

IN THE HIGH COURT OF TANZANIA
AT ABORA
APPELLATE JURISDICTION
(Tabora Registry)
(DC) CRIMINAL APPEAL NO. 51 OF 2012
ORIGINAL CRIMINAL CASE NO. 51 OF 2012
ORIGINAL CRIMINAL CASE NO. 11 OF 2010
ON THE DISTRICT COURT OF KIBONDO DISTRICT
AT KIBONDO
BEFORE E. R. MARLEY – RESIDENT MAGISTRATE
RASHIDI S/O CHARLES
@ BUCHINGERA MANGALAINA APPELLANT
VERSUS
REPUBLIC RESPONDENT

2nd July, 2013 – 29th July, 2013

J U D G M E N T

HON. S. B. LUKELELWA, J.

The appellant Rashid Charles Buchengera was on 24th May 2012 Convicted by Kibondo District Court in Kigoma Region on a charge of two Counts namely:- **1st Count:** Unlawful possession of Fire Arms Contrary to section 4 (1) and 2 of the Arm and Ammunition Act [CAP. 223 RE. 2002] read together with

paragraph 19 of the First Schedule to and section 57 (1) and 60 (2) of the Economic and organized Crime Control Act [CAP. 200 RE 2002].

Second Count:

Unlawful Possession of Ammunition Contrary to section 4 (1) and 34 (1) and 2 of the Arms and Ammunition Act [CAP. 223 RE. 2002] read together with paragraph 19 of the First Schedule to and section 57 (1) and 60 (2) of the Economic and Organized Crime control Act [CAP 200 RE. 2002].

Evidence was led at the trial to the effect that PW1 Bakar s/o Maulidi a businessman at Mabamba village on 21/12/2004 dealing in local brews was doing the business of selling local brew. PW1 testified that at around 23.30 hours, the appellant and three others including a woman turned up at his place. The appellant ordered local brew and served the brew to other people. Thirty minutes after the appellant closed the door and two of his fellows went outside while the appellant and his wife remained inside. The appellant took a pistol from his pockets and forced PW1 to give him money. PW1 testified that he jumped over the appellant and grabbed him while January Kagoma and Jasper assisted him to take the pistol from the appellant. PW1 went on to state that the appellant managed to remove the magazine from the pistol and ran away PW1 went to report the incident to the police and surrendered the pistol at the Police. He told the police that the

pistol belonged to Mangalaine which was the appellant acronym. He accompanied the policemen to the house of the appellant who refused to come out and policemen had to fire bullets in the air they searched the house and found the magazine with five rounds of ammunitions. PW2 E.7844 Detective Corporal Abdulbastwa told the Court that on 22/12/2004 at around 02.15 hours he was on duty at Mambamba town police post when three people came Complaining, the people were one Maulidi, January and Abel Gasper both residents of Mabamba village, having a pistol with No. 005609 chinese pistol which had no magazine saying the had been ambushed by the appellant who had left with a magazine of the pistol.

PW2 testified that they went to the home the appellant where they found the magazine with five rounds of ammunition. They took the appellant to Mabamba police post.

PW3 E.9924 D/C Praygod told the trial court that he accompanied PW2 Abdulbastwa at the house of the accused where they found the appellant having a parcel of clothes trying to escape, and they had to fire in the air before searching his house where they found a magazine and five rounds of ammunitions, then they took the appellant to the police post. Both PW3 said that the appellant was naked when they found him at his home.

PW4 Abed Gasper confirmed the evidence of PW1 that he had helped the latter to retrieve a pistol from the appellant who managed to run away with a magazine leaving behind the pistol.

PW5 C.8296 Corporal Besnon added that after finding the magazine at the home, of the appellant, they arrested him together with his wife Jasinta, and took them to Kibondo police post.

The appellant told the Court that on 15/12/2004 he went to a pharmacy to buy medicines when he met Abdulbastwa who stopped him and asked him why he was riding a bicycle at the market area, and ordered him to go to the police post. He told him that he was sick but the policeman took his bicycle and ordered to go to the police post on the following day. The appellant tendered a copy of charge sheet which was admitted in Court as exhibits D-01 and D-0 2.

He also tendered a copy of Nolle Prosequi.

He denied having been at the bar and had never owned a gun.

In convicting the appellant the learned trial Resident Magistrate held that the pistol Chinese made No. 005609 had earlier been tendered in Court as exhibit, before the High Court

ordered the case to be tried de novo. Since the appellant was found with a magazine with five rounds ammunitions which matched the pistol taken to the police the prosecution case was proved beyond reasonable doubt.

In sentencing the appellant the learned trial Resident Considered the prosecution calling for a severe sentence as unlawful possession of weapons was on the increase and the appellant mitigation that he had been in jail since year 2004, and was suffering from TB and HIV. Aids.

I have considered the evidence at the trial which in my view was overwhelming against the appellant.

It is true no pistol, and the magazine was tendered in court but there was an explanation that the same had been tendered in court in the previous case Criminal Case number 247 of 2004.

That on 14th December, 2005, he had been sentenced to fifteen years imprisonment for the offence of possession of firearms and bullets.

I therefore find the appeal against conviction devoid of any merit and is therefore dismissed.

Coming to the appeal against conviction devoid of any merit and is therefore dismissed.

Coming to the sentence imposed on the appellant the sentence of Seven years Imprisonment was not excessive as to inquire intervention of this court.

However since the two counts were omitted in the same transaction, it was wrong to order that the sentences run consecutively.

That order is hereby set aside, an order that he seven year imprisonment term on each count, are to run concurrently.

Since the appellant had been sentenced on 14th December 2005 and has been in prison ever since, I hereby order that he Seven years imprisonment term begin to run from 14th December 2005. This means that the appellant should have completed serving the sentence by 13th December 2012.

I therefore order that the appellant be released from prison unless held therein on other lawful charges.

Order accordingly.


S. B. LUKELELWA,
JUDGE.

29th July, 202013

Date: 29/07/2013

Coram: Hon. S. B. Lukelelwa, J.

Appellant: Present

Respondent: Represented by Mr. Nestory Paschal State Attorney
who is present

B/c: Mary Mpululu

Mr. Nestory Paschal, the appeal is coming for judgment.

**S. B. LUKELELWA,
JUDGE.**

29th July, 202013

Order: Judgment delivered in Court this 29th July 2013.

Right of Appeal explained.


**S. B. LUKELELWA,
JUDGE.**

29th July, 202013