

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE DISTRICT REGISTRY OF KIGOMA)**

**AT KIGOMA**

**APPELLATE JURISDICTION**

**(DC) CRIMINAL APPEAL NO. 27 OF 2020**

(Arising from Economic Case No. 6 of 2017 Kibondo District Court  
Before: Hon. M.P. Kamuntu – RM)

**BAVUZUKULI S/O MIKANDA.....APPELLANT**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**


**JUDGMENT**

10/03/2021 & 10/03/2021

**A. MATUMA, J**

The accused **BAVUZUKULI S/O MIKANDA** stood charged in the District Court of Kibondo at Kibondo for an offence of Unlawful Possession of Firearms contrary to the provisions of the ***Firearms and Ammunitions Act*** read together with the provisions of the ***Economic and Organized Crimes Control Act as amended in 2016***.

He was alleged to have been found in possession of two firearms commonly known as Gobore on the 19<sup>th</sup> July, 2017 during morning hours at Kagoti Village within Kibondo Village in Kigoma Region without licence.



The prosecution during trial paraded four witnesses to prove the case against the appellant herein. These were Insp. Kelvin Peter Makaranga (PW1), H. 3893 D/C Bashiru (PW2), F. 5216 D/C Shaban (PW3) and Francis Charles Mbuya (PW4). They also tendered two muzzle guns as exhibits P1 and P2 respectively, a Certificate of seizure as exhibit P3 and a Caution Statement of the accused now the appellant as exhibit P4. At the end of trial, the trial Court was satisfied with the evidence of these prosecution witnesses along with the tendered exhibits to have sufficiently established the guilty of the appellant and thus convicted him. He was then sentenced to serve a custodial term of five (5) years.

The appellant became aggrieved with the conviction and sentence hence this appeal with a total of four grounds of appeal which are drafted in the layman's manner but reading them thorough they reflect one major complaint that; ***The prosecution case was not proved beyond reasonable doubt against him.***

At the hearing of this appeal the appellant appeared in person through virtual court at Bangwe Prison while the respondent/Republic had the service of Mr. Shabani Juma Masanja learned state attorney.

The appellant opted for the learned State Attorney to start addressing the court and him to reply thereafter. The learned state attorney Mr. Shabani

Juma Masanja quickly supported the appeal arguing that the prosecution case was fatally affected by discrepancies of its witnesses and the prosecution exhibits having been tendered and admitted in evidence contrary to the guiding rules. He pointed out that exhibit P3 Certificate of Seizure and P4 the Cautioned Statement were not read to the appellant after their admission in evidence. He also pointed out that even the manner in which the charges were drafted was not proper as the specific subsections which were allegedly violated were not cited in the charge sheet. He cited to me the decision in the case of **Maneno Abdallah versus The Republic, Criminal Appeal no. 2 of 2018 (CAT)** to the effect that none citation of a specific subsection allegedly violated is fatal. The learned State Attorney also observed that the trial court did not hold an inquiry to determine admissibility or otherwise of the Cautioned Statement provided that the appellant had objected it on the ground of torture. He thus called this court to allow the appeal.

The appellant on his side having heard a full and free support of his appeal by the Respondent did not add a word. He only purchased the submission of the learned State Attorney and asked for his acquittal.

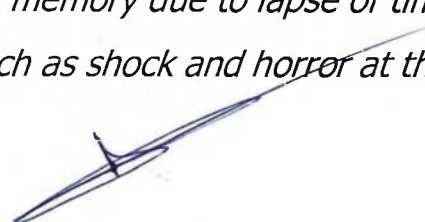
Having heard the submissions of the parties herein and gone through the records of the trial court before me, it is my firm finding that the learned

State Attorney Mr. Shabani Juma Masanja is absolutely right that the prosecution case against the appellant is fatally damaged on the grounds he has advanced as herein above reflected. This appeal has thus been brought with sufficient cause and it should be allowed. This is because it is a settled law that the discrepancies in various accounts of the story by the prosecution witnesses give rise to some reasonable doubts about the guilty of the appellant and that whenever reasonable doubts arises the benefit thereof should be resolved in favour of the appellant. One of the cases which decided on such a principle is that of ***Jeremiah Shemweta versus Republic [1985] TLR 228*** which held that;

*'The Discrepancies in the various accounts of the story by the prosecution witnesses give rise to some reasonable doubt about the guilty of the appellant'.*

I am aware that only major contradictions which goes to the root of the case matters, and not minor one as it was decided in various cases including that of ***Dickson Elia Nsamba Shapwata and another v. Republic, criminal appeal no. 92 of 2007;***

*'Normal contradictions and discrepancies are bound to occur in the testimonies of the witnesses due to normal errors or observation, or errors in memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence'*



But as rightly observed by the learned State Attorney in the instant case, there are several serious contradictions by the prosecution witnesses which cannot be said to be minor as they go to the root of the case in various aspects which has destroyed totally their credibility on whether it is true they were the ones who arrested the appellant and also whether the appellant was really found in possession of the alleged muzzle guns.

