seal of the Record produced by the

Respondent ought to be accepted (subject to any objection that may be taken thereto by the Petitioners) as the Record proper to be laid before Your Majesty on the hearing of the Appeal.”

In the  
Privy  
Council.

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

No. 22.  
Order of  
Her Majesty  
in Council  
granting  
Special  
Leave to  
Appeal,  
1st June,  
1956—  
*continued.*

WHEREOF the Governor or Officer administering the Government of Tanganyika Territory for the time being and all other persons whom it  
10 may concern are to take notice and govern themselves accordingly.

W. G. AGNEW.

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EXHIBITS.

“ A.” Statement of Kassam Ali Karim Mawani.

Resident Magistrate’s Court, D’Salaam.  
Criminal Case No. 3563 of 1954.  
Exhibit No. “ A ”  
Put in by Prosecution.

(Sgd.) J. A. SCOLLIN,

*Resident Magistrate.*

25/11/54.

Exhibits.

“ A ”  
Statement  
of Kassam  
Ali Karim  
Mawani,  
17th  
November,  
1954.

20 17.11.54.  
16.45 hrs.

Statement of : Mr. K. K. Mawani.  
Residing : 37 Mkunguni Street. Religion Ismailia Khoja.  
Occupation : Accountant P.W.D.

I purchased a clock—that is the clock which is in my sitting room. I mean that clock on my cupboard. (Here Mr. Mawani states that he does not know what the other clock is to which I am referring i.e. the “ Mouthe ” clock).

I proceed with Mr. Mawani to his house to indicate which clock I mean.  
30 On arrival I find that the clock in question has been removed.

(Sgd.) D. G. EAGER.

This round faced clock to which you refer has never been in my house.

(At this stage I officially cautioned Mr. Mawani as follows :—

It is my duty to warn you that anything you say will be taken down in writing and may be used in evidence).

(Sgd.) K. K. MAWANI. (Sgd.) D. G. EAGER, S.P. “ C.”

Exhibits.  
 " A "   
 Statement  
 of Kassam  
 Ali Karim  
 Mawani,  
 17th  
 November,  
 1954—  
*continued.*

I deny ever having seen this round faced clock in this room or in the bedroom or in any other part of this house. You have informed me that you saw such a clock in this room and I say that there was not such a clock. I heard Juma give a statement. Whatever he said is incorrect. I do not know why he should say something that is incorrect. It remains for me to investigate this. You have told me that the marks on the arm of the settee were made by Juma. I have nothing to say to this.  
 Statement read over to Mr. Mawani who understands it and agrees that it is correct.

(Sgd.) K. K. MAWANI. (Sgd.) D. G. EAGER, S.P. " C." 10

" C (1) "   
 Search  
 Order  
 dated 17th  
 November,  
 1954.

" C (1) " Search Order.

Resident Magistrate's Court, D'Salaam.  
 Criminal Case No. 3563 of 1954.  
 Exhibit No. C (1).  
 Put in by Prosecution.

(Sgd.) J. A. SCOLLIN,  
*Resident Magistrate.*

25/11/54.

TANGANYIKA POLICE.

No. 20238.

RECORD OF SEARCH BY POLICE OFFICER.

(Police Force Ordinance Section 34, Ordinance No. 51. of 1952.) 20  
 No..... Case File No. MPS 1729.

Whereas I am led to believe on the following grounds.....  
 My own belief reasonable suspicion.

That the thing(s) specified below, namely :—

One round faced clock marked " Mouthe " which are necessary for the purpose of my investigation into the offence of Receiving stolen property are likely to be found in (description of place) :—the premises of Mr. Mawani at 37 Mkunguni Street, Dar-es-Salaam within the limits of this police station, 30

And Whereas, in my opinion, the above-mentioned thing(s) cannot otherwise be obtained without undue delay I therefore, as provided for in Section 34 (1) of the Police Force Ordinance, have made this record before searching or causing a search to be made for the said thing(s) in such place.

Station Dar es Salaam.  
 Date 17.11.54.  
 Time 1805 hours.

(Sgd.) D. G. EAGER,  
*Officer i/c Police Station.*

## " C (2) " Report on Search.

Exhibits.

