

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
DISTRICT REGISTRY
AT TABORA**

DC CRIMINAL APPEAL NO. 60 OF 2020

(Originating from Tabora RM's Court in Economic Case No. 24/2020)

GEORGE S/O ABRAHAM ----- APPELLANT

VERSUS

THE REPUBLIC ----- RESPONDENT

JUDGMENT

Date: 18/07/2022 & 22/07/2022

BAHATI SALEMA, J:

The appellant herein, **George s/o Abraham** was tried and convicted before the Resident Magistrates' Court of Tabora for the offence of Unlawful Possession of a Firearm contrary to Section 20(1) & (2) of the Firearm and Ammunitions Act No. 60(2) of the Economic and Organized Crime Control Act, Cap.200 [R.E 2019] as amended by the Written Laws Miscellaneous Amendment Act No. 3 of 2016.

The particulars of the offence as per the charge sheet were that, on the 2nd day of February, 2020, during the night hours at Imalampaka Village within Sikonge District in Tabora Region, the appellant was found in possession of one firearm, a locally made muzzleloader,

without having a licence. The appellant was sentenced to serve twenty years in jail;

Aggrieved, he filed this appeal, parading a total of five grounds of appeal namely: -

1. *That, the judgment of the trial court is bad in law for lacking conviction*
2. *That the case for the prosecution was not proved beyond reasonable doubt.*
3. *That, the learned trial magistrate erred in law and fact to reject the appellant's reasonable explanation of how he came into possession of the muzzleloader gun allegedly found in his house on the basis of the statement by NEJO'S which was not part of the evidence.*
4. *That, in the circumstances under which the search and seizure of the muzzleloader gun was conducted at the house of the appellant, namely in the absence of an independent witness (if there was any, did not testify) creates doubt as to whether the appellant was found in actual or constructive possession of the alleged muzzle loader gun*
5. *That, the certificate of seizure subject of the search conducted at the house of the appellant was not read aloud in court to*

reveal its content, the omission of which is wrong and prejudicial.

For the above-listed grounds, the appellant prays this Court to allow the appeal, and quash the conviction and sentence meted against him. He further prays for immediate release from custody.

At the hearing of the appeal, the appellant defended himself while the respondent Republic was represented by Mr. Merito Ukongoji, learned State Attorney.

Mr. Merito informed this Court that he will only submit on the fourth ground of appeal because it is conclusive in resolving the entire appeal.

He submitted, thus, the search that was conducted and discovered the alleged muzzle gun in the appellant's home was done in contravention of the requirements of the law in searching. He added that no independent witness was called to observe the search, taking into account that the search was conducted in a village that has people in it and not in a forest reserve.

Replying the appellant had nothing to add; rather, he prayed for his release.

Having keenly heard from both parties, the issue for determination is whether the appeal is meritorious.

According to the case of *Shabani Saidi Kindamba vs The Republic, Criminal Appeal No. 390 of 2019 CAT at Mtwara*, it was held that: -

"Our conclusion is that the search that was conducted illegally at night without permission and without proof that it was an emergency, and the same having being witnessed by a leader of the hamlet other than the one relevant in the case, raise doubt as to whether the drugs were indeed found at the appellant's house."

Similar to the quotation above to the appeal at hand, I agree with the learned State Attorney that the search that was conducted at the appellant's house was illegal as it was conducted in the absence of an independent witness to observe the manner in which the search was conducted.

The facts of the case in *Shabani Saidi*, (supra) reveals that, the Court of Appeal of Tanzania announced it to be illegal for a hamlet leader from another village to witness the search; this shows the importance of having an independent witness in a search but in this case, neither the hamlet leader nor a normal village member was called to witness the search as the law requires.

That being said, I find the fourth ground of appeal to have merit and be sufficient to dispose of the appeal. Therefore, I agree with the learned State Attorney that the prosecution did not prove the case

against the appellant beyond reasonable doubt. In light of the foregoing, I allow this appeal, quash the conviction, and set aside the sentence imposed on the appellant. I order the appellant's immediate release from prison unless he is being held for another lawful cause.

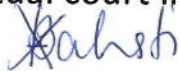


A. BAHATI SALEMA

JUDGE

22/07/2022

Judgement delivered in chamber on this 22nd July, 2022 in the presence of both parties via virtual court link



A. BAHATI SALEMA

JUDGE

22/07/2022

Right of Appeal fully explained.



A. BAHATI SALEMA

JUDGE

22/07/2022

