

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT TABORA

CRIMINAL APPEAL NO. 120 OF 2019

(Original Criminal Case No. 7 of 2018 of the District Court of Tabora at
Tabora)

PAULO KAPARAGEAPPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

KIHWELO, J.

This matter was initially assigned to my late Brother Bongole J. who owing to his sudden death he could not live to compose the Judgment and subsequently the matter was re-assigned to me.

In the District Court of Tabora, the appellant was arraigned and convicted for Unlawful Possession of Weapon in Game Reserve contrary to section 17(1) & (2) of the Wildlife Conservation Act, No.5 of 2009. Upon his own plea of guilty, he was convicted and sentenced to twenty (20) years in prison.

Briefly stated the facts of the case were that, on 20th September, 2018 at about 02:00 am the appellant was found in the game reserve. It was further alleged by the prosecution that at the time of the arrest the

appellant was also found in unlawful possession of weapon. Upon interrogation the appellant admitted to have been found in the game reserve and further he admitted to have been found with unlawful possession of a weapon.

Before the trial court the appellant pleaded guilty and was convicted and sentenced to twenty (20) years in prison.

Unhappy with the decision of the District Court the appellant filed a petition of appeal which is comprised of four points of grievance, namely;

- 1. That, the appellant's plea at the trial court ambiguous (sic) and equivocal as the appellant did only say that "it is true" he did not go further to elaborate in his own words as to what he was saying it is true.*
- 2. That, the appellant was not accorded a fair trial as the trial court did not explain to the appellant all the essential ingredients of the offence charged and the appellant's plea was not treated with the greatest caution.*
- 3. That, since the cautioned statement which the appellant made before the police officer (exhibit P1) and the certificate of seizure were not read out to the appellant, this affected the plea of the appellant.*
- 4. That, the appellant was wrongly convicted, as no finding was made the trial(sic) court in ascertaining that the plea was unequivocal.*

In this appeal, the appellant was fending for himself, unrepresented, whereas the respondent Republic had the services of Mr. Miraji Kajiru learned State Attorney.

When asked to address the court the appellant opted to adopt his grounds of appeal. On his part the learned State Attorney was fairly brief and he strongly opposed the appeal on the grounds that the appellant was convicted and sentenced upon his own plea of guilty and that according to the provision of section 360(1) of the Criminal Procedure Act, Cap 20 R.E 2002 (Henceforth "the CPA") the appellant cannot now come before this Court and allege that he was unlawfully convicted.

I find it convenient to begin in passing to make a note that in the appellant's petition of appeal in particular the first paragraph records are conspicuously clear that the appellant appeals against conviction and sentence while at the trial, the appellant pleaded guilty to the offence of Unlawful Possession of Weapon in the Game Reserve which stood charged. It is pertinent to note that the law bars an appeal against conviction where an accused had pleaded guilty to an offence. Section 360 (1) of the CPA is very categorical on that.

I therefore think it is appropriate here to quote the relevant provision of section 360 (1) of the CPA which states as follows:-

"360 (1) No appeal shall be allowed in the case of any accused person who has pleaded guilty and has been convicted on such plea by a subordinate court except as to the legality of the sentence."

There is a plethora of legal authorities in support of section 360(1) of the CPA. In the case of **Mkiwa Nassoro Ramadhani v Republic**, Criminal Appeal No. 187 of 2013 (unreported) which was cited with approval in the case of **Helman Basekana v Republic**, Criminal Appeal No. 443 of 2016 (unreported) the Court of Appeal stated as follows:-

"Appeal which result from a plea of guilty are governed by section 360 of the Criminal Procedure Act. Subsection (1) to that section bars appeals of such nature except as to the extent or legality of the sentence."

