

TANZANIA / JUDGMENT

abdullah ally ghuhad others vs republic 2011 tzhc 2169 8 september 2011

COURT
TZHCDECIDED
8 September 2011

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM CRIMINAL APPEAL NO. 43 OF 2011
(Originating from Resident Magistrates Court Kibaha at Kibaha Cr Case No. 5/2011) ABDULLAH
ALLY GHUHAD AND 5 OTHERS..... APPELLANT VERSUS
REPUBLIC.....RESPONDENT Date of last Order: 05/09/2011 Date of
Judgment: 08/09/2011

JUDGMENT

KARUA. J. The six appellants, namely, Abdallah Ally Ghuhad, Mohamed Abuhar Touryai, Mohamed Hassan Mohamed, Mohamed Abdulkarim Farah, Jibril Abdul Aadan and Noor Ali Hussein, were jointly arraigned before the Court of Resident Magistrate at Kibaha as the 1st, 2nd, 3rd, 4th, 5th, and 6th accused, respectively, on two counts of being unlawfully present in the country and unlawful possession of ammunitions, contrary to Section 31 (1)(i) and (2) of the Immigration Act, Cap 54, RE 2002; and Section 4 (1) and 34 (1) (2) of the Arms and Ammunitions Act, Cap 223, RE 2002, as amended. The appellants pleaded guilty to the crimes and were convicted as charged. They were then sentenced to serve a prison term of 6 months and 5 years, respectively. The conviction and sentence aggrieved the appellants, hence, this appeal, which was resisted by Mr. Mangoi, on behalf of the Republic. The appellants preferred six grounds of complaint against their conviction and sentence. However, before considering the merits and demerits of the appeal, I am satisfied that the trial was caught up with one fatal procedural irregularity. As demonstrated, the record reveals that appellants pleaded guilty to the crime. However, the plea of all the appellants, were put together in one lamp without regard to particulars or details of what each the appellant had said. The record subscribe that in the 1st count, the 1st to 6th accused said in unison, “it is true”, and in the second count, the same style was recorded by the trial magistrate. It is not known what exactly the 2nd, 3rd, 4th and 5th appellants said. With respect, I am of the considered view that this type of plea recording is questionable. Indeed, the word used, “it is true”, represented an affirmative answer to a question. However, the type of plea recording is displeasing as noted it is caught with some doubtful characteristics, because as said, it is not known if the answer was put to all of them simultaneously and the answer, likewise. It is the duty of the presiding magistrate, to take the plea from each accused, when tried together and the trial magistrate, must record the plea of

what each accused said, one after another. Moreover, in view of the language barrier, which was imminent in this case, I do not think every constituent of the charge were pointed out. The record is silent. This is more important because the appellants were only versed in Somali language and their exception, against the translator, might as well, be true, since the record again is silent, as to whether the appellant were offered an opportunity to take exception against the translator. For the foregone technical reasons, I allow this appeal, quash the decision of the trial court, set aside the sentence and I accordingly order that this case commence a fresh before another magistrate of competent jurisdictions. It is so ordered and directed. JUDGE 08/ 09/2011 DATED AT DAR ES SALAAM Appearances: For the appellants: All present in person For the respondent: Mr. Mhina State Attorney

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://media.tanzlii.org/media/judgment/198518/source_file/abdullah-ally-ghuhad-others-vs-republic-2011-tzhc-2169-8-september-2011.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/abdallah-ally-ghuhad-v-republic-plearecording-tzhc-2011

Prepared on 13 October 2026 · Esheria