IN THE HIGH COURT OF TANZANIA

AT TABORA

APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 94 OF 2019

(Arising from Original Criminal Case No. 8 of 2018 of the Resident Magistrates' Court of Tabora at Tabora)

SALU HERMAN ---------- APPELLANT

VERSUS

REPUBLIC ---------- RESPONDENT

JUDGMENT

23/03 & 03/04/2020

BONGOLE J.

The appellant **SALU HERMAN** together with one another not subject in this appeal, were jointly charged before the Resident Magistrate's Court of Tabora with the offence of Unlawful Possession of Weapons in a Game Reserve c/s 17(1) and (2) of the Wildlife Conservation Act No. 5 of 2009 read together with paragraph 14 of the first schedule to and sections 57(1) and 60(2) of the Economic and Organized Crime Control Act Cap 200 R.E 2002 as amended by the Written Laws (Miscellaneous Amendment) Act No. 3 of 2016. The particulars of the charge were read as follows: -

> ***SALU s/o HERMAN*** *and* ***CHARLES s/o MAKOJE****, on the 20th day of September, 2018 during night hours at Ikobelo area within Luganzo Game Controlled Area (Mpanda line) in Kaliua District, Tabora Region were found in possession of 1 muzzle loader without a permit.*

When the charge was read to the appellant and called upon to answer it, he pleaded guilty, the facts of the case were read to him and there upon he admitted all the facts read to him to be true.

The court went on to convict the appellant on his own plea of guilty and sentenced him to serve twenty (20) years imprisonment.

Aggrieved with the decision of the trial court, the appellant appeals to this court against conviction and sentence on the following grounds.

1. ***That, the appellant's plea in the trial court was ambiguous and equivocal in view of the fact that the appellant did only say "it is true" he did not go (sic) further to elaborate in his own words what it is was saying "it is true" and the trial court did not ask the appellant to elaborate to that effect.***
2. ***That, since the cautioned statement (exhibit P1) that the appellant made before the police officer was not read over to the appellant and/or in court, that affected the piea of the appellant.***
3. ***That, the appellant was not accorded a fair trial in view of the fact that the trial magistrate did not explain to the appellant all essential ingredients of the offence charged and the appellant's plea was not treated with greatest caution at all.***

This court is vested with powers to re-evaluate the evidence adduced in the lower court, look at the manner plea and evidence was taken and procedure used and finally consider whether the trial magistrate applied the law to the facts properly before arriving at the decision.

only said "it is true" but he didn't went further to elaborate on his own words what he was saying and the trial court never asked him to elaborate to that effect.

The question that needs to be answered by this court is as to whether the appellant's plea of guilty was equivocal. Section 228 (2) of the Criminal Procedure Act reads:-

> *"If the accused person admits the truth of the charge, his admission shall be recorded as nearly as possible in the words he uses, and the Magistrate shall convict him and pass sentence upon or make an order against him unless there shall appear to be sufficient cause to the contrary."*

It is trite that the appellant plea of guilty was in relation to the charged offence of Unlawful Possession of Weapon in a Game Reserve c/s 17 (1) and (2) of the Wildlife Conservation Act No. 5 of 2009. The proceedings shows that the charge sheet was read to the appellant in language he understood.

The defense that he pleaded guilty just because he was worried of being killed is irrelevant because the charge was read to him on 28/09/2018 and he pleaded guilty then the case was adjourned for 14 days, on 11/10/2018 the appellant was reminded the charge he also pleaded guilty and in addition he was called to admit or deny the facts and he admitted all the facts. I am of view that the appellant's plea was unequivocal.

Back to the second ground that the appellant's caution statement was not read before the trial court whether it affected the appellant's plea.

It is trite principle that a contested statement of accused person is admitted in evidence the same must be read over in court so as to enable the accused person to understand its content.

In the case of **Emanuel Konrad Yosipita vs Republic Criminal Appeal No. 296 of 2017 HC at Mtwara** (unreported) the Court observed as follows:-

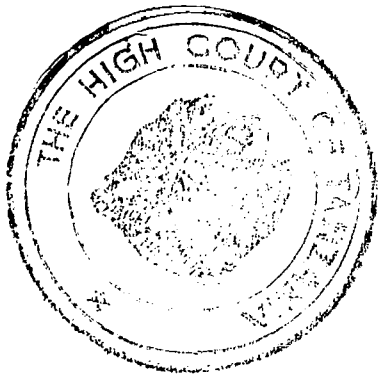
".. .it was wrong for the trial court to receive the cautioned statement as evidence without ordering the same be read over in court".

In the case of **Jamila Mfaume Makanjala @ Mama Warda vs Republic Criminal Appeal No. 383 of 2016** MMILLA J. while citing the case of **Sumni Amma Aweda v. The Republic, Criminal Appeal No. 393 of 2013** stated inter alia as follows:-

"... to have not read those statement in court deprived the parties and the assessors in particular the opportunity of appreciating the evidence tendered in court. Given such a situation, it is obvious that this omission too constituted a serious error amounting to miscarriage of justice and constituted a mis-trial."

It is evident that, having received the appellant's caution statement as exhibit without affording the appellant opportunity to know the content of it in the presence of a magistrate amounted to miscarriage of justice, consequently the trial court proceeding is nullified. The appellant conviction is quashed and sentence is set aside.

Having said that, I order that the appellant be retried before another magistrate with competent jurisdiction.



S. B. BONGOLE

JUDGE

03/04/2020

Judgement delivered under my hand and seal of the Court in chambers this 3/04/2020 in the presence of the Appellant in person and Mr. John Mkonyi learned State Attorney for the Respondent.

S.B. BONGOLE

JUDGE

03/04/2020