

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**CRIMINAL APPEAL NO. 52 OF 2022**

(Originating from Resident Magistrate Court of Katavi in Economic Case No.  
2/2019)

**SALUM ATHUMAN @ HASSAN ..... APPELLANT**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**

**JUDGMENT**

**MWENEMPAZI, J:**

The appellant herein named is aggrieved by the decision of the Resident Magistrate Court of Katavi at Mpanda (Hon. F.U. Shayo R.M) whereby the appellant was convicted with the offence of Unlawful possession of ammunitions contrary to section 21(b) of the Firearm and Ammunitions Act, NO. 2 of 2015 read together with paragraph 31 of the First Schedule to and sections 57(1) and 60(20) of the Economic and Organized Crimes Control Act, Cap. 200 R.E.2002. The trial court sentenced the appellant to serve a

term of twenty (20) years imprisonment. The appellant has therefore filed a petition of appeal with four grounds of appeal as follows:

1. That, the offence charged with was not proved beyond all reasonable doubt as required by standard of law.
2. That, the trial court erred in law point and fact by convicting and sentencing the appellant while he was not found with the said items as established prosecution side.
3. That, the trial magistrate totally erred in law and fact by convicting and sentencing the appellant by not considering the evidence adduced by the appellant.
4. That the trial magistrate totally erred in law and fact by convicting and sentencing the appellant relying on the evidence adduced by prosecution's evidence while he failed to note out that the certificate of seizure was not signed by any independent witness or the neighbor of the appellant.

The appellant has therefore prayed for judgement and order of the court allowing the appeal, quashing the trial judgment and conviction and setting aside the sentence and releasing the appellant.

The appellant wished to be present during the hearing of the appeal. He duly attended. The respondent was being represented by Mr. Mathias Joseph and Jackson Komba, learned State Attorneys.

In his submission in support of an appeal, the appellant submitted briefly by praying that the grounds of appeal be considered and the appeal be allowed, Judgment of the trial court be quashed as well as the conviction and the sentence be set aside and that he be released from prison.

In reply to the submission in chief, the appellant Mr. Mathias Joseph, learned State Attorney submitted in opposition to the appeal as follows. That, this is an appeal emanating from Economic Case No. 2 of 2019. The appellant was charged with an offence of being found with ammunitions contrary to section 21(b) of the Firearm and Ammunition Act. He was convicted and sentenced to serve a term of twenty (20) years imprisonment in jail. On behalf of the respondent, they are opposing the appeal and they pray that the decision of the trial Court be upheld. The counsel prayed to submit generally on all grounds together.

It is the respondent's view that the offence was proved by the prosecution. This is obvious by the fact that the appellant himself led the police to the

place he had hid the ammunition as per PW1 as recorded at page 46 of the typed proceedings.

PW1 was an investigator and testified that the appellant led him to the farm where the appellant uncovered 20 bullets. There was a free and independent witness (PW2) Shukuru Edward Mkaluka. He is corroborating the evidence by PW1. These facts were not objected to when the certificate of seizure and ammunitions were tendered.

It is a legal stand that where the accused signs the certificate of seizure and he doesn't object means that he was found with the object. In the case of ***Waziri Shaban Mizogi Versus the Republic, Criminal Appeal No. 476 of 2019***:

*"the signing of the certificate of seizure by the appellant meant that the narcotic drugs were found in his possession".*

By the act the appellant was found with the ammunitions objecting now is an afterthought.

Also, the evidence of PW3, a police officer, tendered a cautioned statement which he recorded and the appellant admitted that the bullets belonged to

him. When the caution statement was tendered as an exhibit, the appellant did not object. That obviously shows the statement was recorded by the appellant on his volition. Thus, all what was recorded in it was by volition and it is true.

In the case of **Change Zuberi Ngayaga Versus the Republic, Criminal Appeal No. 258 of 2020, Court of Appeal of Tanzania at Mtwara (page 12)** appellant did not object to the tendering of cautioned statement.

*"In the case at hand, both appellants did not object to the tendering of their cautioned statements. In absence of an objection, as per above authority statements will be presumed to have been voluntarily made".*

In the proceedings, the appellant failed to cross examine on important issues (page 52) when PW3 was tendering a caution statement. Also, PW1 and PW2 were present when the appellant took them to show the place where he had concealed the bullets.

Up until the case was concluded the appellant failed to shake the credibility of the witnesses. It was the argument by the counsel for the respondent that they understand this is the 1st appeal, this Court has power to evaluate

the evidence. He prayed that this appeal be found to have no merit and be dismissed.

I have read the record as well as heard the submission by the counsel for the respondent one Mathias Joseph, learned state Attorney. The question is whether the offence of unlawful possession of ammunitions contrary to section 21(b) of the Firearm and Ammunitions Control Act, No. 2 of 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 R.E.2002 was proved by the prosecution.

According to the evidence adduced by PW1 A/inspector Conrad Nchimbi, on 27<sup>th</sup> January, 2019 he was assigned to interrogate the appellant on suspicion that he was possessing ammunitions unlawfully. The suspect admitted to possess the said ammunitions. He also let the police officers to the scene where he had concealed the said ammunitions. At the scene he also involved the Ward Executive office one, Shukuru Edward Mkaluka and certificate of seizure was filled. The same was tendered in court during testimony as reflected at page 47 of the typed proceedings. The appellant did not object to the tendering. In the same vein, the 20 ammunitions (Exh. P2). Chain of

custody form Exh. P3. The ammunitions were being concealed in the farm at Kashelami. In all instances, the appellant did not object to the tendering of the exhibits as reflected in the proceedings at page 47-48. As to the independent witness, the police officers involved the local leadership in the process of search and recovery of the ammunitions. That is Shukuru Edward Mukaruka, PW2. He is also a ward executive officer of Sitarike.

I have read the record of the proceedings. I am satisfied that when G.5696 DC Augustino while testifying he adduced evidence that he recorded the statement of Salum Athuman Hassan who was the suspect of the offence of unlawful possession of bullets. He was at the time in the lock up, agreed to record the statement and confessed to be in possession of the 20 ammunitions without there being a permit. The caution statement was admitted as Exhibit P4 without objection from the appellant. It is a principle in law that failure to object is admission of the truth to the evidence being tendered. In this case the respondent cited the case of ***Change Zuberi Ngayaga Versus the Republic (supra)***.

For reasons stated, I find the appeal has no merit as the appellant seems to have come up with the present appeal as an afterthought. The appeal is therefore dismissed and the decision of the trial court is hereby upheld.

It is ordered accordingly.

Dated and signed at Sumbawanga this 13<sup>th</sup> day of February, 2024.

  
**T. M. MWENEMPAZI**  
**JUDGE**

Judgment delivered this 13<sup>th</sup> February, 2024 in Judge's chamber in the presence of the appellant and Mr. Jackson Komba, State Attorney and Ms. Godliver Shiyo, SA for the Respondent.



  
**T. M. MWENEMPAZI**  
**JUDGE**  
**13/02/2024**

Right of further appeal explained.