Resident Magistrate's Court, D'Salaam.  
Criminal Case No. 3563 of 1954.  
Exhibit No. C (2).  
Put in by Prosecution.

" C (2) "  
Report on  
Search,  
Undated.

25/11/54. (Sgd.) J. A. SCOLLIN,  
*Resident Magistrate.*

10 On 17.11.54 1800 hours, I searched the premises of Mr. Mawani at 37 Mkunguni Street. I removed 1 table Clock and 1 Photograph for the purposes of investigation no property other than that mentioned was removed and nothing was broken.

(Sgd.) ?  
(Sgd.) ?  
(Sgd.) ?

(Sgd.) D. G. EAGER,  
S.P.C.

## " E " Statement of Laila Jhina Mawji.

Resident Magistrate's Court, D'Salaam.  
Criminal Case No. 3563 of 1954.  
Exhibit No. " E. "  
Put in by Prosecution.

" E "  
Statement  
of Laila  
Jhina  
Mawji,  
dated 17th  
November,  
1954.

20 25/11/54. (Sgd.) J. A. SCOLLIN,  
*Resident Magistrate.*

17.11.54.  
1800 hrs.

Statement of : Laila Jina Mawji  
(Mrs. Mawani).

Residing at : 37 Mkunguni Street, Religion Ismailia Khoja.  
Occupation : Married women. Age : 22.

I have officially cautioned Mrs. Mawani as follows :

30 It is my duty to inform you that you are not obliged to say anything but that anything you say may be taken down in writing and may be used in evidence.

(Sgd.) LAILA JINA MAWJI.  
in Gujerati characters.  
(Sgd.) D. G. EAGER.

I have nothing to say. If you want to take this clock you can. I do not know anything about anything else.

(Sgd.) LELI JINA MAWJI,  
in Gujerati character.  
(Sgd.) D. G. EAGER.

Exhibits.

“ 9 ”  
Marriage  
Certificate,  
dated 1st  
December,  
1954.

“ 9 ” Marriage Certificate.

H. H. THE AGAKHAN ISMAILIA PROVINCIAL COUNCIL DAR-ES-SALAAM.

MARRIAGE CERTIFICATE.

Certificate No. 8/54.

No.	Where Married	Names of Parties	Father's Name	Age	Sex	Residence	Where Registered	Signature of Honorary Secretary.
4/10/48	Dar-es-Salaam	KASSAMALI LAILA	KARIM MAWANI JINA MAWJI		Male Female		28th October, 1948	A. H. K. TEJPAR.

I A. H. K. Tejpar, HONORARY SECRETARY, of His Highness The Agakhan Ismailia Provincial Council Dar-es-Salaam do hereby certify that this is a true copy of the Entry No. 4/10/48 in the Register of Marriages kept by the said His Highness The Agakhan Ismailia Provincial Council, Dar-es-Salaam.

Dated at Dar-es-Salaam this day of 1st December 1954.

A. H. K. TEJPAR,  
*Honorary Secretary,*  
H.H. The Agakhan  
Ismailia Provincial Council.

Resident Magistrate's Court, D'Salaam.

Criminal Case No. 3563 of 1954.

Exhibit No. 9.

Put in by Prosecution.

(Sgd.) J. A. SCOLLIN,

*Resident Magistrate.*

10/12/54.

In the Privy Council.

No. 9 of 1956.

ON APPEAL FROM THE COURT OF APPEAL FOR  
EASTERN AFRICA.

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BETWEEN

LAILA JHINA MAWJI (Wife of  
Kassam Ali Karim Mawani, the  
second Appellant) and KASSAM  
ALI KARIM MAWANI

*Appellants*

AND

HER MAJESTY THE QUEEN

*Respondent.*

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RECORD OF PROCEEDINGS

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THEODORE GODDARD & CO.,  
5 New Court,  
Lincoln's Inn,  
London, W.C.2,  
*Appellants' Solicitors.*

CHARLES RUSSELL & CO.,  
37 Norfolk Street,  
London, W.C.2,  
*Respondent's Solicitors.*