

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

CRIMINAL APPEAL NO. 52 OF 2023

(Originating from Mlele District Court in Economic Case No. 14 of 2022)

JAMES S/O STEPHANO @ BINANGWA APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

MWENEMPAZI, J.

REHEMA S/O ANDREA@ HEKEMAN and the appellant herein named were arraigned in the trial court for two counts of offence, being identified as the 1st and 2nd accused person respectively. The first count was alleged for both of them and it was:- Unlawful possession of Government Trophy contrary to section 86(1) and 2(c) (ii) of the Wildlife Conservation Act, [Cap 283 R.E. 2022] read together with paragraph 14 of the first schedule to, and sections 57(1) and 60(2) of the Economic and Organized Crime Control Act, [Cap 200 R.E. 2022]. The second count was for the second accused alone and it was:-

Unlawful Possession of Explosives contrary to section 3(1) and (2) of the Explosives Act, [Cap 45 R.E 2022].

For the first count it was alleged that one Rehema Andrea @ Heleman and 2nd accused person on the 27th day of September, 2022 at Isengenezya Village within Mlele District in Katavi Region, were found in possession of Porcupine meat valued at Tshs. 349,462.50/= (say three Hundred Forty-Nine Thousand and four hundred sixty-two and fifty cent) being the property of the Government of the United Republic of Tanzania without any permit thereof; and for the 2nd count, it was specific for the appellant. It was alleged that the appellant on 27th day September, 2022 at Isegenezya Village within Mlele District in Katavi Region, was found in possession of three (3) bottles of explosives without being approved by the commissioner for use in mainland Tanzania.

The trial court found that the first count has not been proved beyond reasonable doubt and that the 2nd count has been proved beyond reasonable doubt. The appellant was thus acquitted in the first count and found guilty on the 2nd count, convicted of the offence of being found with unlawful possession of explosives contrary to section 3(1) and (2) of the Explosives

Act, [Cap. 45 R.E.2002]. The appellant was sentenced to pay a fine of Tshs. 5,000,000/= (five million only) or to serve a term of imprisonment for five years in jail.

In this appeal the appellant raised three grounds of appeal namely:

1. That the learned magistrate erred in law and fact by convicting and sentencing the 2nd accused on a case which was not proved beyond reasonable doubt.
2. That the learned magistrate erred at law and fact by considering that the 2nd accused was not been found in possession of the Government trophy (meat) and explosives.
3. That the learned magistrate erred at law and fact by convicting the appellant whom the trophy and explosives were planted by PW3 (MARY D/O METHOD) and PW4 (JACKSON S/O PETRO SHULE LOFO).

The appellant therefore prayed that the appeal be allowed and the appellant be acquitted of the offence.

At the hearing the appellant was unrepresented and the respondent was being represented by Mr. Mathias Joseph State Attorney and Frank Mwigune State Attorney. The appellant was brief in his submission that he prays the

grounds of appeal in the petition of appeal be considered and the appeal be allowed.

In reply submission, Mr. Mathias Joseph learned state attorney has submitted that the respondent is supporting the appeal due to legal reasons. The main reason for supporting the appeal is that the certificate of consent and certificate conferring jurisdiction did not form part of the proceedings.

At page 5 of the trial court's proceedings only the charge sheet was substituted. The prosecutor did not tender the certificate of consent nor the certificate conferring jurisdiction to the trial court. Even an order assuming jurisdiction was not issued by the trial court.

The counsel submitted that due to deficiencies the trial court proceeded to try the case without clothing itself with the necessary jurisdiction. There are various decisions to the effect that consent and certificate must be received in court and an order assuming jurisdiction be issued. In the case of **Salumu s/o Andrew Kamande Vs. The Republic**, Criminal Appeal No. 513 of 2020, Court of Appeal of Tanzania sitting at Iringa at page 12 – 13, it was observed that: -

"However, the record of appeal did not reflect that they were formally filed nor endorsed by the trial court. The court of therefore held that the proceedings of the trial court were a nullity".

The proceedings did not reflect how the documents entered into record. The trial therefore was a nullity. The counsel prayed for an order for retrial.

