

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TABORA DISTRICT REGISTRY

AT TABORA

DC. CRIMINAL APPEAL NO. 37 OF 2020

(Original from Tabora Resident Magistrate's Court in Economic

Crime Case No. 40/2019)

PASCHAL S/O NZIBARA.....APPELLANT

VERSUS

REPUBLICRESPONDENT

JUDGMENT

19/2/2021- 19/3/2012

BAHATI,J.:

In the Resident Magistrate's Court of Tabora at Tabora, the appellant **Paschal Nzibara @ Kagoma** was arraigned convicted for three counts, first count, unlawful possession of Government Trophy contrary section 86(1) and (2)(c) (ii) of the Wildlife Conservation Act, No. 5 of 2009 read together with paragraph 14 of the First Schedule to and section 57(1) and 60 (2) of the Economic and Organized Crime Control Act, Cap.200 as amended by Act, No. 3 /2016,

The second count unlawful possession of a firearm contrary to section 20(1) and (2) of the Firearms and Ammunitions Control Act, No. 2/2015 read together with paragraph 31 of the First Schedule to and section 57(1) and 60 (2) of the Economic and Organized Crime Control Act, Cap 200 as amended by Act No. 3/2016.

The third count, unlawful possession of Ammunition c/s 21(b) and 60(1) of Firearms and Ammunitions Control Act, No.2/2015 read together with paragraph 31 of the first schedule to and section 57(1) and 60(2) of the Economic and Organized Crime Control Act, Cap.200 as amended by Act, No 3/2016 and sentenced to serve a custodial sentence of twenty years in jail in each count.

As the appellant pleaded not guilty to all counts, the prosecution paraded for witnesses. After the full trial, the appellant was found guilty and convicted of all counts of offence. Consequently, he was sentenced to twenty years.

Aggrieved, the appellant has come to this court with six grounds of appeal;

- i. *There was a break in the chain of custody of the items allegedly impounded from the appellant,*
- ii. *The learned trial magistrate did not consider the material discrepancy between PW1 on the one hand and PW2 & PW3 on*

the other as regards whether the appellant was found in possession of the errand tail and hedgehog skin whose material discrepancy goes to the root of possession and corrodes their credibility,

- iii. That without prejudice to ground 2 of complaint above, there was no trophy valuation certificate to cement the allegation that the appellant was found in possession of errand skin and establish their values,*
- iv. The defence of the appellant was never considered on its merit, rather the learned trial magistrate erred in law to capitalize on its weakness,*
- v. The appellant thereby takes issue with the propriety of the sentence meted in midst of the fact that the appellant was charged under multiple enactments which, each provides for a different magnitude of the sentence,*
- vi. That section 312(2) of the Criminal Procedure Act, Cap. 20 was not complied with as the judgment is lacking the provision of the law under which the appellant was convicted and the sentence which is meted is missing.*

When the matter was called on for hearing, the appellant appeared in person, unrepresented. On the other hand, the respondent was represented by Mr. Rwegira Deusdedit, learned State Attorney.

In his submission, the respondent partly supported this appeal in respect of the offence of being found with a government trophy as this offence was not proved, however, on the offence of having found with a weapon, it was proved beyond reasonable doubt. He submitted that in the proceedings, starting with PW1 who explained to the court that the accused was found with a muzzle gun and one animal tail. This evidence is not in contact with that of the charge sheet. PW2 on record was found with the animal tail which is incompatible. Also, he submitted that the said tail was not tendered in court. He submitted that it was wrong to convict a person without the exhibit to be placed in court which prejudiced the appellant. He further added that the valuation report which is important to prove on which sentence or fine was not proved.

In respect to the second offence of unlawful possession of a firearm, he contended that this was proved beyond reasonable doubt according to PW1 on the record. This was tendered in court and the appellant did not object.

In his reply, the appellant being a layperson prayed to adopt the grounds stated in his petition of appeal.

Having considered the evidence on record, the petition of appeal, and submission by both parties, the main issue is whether the present appeal has merit.

For the reason which shall be obvious, in due course, I will consider only on the 5th and 6th grounds in the memorandum of appeal wherein the legality of judgment is questioned for non-compliance of the mandatory provisions of section 312(2) of the Criminal Procedure Act, Cap. 20.

On the 5th and 6th grounds of appeal which relate to the multiple enactments of laws and non-compliance of section 312(2) of the Criminal Procedure Act, Cap.20.

In a criminal judgment, one must comply with the provision of section 312 (2) of the Criminal Procedure Act, Cap.20 is not at issue; whether the same has complied with the provisions.

Section 312(2) of the Criminal Procedure Act, Cap.20 provides that;

"In the case of conviction the judgment shall specify the offence of which, and the section of the Penal Code or other law under which, the accused person is convicted and the punishment to which he is sentenced."

Apparent from the quoted provision is that for convicting judgment to amount to a proper judgment, it must *inter alia* specify the offence and section of the Penal Code, Cap.16, or other law under which the accused person is convicted.

In the instant case, having gone through the judgment, it has neither specified the offence nor the section of the law under which the appellant was convicted. The trial court did not at all comply with that requirement. In the last paragraph of the judgment which contains the conviction statement, the trial magistrate just stated that;

"From the above discussion I found the accused person, guilty in all three counts and convicted accordingly."

Hence this court has failed to understand on which offence the accused is convicted and against which provision of law, the judgment is silent. There are many judicial pronouncements in support of that proposition. In the case of **John S/O Charles vs the Republic, Criminal Appeal No. 190 of 2011, Court of Appeal at Tabora (unreported)** stated that;

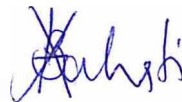
"Judgment writing in subordinate courts is governed by sections 235 and 312 of the Criminal Procedure Act, Cap. 20."

It is my considered view; the trial court is obliged to specify the offence the accused person is convicted with and the section of the law that has

been violated. Omission to comply with the respective provision of the law is fatal to the conviction and sentence. For the above reasons, therefore, I find that the fifth and sixth grounds of appeal are meritorious to the extent the appeal is allowed.

Therefore, the judgment of the trial court is declared null and void for reasons above stated and according set aside and the conviction thereof quashed. The file is hereby remitted to the trial court. The trial magistrate is hereby ordered to write the judgment in due compliance with the requirement of section 312 (2) of the Criminal Procedure Act, Cap.20, and redeliver the same. In the meantime, the appellant shall remain in prison.

Order accordingly.



A. A. BAHATI

JUDGE

19/3/2021

Judgment delivered under my hand and seal of the court, this 19th day March, 2021 in the presence of both parties.

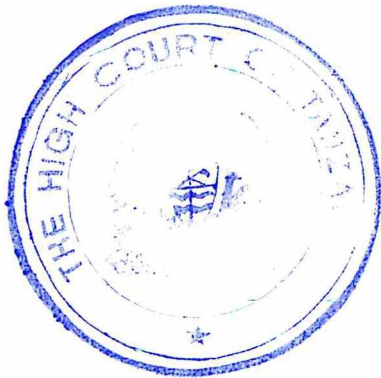


A. A. BAHATI

JUDGE

19/03/2021

Right of appeal is explained.



A. A. Bahati
A. A. BAHATI

JUDGE

19/03/2021