

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

**TABORA SUB REGISTRY**

**AT TABORA**

**DC CRIMINAL APPEAL NO. 46 OF 2023**

*(Appeal from the decision of the Resident Magistrate's Court of Tabora at Tabora  
in Economic Case No. 26 of 2022)*

**JUMA S/O HUSSEIN @KASINDI.....APPELLANT**

**VERSUS**

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

**JUDGEMENT**

*27/11/2023 & 15/02/2024*

**MANGO, J.**

The Appellant was arraigned before the Resident Magistrate's Court of Tabora at Tabora for three offences; Unlawful possession of firearms contrary to section 20(1) &(2) of the Firearms and Ammunitions Act, No.2 of 2015 read together with paragraph 31 of the first schedule to and sections 57(1) and 60(2) of the Economic and Organised Crime Control Act [Cap. 200 R.E 2022]; Unlawful possession of Ammunitions contrary to section 21(a) & (b) of the Firearms and Ammunitions Act, Act No.2 of 2015 read together with paragraph 31 of the first schedule to and sections 57(1) and 60(2) of the Economic and Organised Crime Control Act (Cap. 200 R.E 2022] and Unlawful possession of Government Trophy Contrary to section 86(1)&(2)(c)(ii) of the Wildlife Conservation Act No. 5 of 2009, read together

with paragraph 14 of the first schedule to and sections 57(1) and 60(2) of the Economic and Organised Crime Control Act ( Cap. 200 R.E 2022].

It was alleged that, on 8<sup>th</sup> day of June 2022 at Mpungu area in Nkonongo village Ibiri Ward within Uyui district in Tabora Region, the Appellant was found in possession of three muzzle loader and one local made pistol, 13 iron bars bars, 2 triggers, 10 shells of short gun and one bottle of gun powder without a licence. He was also found in possession of government trophy to wit, 6 pieces of dried Buffalo meat. After full trial, the Appellant was convicted of all offences and sentenced to serve 20years imprisonment for each count. The sentences were ordered to run concurrently.

Aggrieved by the decision of the trial Court the Appellant appealed to this Court on the following grounds: -

1. That Hon. Trial Magistrate erred in law by sentencing the Appellant without conviction as it is required by the law under section 312(2) of the Criminal Procedure Act [Cap. 20 R.E 2022]
2. That the prosecution failed to prove the offence against the Appellant beyond reasonable doubt
3. That Hon. Trial Magistrate erred in law and in facts by not taking into consideration the defence raised by the Appellant and by not evaluating evidence properly as required by the law, section 312(1) of the Criminal Procedure Act, [Cap. 20 R.E 2022]

When the appeal was called for hearing the Appellant appeared in person. Being a layman, the Appellant prayed to adopt his grounds of appeal for

consideration by the Court. The Respondent was represented by Ms. Wivina Rugakingira, learned state Attorney.

In her submission on the grounds of appeal, Ms. Rugakingira conceded the irregularity alleged by the Appellant in his first ground of appeal. She submitted that, proceedings and judgment of the trial Court established that the trial Court did not convict the Appellant before sentencing him the act which contravenes section 312 (2) of the Criminal Procedure Act. She submitted further that, the irregularity does not vitiate proceedings of the trial Court. It only makes the judgement and sentence of the trial Court a nullity. On the remedy for the irregularity, she prayed to have the case returned to the trial Court so that the same can be rectified by the trial Court. She referred the Court to the case of **Abeli Kristofa versus Republic** Criminal Appeal No. 116 of 2020 to back up her submission.

On the second ground of appeal, she submitted that, the prosecution managed to prove the case against the Appellant on the required standards. She mentioned pieces of evidence that she consider to have made the prosecution's case proved beyond any reasonable doubts. According to her, prosecution's case was proved by testimony of PW3 who participated in the search and seizure of the weapons and other items from the Appellant. She mentioned also testimony of PW2 and Exhibit P2, the valuation report as evidence that established that, what was found in possession of the Appellant was Government trophy. She also highlighted the fact that, all exhibits were tendered without objection including a cautioned statement of the Appellant.

On the third ground of appeal she submitted that, the trial Court considered defence case in its decision as it appears at page 5 of the trial Court's judgement. She submitted further that, in case this Court finds that the trial Court did not consider defence case, it can re-evaluate evidence on record. She argued that, this Court being the first appellate Court can re-evaluate evidence and reach its own findings. She cited the case of **Mosi Chacha @Iranga and Mokiri s/o Chacha versus Republic**, Criminal Appeal No. 508 of 2019 Court of Appeal of Tanzania at Musoma to cement her arguments on the powers of the first appellate Court to re-evaluate evidence where the trial Court did not evaluate well evidence on record.

In his brief rejoinder, the Appellant submitted that, the search was conducted in his absence because, when the search team entered into his house, he was under arrest outside the house. He also challenged the certificate of seizure for being signed by his daughter who was not anyhow involved during search of his house nor did she witness any seizure.

According to him, the search team found 5 litres of honey and 3 hammers in his house. He argued that, the weapons reflected in the seizure report were not found in his house. He mentioned where the weapons were allegedly found. In this he submitted that, the weapons were found in a Cassava farm belonging to a person namely Mzee Mrisho. He then prayed the court to allow his appeal and set him free.

