

**IN THE RESIDENT MAGISTRATE COURT OF DODOMA**

**AT DODOMA**

**(APPELLATE JURISDICTION)**

**PRM. CRIMINAL APPEAL NO. 24 OF 2012**

**(DC) APPEAL NO. 98 OF 2011**

**ORIGINAL CRIMINAL CASE NO 07 OF 2009**

**OF THE DISTRICT COURT OF MPWAPWA DISTRICT AT MPWAPWA**

**MAJUTO LUNGWA .....APPELLATE**

**VERSUS**

**THE REPUBLIC .....RESPONDENT**

**5/9/2012 & 9/10/2012**

**J U D G M E N T**

**R.I. RUTATINISIBWA, PRM. EXT. J**

The appellant one **MAJUTO LUNGWA** was produced before the fountain of justice at Mpwapwa District court faced two counts, namely

-unlawfully possession of fire arm c/s 4(1) and 34(1) and (2) of the

Arms and ammunition Act no. 21 of 1991, and

- Unlawful possession of Ammunition c/s 11(2) and 18 of the Arms

and ammunitions Act no. 2 of 1991.

The allegations by the public prosecutor were that on 13<sup>th</sup> January 2009 at about 05.00 hours at Pwaga village within Mpwapwa District the Police officer ASP Linus Mnyambwa searched at the home of the appellant and found a gun-rifle model 1501 Callibre 458, frame No. 8936 and seven ammunitions, and the appellant had no fire arms licence.

The matter went on full trial. At the end the appellant was found guilty and convicted. He was sentenced to pay a fine of Tshs 3,000,000/= or to suffer in jail for a term of 15 years . It appears the appellant had no money to pay he is now in jail. He was not contented, hence, the instant appeal was lodged.

The memorandum of appeal contains, mainly three grounds.

- That the evidence on both sides was not well analysed. That the defence was not considered.
- That the search was not well conducted.
- That the punishment was excessive.

The Respondent/Republic was fully represented by Ms. Salome Magessa, learned state attorney. She supported the conviction.

The two parties argued the grounds orally.

On the first ground, the appellant did not have much to say.

The state attorney argued that on page 3 of the copy of judgement clearly shows that the evidence was well analysed. She cited section 312 of CPA Cap. 20 RE. 2002 that it requires the court to analyse the evidence on both sides and arrive at a fair decision.

I carefully went through the proceedings and the copy of judgement. From page 2 to 3 of the judgement the trial magistrate made a summary of what was said by the defence side. When came time to discuss the issue the trial magistrate started by saying that, that was a straight forward case. Then continue to justify his position and no word was referred to what the defence said. To that extent I could agree that the defence was not considered.

This being the first appellate court I ventured to analyse the defence. The accused or the appellant admitted that the police official (PW1) and PW2 went at his home. They found him at home and asleep. He was put under power. The accused did not admit to have been searched and found in possession of the gun and ammunicions.

I also spent time visiting the prosecution side. The trial court had opportunity to hear four witnesses including the good neighbor of the appellant one Janeth Philimon (PW3). She was among those who

witnessed a search and saw a gun fished out from the room of the accused. All the prosecution witnesses including WEO of Lumuma witnessed a search and said that the gun and ammunitions were found in the room and in the bag of the accused. It was insisted that the one who took the gun from the bag was the wife of the accused/appellant.

I agree the available evidence was enough and tight to prove the 1<sup>st</sup> count. The defence did not inject the doubt, and no permit was produced.

On the second ground, the appellant said that the search was conducted without following the procedure. That the cell leader was not called. That PW3, when arrived she found the gun in the hands of the police.

The state attorney argued that the search was conducted according to the procedure. That PW1 A.S.P. Mnyambwa was the leader. That PW2, Charles Lemwayi, the resident of Pwaga, the home village of the appellant, and WEO of Lumuma witnessed the search. There was also, PW3 and PW4 the senior citizens.

I soberly perused the proceedings. It is not disputed that the search was conducted. PW2, WEO of Lumuma and resident of Pwaga was a

leader who represented all leaders in that area. It was not said that the police went there with a bag in which could have hidden the gun. There was search order/warrant which was signed by the appellant and other witnesses.

From the proceedings, I am of the view that the search was fairly conducted.

The 3<sup>rd</sup> ground challenged the punishment. It was stated that the punishment was on the high side.

The appellant who is a layperson did not explain on this ground. The learned state attorney said that the law provides for a fine of Tshs 3,000,000/= or 15 years in jail. That that is what the appellant was given.

The punishments under the Arms and ammunitions Act Cap. 223 (RE. 2002) are provided under section 34 . The 1<sup>st</sup> count contained section 34(1) and (2). The second count did not contain a punishment section. It beared sections 11(1) and 18 of the arms and ammunitions Act. No. 2 of 1991. These sections has no bearing to the offence charged with . Section 11 says that travelers may introduce arms on certain conditions. section 18