

TANZANIA / JUDGMENT

19721016 TZHC Mwanza

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TZHCDECIDED
16 October 1972

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IN THE HIGH COURT OF TANZANIA at Mwanza HIGH COURT CRIMINAL APPEAL NO. 119 OP 1972 1 ORIGINAL CRIMINAL CASE NO. 513 OF 1971 OF THE DISTRICT COURT OF SHINYANGA-A, DISTRICT AT SHINYANGA-A Before N.E. IONO, Esq., Resident Magistrate A.I.; PIONEER POMBE , Appellant
versus THE REPUBLIC Respondent Charge: Transferring a Firearm to another person without authority contrary to section 15 and 31 (1) and (2) of the Arms and Ammunition Ordinance Cap 223 of the Laws.) REASONS FOR JUDGMENT EJ-KINDY, J. - The appellant, Alphonse s/o Pombe, was charged with and convicted of transferring a fire arm to another person without authority c/s 13 and 31 (1 and (2) of the Arms and Ammunition Ordinance Cap 223. He was fined Shs. 400/= or three months imprisonment in default. The court also cancelled his licence for holding a firearm and disqualified him from possessing a gun. He appealed against conviction, sentence and order. In criminal case No. 514 of the District Court of Shinyanga, Paulo s/o Jiganga was charged with and convicted of unlawful possession of firearm contrary to section 13 (1) and 31 (1) and

- (2) of the Arms and Ammunition Ordinance Cap 223. He was fined to pay Shs. 300/= or imprisonment for two months in default and court ordered the gun to be forfeited to the Republic. Both cases involved a single transaction, The appellant was the owner of the gun and Paulo do Jiganga, who was a shopkeeper, was his friend. The fines in both cases were paid by the appellant. In the circumstances, therefore, the propriety of the convictions, on both cases, were considered at the same time, although Paulo Jiganga did not appeal. Having heard the appeal of Alphonse Pombe and having considered, in revision, the case against Paulo Jiganga, I quashed the conviction and set aside the sentences and orders imposed on the appellant and Paulo Jiganga. I now give my reasons for doing so. Both cases purported to show that the accused persons pleaded guilty to the charge. The facts on which the conviction was based on appear as follows. The appellant, who is a dispensary Assistant, was in the shop of Paulo Jiganga, his friend, in the morning of the 4th of October, 1971. He had with him luggage and his short-gun No. L. 615912. The gun was in its cover. He was waiting for a bus. The appellant kept the gun in the shop at one of the corners, as he kept the rest of his luggage. At about 10.30 a.m. a bus arrived and the appellant began to move towards the bus with some of his luggage and he left his gun behind. When he was at the bus, a police officer entered a shop of Paulo Jiganga and saw this gun. He confiscated the

gun and it is alleged that Paulo Jiganga told the police officer that he had no licence for the gun. 1± ho said so, that would be true because the gun was not his.

- 2 - I Nevertheless he was arrested and charged for being in unlawful possession of fire arm. 1 /hen tho. .ppellant returned, he was also arrested and the sane police officer told the appellant that he had transferred his gun...to. Paulo Jiganga without authority. :Th words of the accused persons in answer to their respective chargo: suggested that they were plead.ing guilty to their respective offences. But the question, was whether any offence was disclosed by these facts. In his mitigation Paulo Jiganga said that the appellant gave him the gun td keep for a short time while the appellant was taking some luggage to a vehicle. If that was so that indicated that Paulo. Jiganga dad not in fact seek to ploaci guilty to the charge before him. On the other hand the appellant said that he was sorry.for wht.t, happened.. But the learned magis- trate did not think that it was case for lenience if the appellant and Paulo Jignga were guilty, as he considered that possession of the firearm without licence was dangerous to peace and tranqu- illity and that it was a grave and serious offence. As for the appellant the learned magistrate found that the appellant was not entitled to lenience because the offence was committed deliberately and he thought that the Arms and Ammunition Ordinance Cap 223, to quote him as a statute of strict liability", and that sentence imposed on the appellant "should reflect revenge on the off ender. Like the learned Acting Senior State Attorney, I find that the facts do not disclose any criminal offence under the Arms and Ammunition Ordinance Cap 223. There has been no transfer of fire- arm, because transfer has been interpreted "ejusden generis" .- with sale; that is to say a pemipizient disposal of the firearm.; In this case there was nodi'posel. The gun was kept in the shop by the appellant himself.' It was not intended, by this mere pla- cing, to be the property of Paulo Jiganga. Equally, the mere presence of the gun in his shop did not make Paulo Jinga a person in possession of it, legally or illegally. I ±ound both conviction were bad. The sentences imposed were, in the circumstances dispropor- tinato to the alleged offence if there had been proper conviction. However, as the convictions cannot stand I neeftIiot cons'icler the legality of the sentences and of the orders. It is pointed out for the benefit of the learned trial magistrate that where forf ci- ture is contemplated, the owner of the gun should be given the ?o pportunit y to be heard on the matter whathsr he is the accused or not. In this case the gun was ordered frfeitwithout the appellant being hear, :in the case where Paulo Jiganga was charged. The appellant should have been heard. For these reasons therefore ;, the convictions were quashed and the sentences and orders set aside. I directed that the fine paid should be refunded to the appellant and the gun and licence confiscated or forfeited, he returned to; the appellant. Delivered in court at Mwanza on the 16th day of October, 1972 45 16/10/72 5 5. /V(EL-KIhI) JUDGE

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Prepared on 14 October 2026 · Esheria