

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY**

AT MWANZA

HC. CRIMINAL APPEAL No. 213 OF 2017

(Original Criminal Case No 359 of 2016 of Geita District Court)

THE DIRECTOR OF PUBLIC PROSECUTIONSAPPELLANT

VERSUS

SIKUDHANI BETAHOSE1ST RESPONDENT

BALEHE MUHOZA2ND RESPONDENT


MUGEMA EDWARD3RD RESPONDENT

JUDGMENT

TIGANGA, J.

Before the Court of Resident Magistrate of Geita, the three respondents namely Sikudhani Betahose, Balehe S/o Muhoza and Mugema Edward, stood charged with two offence of unlawful entry in a National Park Contrary to Section 21 (1) (2) and 29 (1) of the National Park Act (Cap 282 R.E 2002) now (R.E 2019) in the first count and unlawful possession of monofilament contrary of Regulation 66 (1) (a) and 66 (4) of the Fisheries Regulations GN. No. 308 of 2009, in the second count.

The particulars of the offence according to that charge sheet were that, the three accused persons were on 15th day of July, 2016 at about 02:30 hours found at Kondo Kubwa area in Rubondo Island National Park



within Geita Region without permit and while there they were found in unlawful possession of one Monofilament net for the purpose of fishing in fresh water.

When they were arraigned before the trial court they all pleaded guilty to both counts consequence of which they were convicted as charged.

Following such order of conviction they were sentenced to pay fine of Tshs. 10,000/= (ten thousands each) in the first count, or serve two months imprisonment in the alternative, and Tshs. 100,000/= (say one hundred thousand) or to serve four months imprisonment on the second count. The sentences were ordered to run concurrently.

The appellant was not satisfied by the sentence imposed, he appealed against it. The summonses compelling the respondents to appear were issued but the respondents but they were not found to be served. They were therefore served by publication in terms of Section 381 (2) of the Criminal Procedure Act [Cap 20 R.E 2019], but yet still they did not appear, as a result the appeal was heard in absentia of the respondent.

At the hearing, Miss. Mwaseba – State Attorney appeared for the appellant, while the respondent though served through the News paper Publication did not appear and therefore the Appeal was heard and determined ex parte.

In her submission for the appellant Miss. Mwaseba had no problem with the sentence passed in respect of the first count, but had a problem



and complained against the sentence passed in respect of the second count. She in essence complained that the same is inadequate and is contrary to Regulation No. 66 (1) (a) and 66 (4) which provides for the fine which is not less than two millions shillings or to imprisonment for a term of three years or both.

In the record, there is no dispute that the respondents were charged with the two counts and pleaded guilty to both of them. The plea was clear and un equivocal, and following that plea they were convicted and sentenced to pay fine of ten thousands or two months jail imprisonment, in the first count, but in the second count, they were sentenced to pay fine of Tshs. 100,000/= or three years jail imprisonment.

It is true that Regulation 66 (4) of the Fisheries Regulation GN 308/2009 provides a sentence to a person found guilty of being in possession of illegal fishing gears under Regulation 66 to be liable to a fine of not less than two million shillings or to imprisonment for a term of three years or to both.

In the case of **Selemani Makumba vs The Republic** [2006] TLR 379, it was held inter alia that;

"The High Court has power to interfere with the sentence of the trial court where the sentence is manifestly excessive or inadequate or where the trial court acted on wrong principle or took into account irrelevant matter."



In this case, the statutory sentence in respect of the second count is a fine not less than two millions, or three years jail imprisonment in the alternative or both. However the trial court sentenced the respondent to pay a fine of Tshs. 100,000/= or three years jail imprisonment which sentence is manifestly inadequate. That said, I find this to be a warrant for this court's interference to the sentence passed by the trial court.

The appeal is therefore found to be meritorious, I thus reverse the sentence passed in respect of the second count and substitute thereto, the statutory sentence of a fine of two millions or three years jail imprisonment.

It is so ordered.

DATED at **MWANZA** this 24th day of July, 2020.



J.C. Tiganga

Judge

24/07/2020

Judgment delivered in the presence of Miss Magreth Mwaseba, State Attorney for the appellant Republic but in the absence of the respondents.



J. C. Tiganga

Judge

24/07/2020

