

TANZANIA / JUDGMENT

athanasi madenga and another vs republic 2019 tzhc 2168 23 october 2019

COURT
TZHCDECIDED
23 October 2019

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IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA (Kigoma District Registry) AT
KIGOMA CRIMINAL REVISION 19 OF 2019 (Originating from Criminal Case No. 243/2019 of the
District Court of Kibondo at Kibondo Before F. Y. Mbeiwa-RM) ATHANASI S/O
MADENGA..... 1ST APPLICANT NDIMISHIYE S/O RICHARD..... 2ND APPLICANT
VERSUS REPUBLIC..... RESPONDENT

JUDGMENT

23/10/2019 & 23/10/2019 MATUMA, J. The applicants Athanasi Madenga and Ndaimishiye Richard were charged in the District Court of Kibondo along with two others namely Kisahela s/o Ngobongo and Andrea s/o Lucas for an offence of unlawful entry in the game reserve contrary to section 15 (1) and (2) of the Wildlife Conservation Act No. 5 of 2009. They were all convicted and sentenced to pay a fine of Tshs 150,000/= or imprisonment term of 12 months. Ndaimishiye 1 Richard was on his party sentenced to pay a fine of Tshs 100,000/= or to serve a custodial sentence of 12 months. The two applicants are foreign nationals and refugees at Nduta Refugees Camp. They are complaining that they were taken to work for the Tanzanians at the place where they later discovered to be a game reserve after their arrest. They pray to be forgiven so that they can join their families at the camp. The learned state attorney Antia Julius was of the view that this application be rejected as no justifiable reasons for this court to interfere with the findings of the trial court. I have taken the circumstances of this case with a great concern. These applicants were taken to the game reserve by the Tanzanians to work for them. But on their arrest and conviction the Tanzanians paid the fine and left behind these innocent poor people starving into custody for they could not afford to pay the fine. Furthermore, the second applicant Ndaimishiye Richard at the time of his arrest on 6/9/2019 was aged 63 years old. He is too aged. Despite of his old age he still fights for life of himself and his family whom he has stated to be a wife and four children. 2 The first applicant Athanasi Madenga has also left his two children in the camp. I find it in the interest of justice that the sentence of the applicants be reduced to meet the circumstances. I therefore reduce the sentence of both applicants to that which would lead to their immediate release from custody. It is thus, ordered that the applicants be released from prison forthwith unless otherwise held for some other lawful cause. Since they are refugees, I direct that they be handled over to the management of Nduta Refugees Camp to be dealt in

accordance of their refugees status. It is so ordered. 23/10/2019 3

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