

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: RAMADHANI, J.A., MFALILA, J.A., And SAMATTA, J.A.)

CRIMINAL APPEAL NO. 17 OF 1994

BETWEEN

CHRISTIAN BILASI NYAKI APPELLANT

AND

THE REPUBLIC. RESPONDENT

(Appeal from the decision of the High
Court of Tanzania at Dar es Salaam)

(Mackanja, J.)

dated the 18th day of October, 1993

in

Criminal Appeal No. 43 of 1993

SUMMARY REJECTION OF APPEAL

RAMADHANI, J.A.:

The appellant together with the other persons were prosecuted for unauthorised possession of a firearm c/s 13 (1) of the Arms and Ammunition Ordinance (Cap. 223) read together with S. 59 (2) of Economic and Organised Crimes Control Act, 1984 (Act No. 13 of 1984). One person was found not to have a case to answer by the District Court and so, he was let free. The second person was acquitted by the same court after a full hearing. The appellant, however, was convicted and was sentenced to a term of imprisonment of fifteen years. His appeal to the High Court was dismissed by MACKANJA, J. This is his second attempt.

The police received information from a person, who was not called to give evidence, that a group of people were going to rob Fahari Bottlers Co. Ltd. So, the police organised an ambush. However, arrangements misfired and no robbery took place. The informer, nevertheless, took the police to a place where the robbers were to assemble and organise themselves ready for the

mission. From a safe distance, the robbers were pointed out to the police by the informer. Suddenly, the robbers branched off into two prongs. The police were forced to do likewise. One section of the police consisted of Cpl. Tadeo (PW.1) and Cpl. Martin (PW.2) and they followed the group which included the appellant. A vehicle passed-by and the appellant's group whistled at it to stop. It did so. As the appellant was approaching the vehicle, PWs. 1 and 2 decided to come out in the open and arrest him. On searching the appellant, PWs. 1 and 2 found a pistol on him.

The learned Principal Resident Magistrate who tried the case believed the two prosecution witnesses and convicted the appellant. MACKANJA, J., on the evidence available, could not fault the learned PRM and we do not see how we can disagree with both lower courts. We, therefore, dismiss the appeal summarily under S. 4 (4) of the Appellate Jurisdiction, Act 1979.

DATED at DAR ES SALAAM this 12th day of March, 1996.

A.S.L. RAMADHANI
JUSTICE OF APPEAL

L.M. MFALILA
JUSTICE OF APPEAL

B.A. SAMATTA
JUSTICE OF APPEAL

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

(A.G. MWARIJA)
DEPUTY REGISTRAR