

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: Mustafa, J.A., Mwakasendo, J.A. and Kisanaga, J.A.)

CRIMINAL APPEAL NO. 6 OF 1980

BETWEEN

JOSEPH FRANCIS KILANGA. APPELLANT

AND

THE REPUBLIC. RESPONDENT

(Appeal from the Judgment of The High Court
of Tanzania at Dar es Salaam) (Samatta, Ag. J.)
dated the 28th day of January, 1976,

in

Criminal Appeal No. 200 of 1977

JUDGMENT OF THE COURT

MUSTAFA, J.A.:

The appellant was convicted of being in possession of offensive weapons contrary to section 8(1) of the National Security Act No. 3 of 1970 and of unlawful possession of uniform contrary to section 97 (1)(d) of the National Defence Act of 1966 in the Magistrates Court, and was sentenced to a total of 8 years imprisonment. His appeal to the High Court was summarily dismissed.

The facts are not in dispute. He was found in possession of a pistol for which he had no licence, and of a military uniform which he had no right to possess.

The only point at issue raised by Mr. Raithatha for the appellant is whether the appellant was properly charged ^{under} the National Security Act. He submitted that illegal possession of firearms was covered by Section 13 of the Arms and Ammunition Ordinance Cap. 223. It is true that the offence of illegal possession is dealt with in both the National Security Act and the Arms and Ammunition Ordinance. In the Security Act illegal possession of a gun could be punished by a 10 year sentence whereas that in the Arms and Ammunition Ordinance by one year.

Mr. Raithatha submitted that a person found in illegal possession of a single gun or pistol could only be charged under the Arms and Ammunition Ordinance as such a person could not be said to endanger state security which he maintained to be the object of the National Security Act to preserve.

In our view, as the law now stands, it is up to the prosecution, in the light of the evidence it has, to decide whether to prosecute an offender under either the National Security Act or the Arms Ordinance. Even under the National Security Act, a court has the power to impose such sentence as it thinks fit, in the light of the evidence established at the trial. We cannot say that the prosecution is precluded from charging an offender under the National Security Act if the number of weapons involved is small. There is some force in Mr. Raithatha's argument that a simple offence of possession of offensive weapon should be not be ^{brought} under the National Security Act which can result in a heavy sentence; but that is a matter more of policy than of legal interpretation

The appeal is dismissed.

DATED at DAR ES SALAAM this 11th day of February, 1983.

(A. Mustafa)

JUSTICE OF APPEAL

(Y. M. M. Mwakasendo)

JUSTICE OF APPEAL

(R. H. Kisanga)

JUSTICE OF APPEAL

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

(S. J. Bwana)

ACTING SENIOR DEPUTY REGISTRAR.