



**IN THE HIGH COURT OF TANZANIA
AT BUKOBA**

**ORIGINAL JURISDICTION
(Bukoba Registry)**

H/C CRIMINAL APPEAL NO. 16/2004

(Arising from Criminal Case No. 107/2004 at Bukoba District Court)

THE DIRECTOR OF PUBLIC PROSECUTION =====APPELLANT

VERSUS

DENIS S/O KOMBO =====RESPONDENT

JUDGMENT

23/04/2007 & 23/07/2007

K.M. Mussa, J;

In the District Court of Bukoba, the respondent was arraigned for two counts of, respectively, collecting and exporting fish products without a licence contrary to the Fisheries Act No. 6 of 1970. The particulars alleged that on the 8th day of April, 2004 at Rwamishenye

within the District of Bukoba, the respondent collected and exported fish products without a licence.

As to what transpired in court when the charge was read over and explained to the respondent, I will let the record of the proceedings below speak for itself:

30/4/2004

Coram: P.D. Ntumo, RM

PP: Mukama

B/C: Jasinther

Accd: Present

CT: CROEA who is asked to plead thereto:

Plea: 1st count: "It is true"

2nd count: "It is true"

CT: PG Entered

**Sgd: P.D. Ntumo – RM
30/4/2004**

FACTS OF THE CASE

- On 8/4/2004 at 6.00p.m accused was at Rwamishenye area**
- That he collected maws and loaded them in Jaquer Junieur bus**

- Accused collected the said maws, but he had no licence in such business
- Accused was arrested while loading the maws for ex-put to Uganda
- On 9/4/2004 accused wrote a cautioned statement. He admitted to have collected and was about to ex-put them to Uganda.
- On 14/4/2004 accused was charged in court.

**(Sgd) P.D. Ntumo – RM
30/4/2004**

Accused: All are collect, I have a licence. I pray to produce it.

**Sgd: P.D. Ntumo – RM
30/4/2004**

CT: Prayer granted, admitted as exhibit.

**Sgd: P.D. Ntumo – RM
30/4/2004**

PP: I pray to produce the maws and cautioned statement of the accused at Police.

CT: Prayer granted. Maws admitted as exhibit P1 and the statement as exhibit P2.

FINDINGS

Accused has pleaded guilty and admitted to the facts of the case. However the accused has produced a licence authorising him to do fishing products business. This being the case I find him not guilty. I accordingly discharge and acquit him accordingly.

**Sgd: P.D. Ntumo – RM
30/4/204**

ORDER: The Maws be returned to the acquitted person.

**Sgd: P.D. Ntumo – RM
30/4/2004**

The Director of Public Prosecutions was dissatisfied with the acquittal and now appeals seeking an order of this court setting aside the acquittal and a further order for the continuation of proceedings before another Magistrate.

Before me, Mr. Vitalis, the learned state attorney for the appellant DPP, concentrates his efforts on the last two grounds of appeal which are couched thus:-

3. That, the learned Resident Magistrate erred in law for failure to treat the retracted plea of the accused as a plea of not guilty to the charge.

4. That, the learned Resident Magistrate erred in law in acquitting the accused on his own plea of guilty to the charge.

In effect, Mr. Vitalis submits that it was not proper for the trial court to proceed with the acquittal in the face of the fact that the respondent retracted his earlier plea of guilty with a suggestion that he had a licence. Learned state attorney urges that his view is also to be found in the decision of this court in **Rajabu Ramadhani V.R. [1980] TLR 51.**

The respondent counters in a written reply that the business licence he produced was, in effect, proof of his innocence and that, therefore, the trial court was entitled to give the order of acquittal.

Dealing with the rival contentions, I must express at once that much as in the proceedings below the respondent exculpates himself with a suggestion that he had a licence, such was a recantation of his earlier plea and what the trial court ought strictly to have done, was to record a plea of "not guilty" to the charge and proceed with the case to a full trial.

If the contrary view be held the result will be unfortunate and will operate very harshly on the prosecution who, as here, were denied the opportunity to adduce evidence in support of the charge. It should be pointed out clearly that the prosecution is entitled to a fair hearing just as the person accused is expected to be afforded with one.

That said, there is validity and substance in the criticism raised by the learned DPP. In all fairness, I am of the view that it is as much in the interests of justice that the respondent be afforded a chance to plead afresh as it is in the interests of justice that the Republic be given an opportunity to put its case at a full trial; unless,

of course, the respondent pleads guilty without qualification.

To this end, this appeal succeeds and the proceedings culminating in the acquittal order are set aside and it is ordered that the case be re-opened before another Magistrate of competent jurisdiction. Order accordingly.


K.M. Mussa
JUDGE
18/07/2007

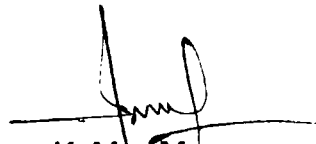
23/07/2007

Coram: Before Mussa, J.

For the DPP: Mr. Ndjike

For the respondent: Present in person

Judgment delivered in chambers in the presence of the Parties.


K.M. Mussa
JUDGE
23/07/2007