I have also gone through the record and appreciate that the submission by the learned State Attorney is verifiable. Indeed, in line with the cited authority the crucial procedure was not complied to by the court hence rendering the trial court hearing and trying the case without being clothed with the necessary jurisdiction it must have. Under the circumstances I am in total agreement to the submission that indeed the trial was a nullity as the trial court had no jurisdiction to hear and determine the case.

When perusing the record of the trial court, I have noted at page 17 while Marry d/o Method (PW3) was testifying, the 1st accused was convicted with the offence of contempt of court contrary to section 114(1) of the Penal Code, Cap. 16 R.E.2022 and sentenced serve an imprisonment for a term of six (6) months in jail for the offence. The process just explained was a

summary procedure adopted due to interfering behaviour of the 1st accused at the time the witness was testifying. The record reads: -

"Court: 1st accused (Rehema d/o Andrea@ Heleman) having been interfering the court when she is instructed to cross-examine the accused, she also have been interfering witnesses while testifying, which counts contempt to this court.

***1st accused:** 'I did not interfere the court'*

***Court:** subject to section 114(1) of the Penal Code, Cap. 16 R.E.2022, accused Rehema d/o Andrea @Heleman, is hereby sentenced to serve imprisonment for a term of six(6) months in jail for contempt of court."*

With due respect to the trial court, I think, the proper procedure was vitiated hence the trial court erred in law. In the case of **Tanzania Bundu Safaris Ltd V Director Of Wildlife & Another** [1996] TLR 246 (HC) it was held that:

"The prime object of contempt of court proceedings is to vindicate the rule of law, rather than to punish an individual. The punitive jurisdiction of the court to punish for contempt is based

upon the fundamental principle that it is for the good of the public and the parties that such orders should not be despised or slighted."

In the case of **Yasini Mikwanga V Republic** [1984] TLR 10 (HC) it was observed that:

"The cardinal aim of creating the offence of contempt of court is to arrest all conducts which are aimed or reasonably feared to be aimed at interfering with proper administration of justice.

And the question to be determined is *whether the action complained of is calculated to interfere with the proper administration of justice.* This court in the referred case observed that:

"One of the essential conditions for proper administration of justice is that there should prevail discipline in court throughout any trial. This condition will definitely be undermined if any party in the trial was to be allowed with impunity to defy an order of the court on the ground that the said order is illegal or otherwise improper."

However, for justice to prevail the alleged offender must be given a right to answer to the charges levelled against him or her. This court therefore opined in that the compliance can be gauged by answering the following questions in affirmative, namely:

"Whether the court took the necessary step in explaining to the accused the gist of his offensive conduct, the particular provision of the law which contravenes it, and lastly give him an opportunity to make a reply."

I have observed the record does not reflect that there was compliance to the requirements and therefore there was noncompliance to the law hence rendering the sentence unfair. I urge therefore the process be complied with in order to appraise the rule of law as explained herein above.

Lastly, the learned state attorney prayed that this court order for the retrial of the case after holding that the proceedings were a nullity. I have read the narration of the prosecution witnesses. I have the opinion there is doubt to the handling of the matter. After the arrest of the 1st accused, the Village Game Scout went with the accused at her home. At page 18 of the proceedings shows the Village Game Scout was even able to know that the

2nd accused was absent. She has testified that when they went for the second time that is when they found him. What else has not been disclosed. Surely, the 1st accused was under arrest. She had no control of the situation. Anything may have happened. The whole process creates doubt and in case of retrial, injustice may be occasioned.

Under the circumstances I find it in the interest of justice, it won't be just to order for the retrial. The proceedings are nullified, judgment and conviction quashed, sentence set aside. The appellant should forthwith be released from prison unless otherwise he is lawfully being held for another lawful cause.

It is ordered accordingly,

Dated and signed at Mpanda this 21st day of May 2024.



T. M. MWENEMPAZI

JUDGE

Judgment delivered this 21st day of May 2024.in Judge's chamber in the presence of the appellant and Mr. Jackson Komba, State Attorney for the Respondent.



A handwritten signature in black ink, appearing to read "T. M. Mwenempazi".

T. M. MWENEMPAZI
JUDGE
21/05/2024

ORIGINAL