The discrepancies I have found in this case and those which the learned State Attorney observed which cannot be ignored and are to be resolved in favour of the appellant are;

- i. While PW1, PW2 and PW4 testified that on the material date on 19/7/2017 in the morning when they were patrolling in the game reserve got informed that the appellant was in possession of the firearms, the information which they acted upon by going to the home of the appellant in the middle night at 00:30 hours, arrested him and asked him of the alleged guns and the appellant led them to the place where he had hidden, PW3 on his part testified that on such a date 19/7/2017 the appellant was already in custody even before evening hours as he took him from custody at 04:55 pm for interrogations and wrote his cautioned statement. The evidence of PW3 is corroborated by the Caution statement exhibit P4 which reflects that the appellant was arrested on 18/7/2017. Therefore, PW1,*

*PW2 and PW4 who purports to have arrested the appellant in the late night on 19/7/2017 are not witnesses of truth. Since it is them who alleges to have found the appellant with the alleged guns, their allegations are doubtful.*

- ii. Since PW1, PW2 and PW4 stated to have got information that the appellant is in possession of muzzle guns on the 19/7/2017 while the appellant was already in custody since 18/7/2017, then it is obvious that the appellant was arrested for other cause and not possession of muzzle guns as alleged by these witnesses.*
- iii. While PW1 and PW2 stated in evidence that along with the muzzle guns, they also found the appellant in possession of explosive powder, bullets and fishing rods, PW4 stated to have only found two muzzle guns. He did not talk of explosive powder, bullets or fishing rods. Certificate of seizure which all the three witnesses stated to have filled and signed immediately after the seizure of the herein items does not reflect the alleged bullets and fishing rods. Even if there were no counts in the charge sheet in relation to the bullets and fishing rods, a prudent court would expect the seizure form to reflect all the items allegedly were found in possession of the appellant and seized at the time of arrest or on*



*the crime scene; more so, the bullets and fishing rods whose possession is prohibited under the law unless one possesses a valid licence to that effect. Therefore the witnesses testimony in court contradicted their own exhibit P3.*

- iv. While PW1 stated that the bullets found were 13, PW2 stated that they were 10. The certificate of seizure was not filled to reflect the true status if at all the appellant was found in possession of the bullets. This discrepancy does not affect the witnesses' testimony on the bullets alone, but also on credibility basis, on the allegation that they found the appellant in possession of the alleged muzzle guns.*

With the herein discrepancies in various accounts of the story by the prosecution witnesses, the defence of the appellant at the trial that he was not arrested with the guns cannot be overruled.

There is also a question of the Cautioned Statement exhibit P4. This exhibit was objected by the appellant when PW3 sought to tender it in evidence. He objected it on the ground of torture. He stated that he was forced to confess by afande Makaranga under heavy beatings (no doubt he was referring to PW1). The trial court overruled such objection without holding an Inquiry on a mere observation that he who recorded the statement was not Makaranga but PW3 D/C Shaban. That was wrong as rightly argued by

the learned state attorney. This is because the law does not state that torture by a third-party officer of the Police Force in relation to confession statements recorded by their fellow officers is irrelevant. Rather it requires whenever torture is alleged, the trial court to stop the main trial and hold an inquiry to accord the accused opportunity to establish the said torture and how it affected him in his alleged confession. On the other hand, the prosecution to discharge their duty under section 169 (3) of the ***Criminal Procedure Act, Cap. 20 R.E 2019*** by establishing that such evidence was procured in accordance to the law. See; ***Nyerere Nyague Versus The Republic, Criminal Appeal No. 67 of 2010.***

Therefore, the Cautioned statement was illegally admitted in evidence. Even after its admission as exhibit, it was not read to the appellant to avail him with its contents. That violated the settled principle that documentary exhibits must be read to the accused person to accord him opportunity to know its contents for preparation of his focused defense as it was decided in the case of ***Robinson Mwanjisi & 3 Others versus The Republic (2003) TLR 218.*** The Cautioned Statement is thus liable to be expunged, so I do. Exhibit P3 the certificate of seizure suffers the same defect as pointed herein above by the learned state attorney. It is also hereby expunged. In the absence of exhibit P3, P4 and with the available



discrepancies, the prosecution case cannot be said to have been proved beyond reasonable doubts against the appellant.

In the circumstances, I find the appellant to have successfully raised reasonable doubts against the prosecution case. I therefore allow the appeal, quash the conviction and set aside the sentence of five (5) years meted against him.

I order his immediate release from custody unless held for some other lawful cause. It is so ordered.



**A. Matuma**

**Judge**

**10/03/2021**

**Court:** Judgment delivered in Chambers through virtual court this 10<sup>th</sup> March, 2021 in the presence of the appellant in person at Bangwe Prison and in the presence of Shabani Juma Masanja learned State Attorney for the Respondent. Whoever aggrieved has the right of further appeal to the Court of Appeal of Tanzania subject to the relevant Laws governing appeals thereto.

**Sgd. A. Matuma**

**Judge**

**10/03/2021**