

TANZANIA / JUDGMENT

Hashimu

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3 December 2024

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IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA ATTABORA DC CRIMINAL APPEAL
NO. 24509 OF 2024 (From the decision of the resident magistrates Court of Tabora in Economic
case No 07 of 2023) HASHIMU S/O OSCAR @ YUSUPH..... APPELLANT Versus
REPUBLIC..... RESPONDENT

JUDGEMENT

Last order date: 03/12/2024 Judgement date: 14/02/2025 MANGO, J The Appellant was charged with the offence of Possession of Ammunition without License contrary to section 21 and 60(1) of the Firearms and Ammunitions Control 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]. After full trial, the trial Court, Resident Magistrate's Court of Tabora at Tabora, convicted the Appellant as charged and sentenced him to serve 20 years imprisonment. Aggrieved with the decision of the trial Court, the Appellant lodged the appeal. His first petition of appeal contains four grounds of appeal which are hereby reproduced as follows: -

1. That the learned Trial Magistrate erred in law and in fact to convict the Appellant as the seizure of exhibits was not in compliance with the law
2. That the learned trial Magistrate grossly erred in law and fact to convict the Appellant as no search warrant was issued under section 38(1) of the Criminal Procedure Act and PGO NO. 226
3. That chain of custody of was not maintained as no labelling of exhibits and movement of one place to another does not reflect the proper custody and handling of exhibits
4. That the case was not proved against the Appellant On 3rd December 2024 when the appeal was called on for hearing, the Appellant appeared in person while the Republic was represented by Charles Magonza learned State Attorney. The Appellant being a layperson, he merely adopted his grounds of appeal and prayed the Court to consider the same. In his submission, Mr. Magonza SA conceded the first and second ground of appeal. He submitted that, the search in this matter was conducted in contravention to the legal requirements. He explained that, the disputed search was conducted by the Hamlet chairman which is contrary to section 38(1) of Criminal Procedure Act, [Cap. 20 R.E 2022], He submitted further on the legal requirements pertaining to searches. In this he submitted that, ordering search

is the mandate of a police officer in charge of the police station. He pointed out that, evidence on record establishes that the hamlet chairman conducted search without following the laid down search procedures. He argued that, the search would have been proper had the same being an emergency search but, circumstances in this case does not establish any emergence. 2 On the allegations that the Appellant was arrested by police officers, the learned State Attorney submitted that evidence on record does not establish so. He referred the Court to the testimony of PW1 who stated expressly that, when they arrived at the scene of crime, they found the Appellant already under arrest and the item seized from him was handed to PW1 by one of the persons who arrested the Appellant The learned State Attorney submitted further that, evidence on record does not establish whether the seized item was a bullet or not. He argued that, the item ought to have examined by the ballistic bureau to establish if it is a bullet as alleged by witnesses in this matter. Failure to establish that the item was a bullet makes the prosecution case not proved on the required standards I have considered submission by the State Attorney, grounds of appeal lodged by the Appellant and evidence on record. I will start with the 5th ground of appeal which demands this Court to assess whether, with available evidence on record, the prosecution managed to prove the case against the Appellant beyond reasonable doubts. Court record indicates that the Appellant was charged with the offence of possession of ammunition without license as it appears in the charge filed against him. For the offence to be proved on the required standard, the prosecution ought to have established the alleged possession of the ammunition and absence of a license allowing the Appellant to possess the same. Unfortunately in this matter, there is no reliable evidence establishing that the item alleged to have been seized was in the Appellants possession. I hold so because evidence on record does not establish who seized the item 3 establish that the item seized is a bullet, makes the cautioned statement of the accused person, exhibit P2 valueless. In such circumstances, I find the prosecution to have failed to prove the case against the Appellant beyond reasonable doubts. For that reason, the appeal is hereby allowed, Appellants conviction is quashed, and sentence meted against him is set aside. The Appellant be released from custody unless held for other reasons. Dated at Tabora this 14th day of February 2025
Z.D.MANGO JUDGE 5

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Prepared on 13 October 2026 · Esheria