

**IN THE HIGH COURT OF TANZANIA  
AT TABORA**

APPELLATE JURISDICTION  
(Tabora Registry)

**MISC CRIMINAL REV APPLICATION NO. 6 OF 2012  
ORIGINAL CRIMINAL CASE NO. 3 OF 2000  
ON THE DISTRICT COURT OF KAHAMA DISTRICT  
AT KAHAMA**

**BEFORE:.....Esq  
PRINCIPAL/RESIDENT /DISTRICT MAGISTRATE**

**JACOB S/O FARAH @ MADILI.....APPELLANT  
(Original Accused )**

**THE REPUBLIC.....RESPONDENT  
(Original Accused)**

**R U L I N G**

The applicant Jacob Farah @ Madili was convicted by Kahama District in Criminal case number 3 of 2000.

The appellant submitted that he was convicted on an offence of unlawful possession of a Muzzle loading gun, and sentenced to twenty years imprisonment in year 2005. The case started in January, 2000. he had been in jail for eight years.

It is averred in the affidavit of the applicant that, he was convicted with the offence of unlawful possession of fire arm c/s 13 (1) and S. 31 of the Arms and ammunition ordinance Cap.223 and sentenced to serve 20 years in jail on 25/10/2005.

That after the conviction the applicant immediately expressed his desire to appeal to the High Court of Tanzania at Tabora.

The applicant has completely failed to secure a certified true copy of Judgment despite the demands by correspondence with the District Court of Kahama through the following letters:-

1. 112/SHY/4/4/111/111 of 8/11/2005
2. 112/SHY/1/XV111/29 of 10/12/2008
3. 112/SHY/1/X V111/331 OF 13/10/2009 ( to the CHGG)
4. 112/SHY/1/X1X/191 OF 5/11/2010

With no avail.

I'm satisfied that the original record of the trial Court cannot be secured, it has been lost.

In Misana V.R.(1967) E.A. 334 it was held that where records are missing the matter had to be remitted to the trial Court so that the case might be re-heard.

In the case at hand the applicant has already served eight years imprisonment from his twenty years imprisonment imposed on him.

Ordering a retrial will do an injustice to the appellant.

I therefore quash his conviction and set aside the sentence of twenty years imprisonment imposed on the applicant.

It is ordered that, the applicant be released forthwith from prison unless held therein on other lawful charges.

Order accordingly.

  
**S.B. LUKELELWA**

**JUDGE**

**20/5/2013**

Date: 20/5/2013

Coram: Hon. S.B. Lukelelwa, Judge

Applicant: Present

Respondent: Mr. Innocent Rweyemamu- State Attorney  
who is present

B/Clerk: Mary Mpululu

Order: Ruling delivered in court this 20<sup>th</sup> may 2013

Right of Appeal explained.

  
**S.B. LUKELELWA**

**JUDGE**

**20/5/2013**