

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
SUMBAWANGA DISTRICT REGISTRY
AT SUMBAWANGA
CRIMINAL APPEAL NO. 28 OF 2021**

**(Original Economic Case No. 8 of 2018 of Mpanda District
Court)**

VENANCE MAPALALA..... APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

Date of Last Order: 02/12/2021

Date of Judgment: 05th April, 2022

NDUNGURU, J

The appellant in this criminal appeal Venance Mapalala was arraigned before the District Court of Mpanda along with Jumanne Hussein for the two counts. For the first count, all accused persons, were charged with unlawful possession of fire arms without license contrary to section 20 (1) and (b) and section 20 (2) of Fire Arms and Ammunitions Control Act No. 2 of 2015 read together with Paragraph 31

of the First Schedule and section 57 (1) and 60 (2) of the Economic and Organized Crime Control Act, Cap 200 RE 2019 as amended by section 16 (b) and 13 (b) of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016. For the second count, 1st and 2nd accused persons were charged with unlawfully possession of ammunitions without license contrary to section 21 (b) of the fire arm and ammunition Control Act No. 2 of 2015 read together with paragraph 31 of the first schedule, section 57 and 60 (2) of the Economic and Organized Crime Control Act, Cap 200, RE 2002 as amended by Act No. 3 of 2016.

It was alleged for the first count that, on 20th day of October, 2018 the accused persons at or about 07: 30hrs at Imilamate area within Mpanda District in Katavi Region, were found in possession of one (1) Muzzle loading gun with serial No. 9512 without authorization under any written law.

Again, it was claimed on the same day in respect of the 2nd count that, Jumanne Hussein and Venance Mapalala were found in unlawfully possession of 50 grams of explosives, 51 pieces of iron bar, and 200 rounds ammunitions without authorization under the law.

All the accused persons denied charges against them and to prove the allegations, prosecution called six witnesses along with six exhibits

while the appellants defended themselves. Trial Court found both accused persons had a case to answer during closure of prosecution case. After full trial, the trial court found the appellants guilty of all the two counts and thereafter convicted them and consequently sentenced each appellant to serve a custodial sentence of twenty years for each count and the sentences were ordered to run concurrently.

Aggrieved by the conviction and sentence, appellant herein has preferred the present appeal based on five grounds of appeal, namely:

- 1. That the case against the appellant was not proved to the required standard against the sentence imposed is excessive.*
- 2. That the case was cooked, fabricated and all evidence adduced at the trial was after thought.*
- 3. That confession made involuntary at the police station could have not been acted upon to find conviction.*
- 4. That the appellant was found possessing none of the exhibit tendered.*
- 5. That there was a school of thought at the prosecution door since the evidence adduced was of contradiction.*

When the appeal was called for hearing the appellant appeared in person unrepresented whereas the Republic was represented by Ms. Marietha Magutha, learned state attorney.

In support of his appeal, the appellant prayed the court to adopt his grounds of appeal.

On other hand, the republic through Ms Maguta resisted the appeal as they support conviction and sentence meted against the appellant.

Ms Maguta submitted that the prosecution in proving the case had six witnesses and six exhibits. Four witnesses witnessed the arrest of the appellant with the gun and explosives. Their testimony is very direct and acceptable as per **section 67** of the Evidence Act. She further submitted that the said four witnesses testified on how they arrested the appellant and his fellow and how the appellant led them to discover the weapon. Such evidence she said is acceptable as per section 31 of the Evidence Act.

Ms Maguta went on submitting that that piece of evidence is supported by seizure certificate which the appellant signed, thus she prayed for the 1st, 2nd and 4th grounds be dismissed.

As regards the 3rd ground, Ms Maguta submitted that the confession statement when tendered the appellant never objected, that implies that it was made voluntary, thus it was relied by the trial court as per **section 27 (1)** of the Evidence Act.

As regards the 5th ground, Ms Maguta submitted that though the evidence of PW3 was that it was the 1st accused (who is absent) was contrary to that of others, that contradiction did not go to the root of the case, because it was the appellant and his fellow who together led to the discovery. According to **Shukuru Tunuga vs Republic**, Criminal Appeal No. 243 of 2015 the Court held that not every contradiction leads to the flop of the prosecution case. The court should look if contradiction goes to the root of the case. Thus, she prayed for the appeal be dismissed.

