

**IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA**

(CORAM: RUTAKANGWA, J.A., KILEO, J.A., And MASSATI, J.A.)

CRIMINAL APPEAL NO. 531 OF 2015

JAMES MALEDO..... APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

**(Appeal from the decision of the High Court of Tanzania
at Arusha)**

(Moshi, J.)

Dated the 17th day of April, 2015

In

DC Criminal Appeal No. 64 of 2014

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JUDGMENT OF THE COURT

26th & 29th July, 2016.

KILEO, J. A.:

The District Court of Ngorongoro sitting at Loliondo convicted the appellant James Maledo of unlawful possession of firearm contrary to sections 4 (1) and 34 (2) of the Arms and Ammunitions Act, Cap 223 R. E. 2002 as amended by section 46 of the Written Laws (Miscellaneous Amendments (No. 3) Act 2010. He was sentenced to pay a fine of Tshs. 20,000,000/= or to serve ten years imprisonment in default. It was alleged that on 2nd day of March 2012 at about 15 hours at Jema village

within Ngorongoro District, the appellant was found with one SMG no. 07907/21829 without permit.

The prosecution case upon which the appellant was convicted was based on the testimonies of five witnesses. In essence the prosecution alleged that upon receipt of information that the appellant unlawfully possessed a firearm, they arrested him and thereafter he led them to a pit latrine at his residence where the gun was recovered. The appellant denied possession of the gun which was tendered in the trial court as exhibit P3.

Having lost his appeal in the High Court the appellant has come before us on a second appeal.

The appellant who appeared before us in person with no legal representation had filed a memorandum of appeal comprising of three grounds in which he was basically challenging the decision of the High Court for failure to properly analyze the truthfulness of the prosecution case. Elaborating on his grounds of appeal the appellant argued that the discrepancies which were apparent in the case for the prosecution with regard to the serial number of the submachine gun that was allegedly found in his possession should have been resolved in his favour.

Mr. Diaz Makule, learned State Attorney represented the Republic at the hearing of the appeal. At first he told us that he was supporting conviction and sentence, but upon reflection, especially after discrepancies on the record with regard to the serial number of the SMG- the subject matter, had been pointed out, he changed his stand and conceded that the appeal had merit.

The matter is simple and straight forward. Indeed there were such serious inconsistencies that conviction ought not to have been sustained at all.

According to the charge sheet, the appellant was found with one firearm make SMG no. *07907/21829*. However, the firearm which was allegedly found in possession of the appellant and sent to the firearm examiner for examination did not bear the same serial number as the one appearing on the charge sheet. This comes out clearly from the evidence of PW5 and the firearm examination report, exhibit P4. The report which was tendered in court indicated that the gun that was sent for examination bore serial number *07907/218291*. Furthermore, PW5's testimony itself was so wrought with inconsistencies that it ought to have been discredited from the word go. Looking at page 15 of the record it appears that at first he claimed that the gun which was sent to

him for examination bore serial number *07907* and *2182911*. Even before he was done with his testimony in court he changed the serial number to *07907* and *21829*. The discrepancy did not end there. His report, exhibit P4 had the serial number as *07907/218291*. In view of such discrepancies it was no doubt very unsafe to arrive at a conviction. The question might as well be asked, which gun was the appellant found with, if at all he was really found with a gun?

Apart from the discrepancies with regard to the serial number of the gun that the appellant was allegedly found with we have also observed that the prosecution introduced evidence of bad character which might have prejudiced the mind of the trial court to believe that the appellant committed the crime he was charged with. PW3 is recorded, at page 10 of the record, as having stated that the appellant was a bandit. At page 12 PW4 stated that his informer told him that the appellant was dangerous. In such circumstances the appellant could not have had a fair trial to which he was entitled.

Another aspect of the case that should have been given due consideration is the appellant's defence to the effect that the case against him was framed up because of grudges that existed between him and PW2 who was the sub village chairman. The issue of grudges

was raised for the first time during cross examination of PW2. It was repeated when the appellant gave his defence. Had the courts below seriously considered the appellant's defence in the backdrop of the shaky prosecution case no doubt they would have found that the case against the appellant was not proved to the standard required of in the criminal justice system.

Without much ado, we are settled in our minds that the appeal by James Maledo was filed with sufficient cause for complaint. For that reason we allow it. Consequently conviction entered against him is quashed and sentence imposed is set aside. We order the immediate release from custody of the appellant unless he is held therein for some lawful cause.

Dated at Arusha this 26th day of July 2016




E. M. K. RUTAKANGWA
JUSTICE OF APPEAL

E. A. KILEO
JUSTICE OF APPEAL

S. A. MASSATI
JUSTICE OF APPEAL

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


E. F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL