

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
THE SUB-REGISTRY OF TABORA

AT TABORA

CRIMINAL APPEAL NO. 5 OF 2023

(Originating from Criminal Case No. 04/2022 of Kaliua District Court)

KATEMI S/O BULOGO @ IHAGALA ----- APPELLANT

VERSUS

THE REPUBLIC ----- RESPONDENT

JUDGMENT

Date: 03/07/2023 & 21/07/2023

BAHATI SALEMA, J.:

The appellant Katemi Bulogo Ihagala was prosecuted in the District Court of Kaliua at Kaliua with two counts. One, Unlawful Possession of Firearm contrary to section 20(1) and (2) of **the Firearms and Ammunitions Act**, No. 2 of 2015 read together with paragraph 31 of the 1st schedule to and section 57 (1) and 60(2) of the **Economic and Organized Crime Control Act**, Cap. 200 [R.E 2019]. Two, Unlawful Possession of Ammunitions contrary to section 21(a) and (b) of the Firearms and Ammunitions Act No. 2 of 2015 read together with paragraph 31 of the 1st Schedule to and section 57(1) and 60(2) of **the Economic and Organized Crime Control Act**, Cap. 200 [R.E 2019].

In the trial, the appellant was convicted upon entering a plea of guilty to both counts and sentenced to serve 20 years jail term for each count; the sentence was fixed to run concurrently.

Aggrieved by the decision of the Court, the appellant lodged this instant appeal preferring two grounds of appeal namely;

- 1. That, even taking into consideration the admitted facts, his plea was imperfect and ambiguous and for that reason, the lower court erred in law in treating it as a plea of guilty.*
- 2. That, the trial magistrate erred in law by imposing a sentence that exceeded its jurisdiction.*

At the hearing, the appellant appeared in person unrepresented. The republic/respondent was represented by Ms. Wivina Rwebangira and Ms. Idda Lugakingira learned State Attorneys.

When I invited the parties for hearing their submissions, I observed that the appellant is somewhat uninformed as he is 87 years old and he cannot communicate well in the Kiswahili language, by an order of this Court we enjoyed the services of Mr. Peter Kulwa who interpreted the proceedings from Kiswahili to Sukuma language and vice versa. The hearing of the appeal went well as both the appellant and the prosecution had a chance to make submissions and the matter was reserved for delivery of judgment.

While I was preparing to write the judgment, I went through the trial Court's case file to find out what transpired in the appellant's trial. After going through the record I noted that there are important legal issues that need the attention of this Court before I deliver judgment.

On 12/07/2023 I re-opened the proceedings and called the parties to address the Court on two legal issues namely;

- 1. Whether the charge sheet that the appellant was convicted upon was properly substituted; and*
- 2. Whether the trial Court had jurisdiction to entertain the matter*

Ms. Idda Rugakingira, learned State Attorney admitted that one; the Charge sheet was substituted but the proceedings of the Court do not reflect the same and on the second issue the learned State Attorney admitted that the Proceedings of the trial Court are silent as to whether the DPP's consent and Certificate of order for trial was admitted in court. Following the cited irregularities Ms. Idda left the matter to the Court for it to decide.

As I stated earlier the appellant is an old man and being an old-aged layman, he was unable to grasp the discussion on the legal issues that were raised by the Court, he opted to remain silent readily waiting for the judgment day.

The court upon perusing the record on the trial Court file reveals that on 07/05/2021 the appellant was arraigned at Kaliua District Court facing one Count of Unlawful Possession of Firearm c/s 20(1) and (2) of **the Firearm and Ammunition Control Act**, No. 2 of 2015. On 13/09/2022 the Public Prosecutor informed the Court that he has received a charge sheet from the National Prosecution Services Office and he prayed to read the same to the accused person (appellant) without praying the Court to substitute the existing charge sheet that was read to the appellant on 07/05/2021.

Section 234 (1) of **the Criminal Procedure Act**, Cap 20 [R.E 2019] which provides for amendment and substitution of Charge sheet states that;

"Where at any stage of a trial, it appears to the court that the charge is defective, either in substance or form, the court may make such order for alteration of the charge either by way of amendment of the charge or by substitution or addition of a new charge as the court thinks

necessary to meet the circumstances of the case unless, having regard to the merits of the case, the required amendments cannot be made without injustice; and all amendments made under the provisions of this subsection shall be made upon such terms as to the court shall seem just”.

The above-quoted provision of the law requires the Court to make orders for the charge sheet to be substituted. In the instant case nowhere in the proceedings did the trial Court make an order regarding the substitution of the charge sheet from the one with a single count to the new one with two counts. It is my considered view that the appellant's trial was made illegal from the time the Court adopted a new charge without properly admitting the same to the Court record.

Regarding the second issue of whether the trial Court had jurisdiction, the Court of Appeal of Tanzania in the case of ***John Julius Martin & Another vs Republic*** (Criminal Appeal No. 42 of 2020) [2022] TZCA 789 (8 December 2022) where the Court of appeal sitting in Arusha held that;

"Thus, we hold that because the instruments of consent and the certificate at page 3 of the record of appeal, were neither endorsed as having been admitted by the trial court nor does the record show that the documents were admitted, the trial Court tried the case without jurisdiction."

In the instant appeal, the record displays that the Public Prosecutor informed the Court that he has received both Consent and a Certificate of Order for trial from the DPP but he never prayed the court to admit the

same to its record, from that point, the Court continued with trial without jurisdiction.

Worse enough, the purported consent and certificate are attached to the trial court file though it is not known how they have gotten into the court file, on the face of it they lack endorsement by the magistrate and they are not dated. **In *John Julius's case (supra)*** the Court of Appeal while faced with an akin situation cited the case of ***Maulid Ismail Ndonde vs R, Criminal Appeal No. 319 (unreported)*** it was observed that;

"The court nullified the proceedings of both the trial court and of the High Court because the certificate and the consent documents had no legal force as they were not endorsed by the trial magistrate as having been admitted them on record."

The same applies to the case at hand, having found the stated irregularities to be present in the appellant's trial, this court has no other option than to nullify the proceeding, the judgment of the trial court and orders thereof as they originated from illegal proceedings.

Having nullified the proceedings and judgment of the trial Court, I see no reason to discuss the grounds of appeal levelled by the appellant because the same has been engulfed by the two issues raised by the Court. Therefore, for the reasons stated hereinabove, I order an immediate release of the appellant from prison unless he is held for other lawful reasons.

Order accordingly.



A. BAHATI SALEMA
JUDGE
21/07/2023



Court: Judgment delivered in presence of both parties.



**A. BAHATI SALEMA
JUDGE
21/07/2023**

Right of Appeal fully explained.



**A. BAHATI SALEMA
JUDGE
21/07/2023**

