

IN THE HIGH COURT OF TANZANIA

AT TABORA

(Tabora Registry)

DC CR. APP. NO.170 OF 2010

(Original Criminal Case No.9 of 2010 of the District Court of Bariadi)

AT BARIADI

Before: R.A. OGUDA Esq., RESIDENT MAGISTRATE

MALIMI MADUHU @ NINDWAAPPELLANT

VERSUS

THE REPUBLICRESPONDENT

Date of last order: 30/7/2012

Date of Ruling: 2/8/2012

R U L I N G

WAMBALI, J.

The appellant, Malimi Maduhu Nindwa was charged before the District Court of Bariadi with four counts. First, Unlawful entry into a Game Reserve contrary to section 15(1) and (2) of the Wildlife Conservation Act, No.5 of 2009. Second, Unlawful Possession of Weapon in a Game Reserve contrary to section 17(1) and (2) of the Wildlife Conservation Act No.5 of 2009 read together with paragraph 14(c) of the first schedule to the Economic and Organised Crime Control Act, Cap. 200 R.E. 2002. Third, Unlawful hunting in a Game

Reserve contrary to section 19(1) and (2) (b) and (c) of the Wildlife Conservation Act, No.5 of 2009 read together with paragraph 14(a) of the first schedule to the Economic and Organised Crime Control Act, Cap. 200 R.E. 2002. Fourth, Unlawful Possession of Government Trophies contrary to section 86(1) and (2) (b) and (c) (i) of the Wildlife Conservation Act, No.5 of 2009 read together with paragraph 14(d) of the first schedule to the Economic and Organised Crime Control Act, Cap. 200 R.E. 2002.

The trial District Court convicted him on all counts and imposed sentences of imprisonment of one year in jail or a fine of Tshs.100,000/=; imprisonment to three years or a fine of Tshs.200,000/=; imprisonment to two years and imprisonment to twenty years or a fine of Tshs.5,000,000/= for the first, second, third and fourth counts respectively. The trial District Court ordered that the sentence had to run concurrently.

The appellant was not satisfied and lodged appeal to this court with several complaints. He appeared in person at the hearing. Mr. Juma

Masanja learned state attorney appeared for the Respondent/Republic.

In the course of hearing it was noted by the court and the learned state attorney rightly conceded that the charges which were placed at the District Court after the consent of the Director of Public Prosecutions (DPP) on 11/10/2010 were not read over to the appellant to enable him to plea. The appellant did not have much to say about the issue as he stated that the matter involved legal issues. He however prayed that he be set free.

It is noted that the appellant appeared before the District Court on 8/10/2010 for the first time. The charges were read over to him but he was not required to plea because the same involved economic offences and there was no consent of the DPP. The DPP gave the consent on 11/10/2010 and submitted the same to the District Court together with the charge sheet that contained four counts.

The appellant appeared again before the trial court on 13/10/2010. On that day, the record indicates that the state attorney who appeared for the Republic prayed to the trial court to substitute the charge and submit a consent of the DPP. The trial court then simply indicated that the charge was read over to the accused who pleaded not guilty to "both counts" that faced him. The learned trial resident magistrate then signed. The prosecutor then prayed to read the facts as the investigation was complete. The trial court then recorded the prosecution case facts as follows:

"1. It is true

2. It is true

3. It is true

4. It is true"

Thereafter the appellant, prosecutor and the learned resident magistrate signed. There is no indication of what were really the facts and if there were any undisputed facts which were recorded and read over for the respective parties to sign as required by section 192 of the Criminal Procedure Act, Cap. 20 R.E. 2002.

Fortunately, the prosecution had three witnesses on that day and thus the trial proceeded immediately. The case for the prosecution and the defence was closed on the same day and a judgment date was scheduled on 27/10/2010.

There is no doubt that the speed with which the trial District Court proceeded need to be commended in the administration of justice. However, that speed, with greatest, respect was not consistent with the procedure laid down by law. From the record as conceded by the learned state attorney, it is clear that the appellant was not called upon to plea to the charges contained in the four counts as required by law. The trial court simply recorded that the appellant pleaded not guilty to "**both charges**" but did not record what he stated with respect to all counts. That was not proper at all.

It must be insisted that the charge(s) should be read over and explained to the accused in a simple language to be understood by him. In the present case that was not done. The trial certainly, in view of what I have stated was a nullity.

In **Thuway Akonay V.R.** [1987] TLR 92, the Court of Appeal of Tanzania stated categorically that it is mandatory for a plea to a new or altered charge to be taken from an accused person and failure to do so renders a trial a nullity.

Indeed in **Naoche Mbile V.R.** [1993] TLR 253 the Court of Appeal held thus;

- (i) One of the fundamental principle of our criminal justice is that at the beginning of a criminal trial the accused must be arraigned, i.e. the court has to put the charge or charges to him and require him to plead;
- (ii) Non – compliance with the requirement of arraignment of an accused person renders the trial a nullity.”

It follows that the trial of the appellant was thus a nullity. The purported proceedings and convictions in respect of all counts are quashed. The sentences of fine and imprisonment are accordingly set aside.

It is ordered that the appellant be tried denovo by another magistrate at the discretion of the Director of Public Prosecutions immediately as he has been in prison for almost two years. It is further ordered that as the convictions and sentences that placed him in prison have been quashed and set aside, he should be released from that prison custody immediately pending the retrial. It is so ordered.



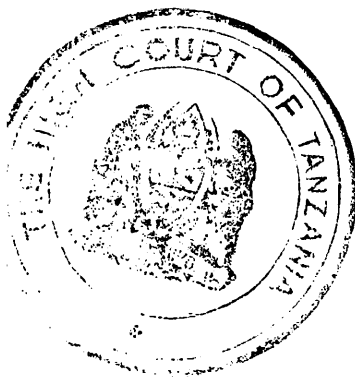
A handwritten signature in black ink, appearing to read "F.L.K. Wambali".

F.L.K. WAMBALI

JUDGE

2/8/2012

Ruling delivered in the presence of the appellant in person and Mr. Juma Masanja state attorney for the Respondent/Republic.



A handwritten signature in black ink, appearing to read "F.L.K. Wambali".

F.L.K. WAMBALI

JUDGE

2/8/2012