I have considered grounds of appeal raised by the Appellant, submissions by both parties and Court record. I will start with the first ground of appeal in which both parties are of the view that the Appellant was sentenced

without being convicted. The findings of the trial Court as they appear at page 6 of the judgement indicate that, the Appellant was properly convicted. The relevant paragraph reads:

*"From evidence adduced by the prosecution side, I find that the prosecution has succeeded to prove the case beyond reasonable doubt on all counts. I therefore find the accused person guilty of the offences charged in all three counts on which **I admit the accused in all of them fourth with.**"*(Emphasis added)

The words used by the trial court indicates that, he was convicted before he was sentenced by the trial Court. From the quoted paragraph of the trial Court's decision, the Court found the accused guilty of the three offences he was charged with and thereafter convicted the Appellant in all counts. I hold so despite the fact that the words that appear in the last sentence of the quoted paragraph read *"...I admit the accused in all of them forthwith"* because in my view, the word *"admit"* is just a result of typographical errors. Ordinarily after finding the appellant guilty what would have followed is conviction and not admission. I am of a considered view that, the word admit is merely a typing error which did not occasion justice to any of the parties.

Given the fact that, the Appellant was convicted but his conviction is not expressly indicated in the judgement due to typing errors, I find the irregularity to be curable under section 388 of the Criminal Procedure Act. The Court of Appeal of Tanzania when faced with a similar situation in the case of **Mabula Makoye & Another vs Republic** (Criminal Appeal 227 of 2017) [2020] TZCA 1762 (28 August 2020) employed overriding objective principle to dismiss the ground of appeal that challenged the trial Court's failure to convict the Appellant before sentencing him. I also find the

irregularity in this matter to be curable as expressed. I hereby dismiss the first ground of appeal and proceed to determine the remaining grounds of appeal.

Second ground of appeal is very general as it requires the Court to assess if the prosecution managed to prove all necessary elements of the offence. In this, I am grateful to the learned state attorney for her lucid submission which highlighted necessary ingredients of the offences that the Appellant was charged with and evidence that proved the same. In short, I agree with the learned State Attorney that, the main elements of the offence of unlawful possession of firearms, government trophy, and ammunitions is being found in possession of the three mentioned items without a valid authorisation. The said elements of the three offences are found in the provisions establishing the offence.

Section 20(1) of the Firearms and Ammunitions Act which creates the offence of unlawful possession of firearms criminalise possession of firearms or part thereof without a licence. This means a person can possess firearms or part thereof if he has been authorized to do so. Similar wording appears under section 21 (a &b) of the Firearms and Ammunitions Act, the provision which creates the offence of unlawful possession of ammunitions. Even section 86(1) of the Wildlife Conservation Act criminalises possession of Government trophy in contravention with the provisions of the Act. Under section 85(1)(d) of the Wildlife Conservation Act, possession of Government trophy is an offence only where the possessor cannot satisfy the Director that he lawfully acquired the same. In other words, a person who has been

found in possession of Government trophy is bound to establish that he lawfully possesses the trophy.

Evidence in record establishes that, the Appellant was found in possession of 3 firearms, ammunitions and Government trophy. Such evidence is found in the testimony of PW3 ASP Boniface Mtitu, PW4 Mohamed Jumanne Hussein and PW5 F6526 D/CPL Vicent who recorded the Appellant's cautioned statement. The Appellant confessed that, he was found in possession of firearms, ammunition and other materials which he used in manufacturing firearms. His cautioned statement was admitted without objection as exhibit P5. Seizure report which was also admitted as exhibit P4 without objection, indicates that the was found with the same items. I hold so while aware that the Appellant tried to challenge the contents of the cautioned statement and the certificate of seizure. It is trite law that, issues that were not raised during trial cannot be raised during appeal. The Court of Appeal of Tanzania discussed in detail the application of this principle in the case of **Nyerere Nyague vs Republic** (Criminal Appeal Case 67 of 2010) [2012] TZCA 103 (21 May 2012). Thus the Appellant who did not object admission of the two documents during trial is barred from raising any objections against them before this Court.

Despite the contents of the two documents, available oral testimony establishes that the Appellant committed the offences he was charged with. The testimony of the independent witness, Mohamed Jumanne Hussein, PW4, establishes that, the Appellant was found in possession of the items mentioned in the Appellant's cautioned statement and the seizure report. According to PW4 the Appellant was found in possession of 3 muzzle loader,

Iron bars and other pieces of iron. Similar testimony was adduced by PW3 a police officer who participated in the search and PW5 a police officer who recorded the Appellant's cautioned statement. The pieces of animal skin found seized from the Appellant were examined and found to be pieces of Buffalo skin as expressed in Exh. P3 and its value was found to be USD 1900 equivalent to Tshs. 4,417,500/- as per the contents of the valuation certificate Exh. P2 and testimony of PW2, Khatib Athumani Mbogela, a wild life officer who conducted valued the pieces of animal skin seized from the Appellant. It was the duty of the Appellant to establish that, he possesses those items lawful. Unfortunately, the Appellant did not anyhow establish that he lawfully possesses the items that were found in his possession.

The allegations by the Appellant that he did not witness the search, and that the search team made his daughter sign the search report, are not borne by evidence on record. I hold so because the seizure report was not signed by any person who is related to the Appellant. It was signed by four people namely Mohamed Jummanne, G. 4030 CPL Steven, H6152 PC Jacob and Juma Hussein @ Kasindi who is the Appellant himself. As to what transpired during search, PW 4 stated clearly that, the search team entered into the Appellant's house and searched the entire house while accompanied by the Appellant himself as it appears at page 20 of the proceedings. PW4 who was the independent witness in this matter testified further that, during search, they did not find anything in the Cassava farm.

With such evidence that corroborates the Appellant's confession, I don't find any reason to fault the decision of the trial Court. The Appeal is hereby dismissed



Dated at Tabora this 22<sup>nd</sup> day of February 2024



A handwritten signature in black ink, appearing to read "Z.D. Mango", written over a faint grid pattern.

**Z.D. MANGO**  
**JUDGE**

Right of Appeal explained