

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CRIMINAL APPEAL No. 35 OF 2001

MORRIS RAMADHANI MARANGE.....APPELLANT

- versus -

REPUBLIC..... RESPONDENT

J U D G M E N T

A. SHANGWA, J.

This appeal was presented for filing on 12.4.2001. It was brought under S.82 (5) of the Wildlife Conservation Act, 1974. It is against two orders of the Northern Zonal Game Officer of Matambwe area in Morogoro District. The two orders were made on 27.2.1999. They are as follows:-

1. Payment of a fine of shs.20,000/-
2. Forfeiture of the appellant's shot
gun No 70/21042 make F.N.B 12 Bore

These orders were made after compounding the offence chargeable under S.71 of the Wildlife conservation Act, 1974.

...2/-

There are two main grounds of appeal which were raised on behalf of the appellant by M/S Massati & Co. Advocates. They are as follows:-

1. That the compounding officer erred in law in seeking the appellant to sign the composition form by use of force.
2. That the compounding officer wrongly seized and forfeited the appellant's gun which is not a weapon contemplated under S.71 of the Wildlife Conservation Act, 1974.

It appears to me that the appellant's complaint on the first ground of appeal is that he did not admit in writing that he has committed the offence charged against him, and that he did not agree to the offence being compounded by the Northern Zonal Game Officer of Matambwe area. It was submitted on his behalf by M/S Massati & Co. Advocates that he was forced to sign the composition form.

For me, I do not think that the appellant was forced to sign the composition form^m in which he admits in writing that he committed the offence charged. I do not think so because this form bears the signature of his witness one Athuman Bundile. Had the appellant been forced to sign on this form, his witness would not have signed it as well. I hold therefore that the first ground of appeal has no merit and it fails.

The pertinent question to be considered is whether or not the offence charged, admitted . . . and compounded is backed by facts and law. This question is embodied in the second ground of appeal which I now embark upon. The crucial fact in this case is that the appellant was found in possession of a shot gun and then charged under S.71 of the Wildlife conservation Act, 1984.

Actually, the fact that he was found in possession of a shot gun is not in dispute. One of the notable problems in this case is that the circumstances under which he was found in its possession are not disclosed on the composition form. What is disclosed are certain particulars

which do not relate to an offence chargeable under S.71 of the Wildlife Conservation Act, 1984. Such words as 'KUAZIMA NA KUTUMIA SILAHA' to lend and use a weapon have no relevance to an offence chargeable under S.71 of the said Act. This section provides as follows and I quote:

"Any person who is found in possession of any ball ammunition, poison, snare or trap in circumstances which raise a reasonable presumption that he has used or intends or is about to use the same for the purpose of the commission of an offence under this Act shall, unless he shows lawful cause for such possession, be guilty of an offence, and shall be liable on conviction to imprisonment for a term not exceeding three years".

As it can be seen from the above quoted section, there is nothing in it which talks about 'lending and using a weapon'. The words used in it are specific. They concern being found in possession of certain weapons, under certain circumstances and without lawful cause.

....5/-

Learned counsel for the appellant contended that a gun is not a weapon which is contemplated in S.71 of the Act. I agree with their contention. There are many types of weapons that a person may be found in possession such as a fire arm, knife, spear, bow and arrows etc. which are not covered under S.71 of the Act. This section only covers certain weapons which are mentioned therein namely ball ammunition, poison, snare or trap. Strictly speaking, a shot gun is one of those weapons which are not covered any way.

But even if a shot gun were to be covered, as I have already mentioned, the circumstances under which the appellant was found in its possession such as those mentioned in S.71 of the Act are not disclosed on the composition form. For instance, it is not disclosed that he had used it or was about to use it in the commission of an offence under the Act. Even the place from where he was found with it be it at home or in a game controlled area is not disclosed.

At any rate, I think the appellant wrongly admitted in writing that he had committed an offence

chargeable under S.71 of the Act and wrongly agreed to the offence being compounded which offence is not supported by facts and law. From the facts of this case, it is plain that the Northern Zonal Game Officer of Matambwe wrongly compounded an offence which had no legal basis to stand. Moreover, the Zonal Game Officer is not a Director of Game by designation who is legally empowered under section 82 (2) of the Act to compound offences under the Act. For these reasons, the second ground of appeal has merit and I uphold it.


Finally, I allow this appeal and set aside the order of payment of a fine of shs.20,000/= and the order of forfeiture of the appellant's shot gun. The amount of fine imposed on him should be refunded to him and his shot gun should be restored to him henceforth.


A. SHANGWA
JUDGE

20.12.2004



Delivered in court this 20th day of December,


A. SHANGWA
JUDGE

20.12.2004