Having gone through the trial court's record and the submission of both sides, I have one issue to decide. Whether the case was proved beyond reasonable doubt by prosecution side.

With regard the proof of the case, to prove their case the prosecution brought six witnesses (PW1, PW2, PW3, PW4, PW5 and PW6) of whom PW1, PW2, PW3 and PW6 testified at the trial court how the appellant and his fellow were arrested and how the appellant led them until the place where the Muzzle loading gun (exhibit P2), 51 pieces of iron bar, 200 round balls and 50 grams of explosives (exhibit P3 collectively) were discovered underground.

PW1 Kahabi testified before the trial court that on 20. 10. 2018 while on patrol he received information that at Mwankulu area, one Jumanne Hussein is in possession of the gun and trophies. He be accompanied by A/Inspector Ndagala and VEO's of Mwankulu and Inteka A villages went to the home of Jumanne Hussein. Upon search of the house nothing was found. Also, they went to the house of the Venance Mapalala where nothing was retrieved. However, after further interrogation he said the duo accused admitted to possess the gun somewhere in the bush. Being led by the accused persons, they went to the area and after digging the area they retrieved muzzle loading gun which he said was wrapped in a black nylon, 200 round balls and 50 grams of explosives.

The above testimony of PW1 resembles to that of PW2, PW3 and of PW6. Again, PW2 also tendered certificate of seizure which was admitted in court as exhibit P1 without objection from both accused.

PW5 recorded cautioned statement of the appellant which was tendered and admitted in court as exhibit P6 without objection from the appellant.

The question I may ask myself was whether testimonies by the witnesses at the trial court were reliable and credible to warrant conviction.

As it was observed from the trial court record that the process of search and until the discovery of the gun, and other explosive materials were conducted in presence PW1 Gasper Kahabi, a Park Ranger of Katavi National Park and A/Inspector Gofrey Ndangala of police force in the presence of PW3 and PW6 who are the village executive officers of Itenka A Village and Mwankulu village respectively, who I think are independent witnesses. The appellant and his fellow had no any permit authorizing them to possess the weapon and other explosive material.

It is the domain of the trial court to test the credibility of the witnesses as per the case of **Goodluck Kyando vs Republic** [2006] TLR 363. Having regard the totality of evidence I see no reason to fault or interfere the trial court's assessment and evaluation of evidence and witnesses' credibility as stated by the Court of Appeal in **Omary Ahmed vs Republic** [1983] TLR 32. The trial court's finding as to credibility of witnesses is usually binding on appeal unless there are circumstances on an appeal Court on the record which case for reassessment of credibility.

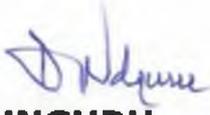
I am therefore satisfied as the trial court did proper evaluation of the demeanor and credibility of all the witnesses.

It is therefore my strong observation as was found by the trial court that, the testimonies of PW1, PW2, PW3, PW4, PW5 and PW6 were consistent and corroborated on the issue of the chain of custody. All of them are credible witnesses, they demonstrated coherence and gave the story to what exactly transpired during the search and until the discovery of the weapon and other explosives material.

In the light of the above, I am satisfied that the prosecution has sufficiently discharged the burden of proof, and I have no reasons whatsoever to vary the finding of the trial court. The charges against the appellant were proved beyond reasonable doubt as such the appeal is without merit and it is dismissed in its entirety.

It is so ordered.




D. B. NDUNGURU

JUDGE

05.04.2022

Date - 05.04.2022
Coram - Hon. L. M. Ndelwa – AG, DR
Appellant - Present
Respondent - Mr. Peres– State Attorney
B/C - Zuhura

Mr. Peres – State Attorney: The matter comes for the Judgment, I am ready

Appellant: I am prepared too.

Court: Judgment is delivered in open court in the presence of State Attorney Mr. Peres and the appellant who present in person.



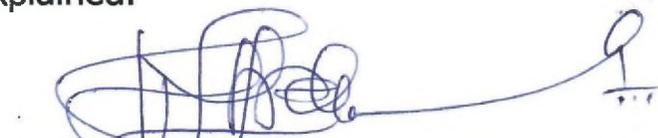

L. M. NDELWA

Ag, DEPUTY REGISTRAR

05.04.2022

Court: Right of appeal is explained.




L. M. NDELWA

Ag, DEPUTY REGISTRAR

05.04.2022