

TANZANIA / JUDGMENT

norbert john mpili vs republic

2023 tzhc 19826 30 june 2023

COURT
TZHCDECIDED
30 June 2023

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THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY) AT MTWARA CRIMINAL APPEAL NO 55 OF 2022 (Originating
from the District Court of Masasi at Masasi in Criminal Case No 8 of2020) NOBERT JOHN
MPILI ..____APPELLANT VERSUS THE
REPUBLIC.....RESPONDENT

JUDGMENT

08/05 & 30/6/2023 LALTAIKA, J. The appellant herein NOBERT JOHN MPILI was arraigned in the District Court of Masasi at Masasi charged with four counts as follows:

1. Unlawful entry into a game reserve contrary to section 15(1) and (2) of the Wildlife Conservation Act No. 5 of2009
 2. Unlawful possession of government trophy contrary to section 86(1) and (2) of the Wildlife Conservation Act No. 5 of2009 as amended by section 61 of the Written Laws (Miscellaneous Amendment) (No. 2) Act of 2016 read together with paragraph 14 of the First Schedule to and section 57(1) and section 60(2) and (3) of the Economic and Organized Crime Control Act [Cap 200 R.E. 2002]
 3. Unlawful possession of forest produce contrary to section 88 of the Forest Act No 14 of 2002 as amended by section 28 of the Written Laws (Miscellaneous Amendment) (No.2) Act of2016.
 4. Destruction of vegetation in a game reserve contrary to section 18(1) and
- (3) of the Wildlife Conservation Act No 5 of2009. Page 1 of 5 When the charges were read over and explained to the appellant, (then accused) he pleaded guilty to the offence. The learned trial Magistrate proceeded to convict him on his own plea of guilty and sentenced him as follows: 1st count: to pay a fine of TZS 2,000,000 or to serve a term of ten years imprisonment. 2nd count: to pay a fine of TZS 100,000/= or to serve a term of one (1) year imprisonment in default to pay the time 3rd count: to pay a fine of TZS 200,000/= or to serve a term of three years imprisonment in default and for the 4th count: to pay a fine of TZS 1,00,000 or to serve a term of two years imprisonment in default of paying the fine. The

sentences were ordered to run concurrently, Dissatisfied, the appellant has appealed to this court on six grounds as reproduced hereunder: /. That Honorable judge the plea of guilty was entered as a result of mistake or misapprehension and thus trial court erred in law in treating it as a plea of guilty.

2. The learned trial Magistrate erred in law by convicting and sentencing the appellant while the records of the. Court does not reflect the language used to explain the charge/facts to the appellant. 3, That the leaned trial Magistrate court erred in la w and fact for making the appellants mere admission of facts to be unequivocal (lucid) plea. 4 That the manner that the trial was conducted was irregular and/or improper.
5. That the prosecution side failed to tender and record the acknowledgement receipt so as to prove that the said exhibits was seized from none but appellant as per section 38(3) of the criminal procedure Act (cap 20, RE 2019)
6. That taking into consideration on the admitted facts the appellants plea was imperfect ambiguous or unfinished hence the lower Court erred by treating it as plea of guilty. When the appeal was called on for hearing, the appellant appeared in person, unrepresented. The respondent Republic, on the other hand, appeared through Mr. Melchior Hurubano, learned State Attorney. Page 2 of 5 Not being learned in law, the appellant had not much to add to his written submission expounding on the above grounds. Nevertheless, he reserved his right to a rejoinder. Upon taking the podium to counter the above grounds of appeal, Mr. Hurubano, more or less, had not much to add either. He supported the first ground of appeal that the plea was equivocal. Without any case authority or any elaboration to that effect, Mr. Hurubano stated: "My lord...the appellant was convicted on his own plea of guilty. He has appealed to this court that the trial court had erred in regarding the plea as unequivocal. Upon going through the proceedings, we agree with the ground. The plea was indeed equivocal. It was not sufficient to convict him. To this end we pray that this court orders the matter to be tried de-novei." In a brief rejoinder, the appellant clarified what had befall him. He narrated that he was arraigned in Masasi District Court for Unlawful entrance into a protected area. He was sentenced to serve ten years in prison and a fine that he could not remember. He clarified further that he had submitted his grounds of appeal in writing and hoped he would be set free. That situation leaves me with only one issue to decide namely whether the prayer for trial de-novei is meritorious. I hope I am not preempting my verdict by saying that I have examined the lower court records and the same leave a lot to be desired. No wonder the learned State Attorney chose to be extraordinarily brief as quoted above. He did not go to the details as it was expected. Page 3 of 5 According to the trial court's file, the appellant was arraigned in court on 13/10/2020. The charge was read over to him, and he was not asked to plead thereto. For countless adjournments that followed, the reason given was that investigation was incomplete. At a later stage, the language changed, and the reason was lack of consent of the Director of Public Prosecution (DPP). This is in line with the provisions of section 26(1) of the Economic and Organized Crime Control Act, (Cap 200 R.E. 2002) (EOCCA) which provides as follows: "26 (1) Subject to the provisions of

this section, no trial in respect of an economic offence may be commenced under this Act save with the consent of the Director of Public Prosecutions." Without going into the details that I consider by and large irrelevant at this stage, the appellant was kept in remand prison until 03/03/2022 when he, allegedly pleaded guilty to the offences (allegedly) committed back in 2020. The appellant is now 58 years old and physically very weak. An order for retrial in not in the interest of justice. In the upshot I In the upshot, I allow the appeal. I hereby quash the conviction and sentence of the lower court. I order that NOBERT JOHN MPILI be released from prison forthwith unless he is being held for any other lawful reason(s)/ It is so ordered. " a z fl Z] Ij' £L_ualtaika zp* JUDGE U 30.06.2023 Page 4 of 5 Court This Judgement is delivered under my hand and the seal of this court this 30th day of June 2023 in the presence of Mr. Melchior Hurubano, learned State Attorney and the appellant who has appeared in person, E.I. i_ALTAI KA JUDGE 30.06.2023 The right to appeal to the court of appeal of Tanzania fully explained. 30.06.2023 Page 5 of 5

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