

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: NYALALI, C.J., MNZAVAS, J.A., And MFALILA, J.A.)

CRIMINAL APPEAL NO. 169 OF 1994

BETWEEN

1. MALICK KASSIM TITU } APPELLANTS
2. KASSIM SAIDI MTUNGUJA }

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 May, 1994

in

H/C Criminal Appeal No. 135 of 1993

SUMMARY REJECTION OF APPEAL

MFALILA, J.A.:

The two appellants were charged with and convicted of two counts involving unlawful possession of firearm and ammunition. The two charges were laid under the Economic and Organised Crime Control Act 1984. In the District Court at Kisumu where they were tried and convicted, they were sentenced to an omnibus sentence of 8 years imprisonment. They unsuccessfully appealed to the High Court against both their convictions and sentences where Mackanja, J. dismissed their appeals holding that there was enough evidence to support their convictions and that the sentence of 8 years was not a day too long. This is their second attempt to regain their freedom.

The appeals have no merit as the appellants were arrested on the spot following a hot pursuit. In the face of such evidence, we were more than surprised to see that the State Attorney who

appeared for the Republic declined to support the appellants' convictions on the ridiculous explanation that the evidence of police witnesses needed corroboration. The learned judge rightly rejected this face saving argument which has no basis in law. This being a second appeal, it can only be entertained on points of law which there are none.

We wish to add however that in the course of his judgement, the learned judge should have corrected the irregular omnibus sentence passed by the trial Court, on both accused for both counts. The High Court should have corrected the error by sentencing each accused to eight years imprisonment on each count and ordered the sentences to run concurrently. Accordingly we make this correction.

Apart from this correction the appeals of both appellants have no merit and we summarily reject them.

DATED AT DAR ES SALAAM THIS 6th DAY OF November, 1995.

F.L. NYALALI
CHIEF JUSTICE

N.S. MNZAVAS
JUSTICE OF APPEAL

L.M. MFALILA
JUSTICE OF APPEAL

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


(M.S. SHANGALI)
DEPUTY REGISTRAR