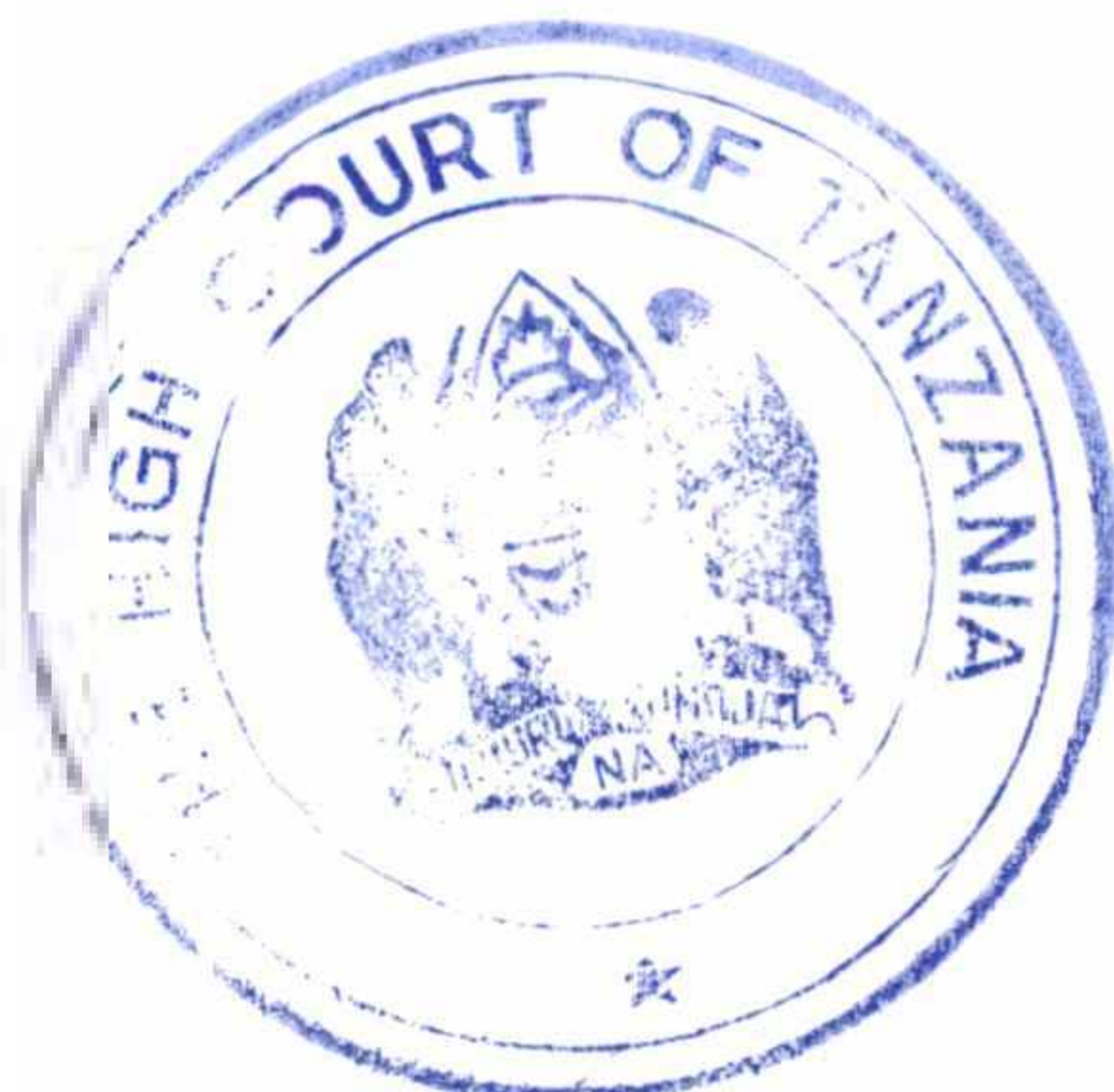
According to the four grounds of complaint in this appeal all the grounds concerns conviction and not a single ground concerns sentence even if the petition of appeal indicated that the appeal was against both conviction and sentence. I therefore find considerable merit in the learned State Attorney's submission that since the appellant pleaded guilty he cannot be heard now to challenge the conviction which was based upon his own plea. I am alive to the principle that every case must be decided upon its own merits.

The foregoing said and done, I am of the firm view that there is no scintilla of merit in the present appeal. That is the reason why I dismiss it in its entirety.

P.F. KIHWELO

JUDGE

10/12/2020



Judgment to be delivered by the Deputy Registrar on a date to be fixed.



P. F. KIHWELO

JUDGE

10/12/2020

Date : 17/12/2020

Coram : B.R. Nyaki, DR

Appellant : Present in person

Respondent: Absent

Bench Clerk: Grace Mkemwa, RMA

Court: Judgment delivered this 17th day of December, 2020 in the presence of the Appellant but in absence of the Respondent.

Right of appeal explained fully.



A handwritten signature in blue ink, appearing to read "B.R. Nyaki", is written over the printed name.

B.R. Nyaki
DEPUTY REGISTRAR
HIGH COURT – TABORA