

TANZANIA / JUDGMENT

DC CRIMINAL APPEAL 9593 OF 2024 SALUMSUDI SUEDI

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THE JUDICIARY OF TANZANIA IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT
KIGOMA ECONOMIC APPEAL NO. 000009593 OF 2024 SALUMSUDI S/O SUEDI
COMPLAINANT / APPELLANT / APPLICANT VERSUS REPUBLIC
RESPONDENT / DEFENDANT

JUDGMENT

A. K. RWIZILE, J This is an appeal from the judgment of the district court of Kibondo. It was alleged that without license, the appellant was found in Mwimba area within Moyowosi game reserve with a muzzleloader gun. The appellant was arrested and arraigned. According to the judgement of the trial court, he was charged on two counts of unlawful possession of firearms in the game reserve contrary to section 17(1) of Wildlife Conservation Act [Cap 283 R.E 2022], read with paragraph 14 of the first schedule to section 57(1) and 60(2) of the Economic and Organized Crimes Control Act [Cap 200. R.E 2022], while, on the second count was an unlawful entry into game reserve contrary to section 15(1)(2) of the Wildlife Conservation Act [Cap 283 R.E 2022] On the first hearing of the case, it is shown, the appellant pleaded guilty to the second count. He was found guilty and sentenced to pay fine of TZS 300,000.00 or to serve one-year imprisonment. The appellant was then tried on the remaining count. At the end, he was found guilty, convicted and sentenced to serve 20 years imprisonment. Aggrieved, he has preferred this appeal with four grounds: -

1. That, before the court I denied the offence of possession of firearms in a game reserve as charged.
2. That, the trial magistrate erred in law and in fact to convict the appellant due to weakness of his defence.
3. That, the trial court based his judgment on framed defence by game reserve officers on the sake of defeating the appellant.
4. That, the trial magistrate erred in law and in fact in accepting that the prosecution side had proved its case beyond reasonable doubts while in fact the whole prosecution evidence was framed. The appellant appeared in person at the hearing of this appeal, while the Republic

was under services of Ms. Edna Makala learned state attorney who did not contest this appeal. The appellant advanced no viable argument but asked the learned state attorney to show reasons to support her position: - Ms. Edna submitted that a muzzleloader alleged found with the appellant was not properly identified by the prosecution witnesses. She argued, there ought to be evidence on ballistic report, proving that what was tendered in Page. 1 Hon. AUGUSTINE RWIZILE court was a muzzleloader. She also submitted that the chain of custody in respect of the exhibit itself was broken. In her argument, she was clear that the evidence of Pw4 did not specify who brought to him the said document. She further submitted that Pw6, tendered in court a caution statement, the accused was arrested on 1st October 2023 and the same was recorded on 7th October 2023 out of prescribed time under the law. She said, an extrajudicial statement in terms of evidence of Pw7, did not follow the directive of the CJ, and lastly, she said, the certificate of seizure, was not identified by anybody else apart from the witness who tendered the same. Having heard the argument by the learned state attorney, I think, the point for determination is whether the offence was proved beyond reasonable doubt. To be able to appreciate the argument of the learned state attorney, this court is entitled to re-evaluate the evidence based on the principle stated in the case of Edson Simon Mwombeki v. The Republic, (CAT), Criminal Appeal No. 94 of 2016, on pages 14 – 16 that: "We are aware of a salutary principle of law that a first appeal is in the form of a re-hearing. Therefore, the first appellate court, has a duty to re-evaluate the entire evidence on record by reading it together and subjecting it to a critical scrutiny and if warranted arrive at its own conclusions of fact". In the first place, I agree with Ms Edna learned state attorney that this appeal is not supportable. As submitted, exhibits tendered were admitted in contravention of the law. To cite as paradigms, a certificate of seizure, exhibit P1, which was tendered by Pw1 who alleged executed the same in presence of Felician Ilonga and Jacob Elina, Pw2 and Pw3 respectively. At the trial, exhibit P1 was only identified by Pw1 alone. No mention was made by Pw2 and Pw3. It is clear to me, and it has been the practice that once a document or an exhibit was executed by witnesses, they have to identify the same in court, before and/or after its admission. Further, a muzzleloader was seized from the appellant, as it is the evidence, on 1st October in the presence of Pw1, Pw2 and Pw3. It was admitted as P2. Like exhibit P1, it was not identified by any other witness save Pw3 who tendered it. In yet another exhibit P5, which was tendered by G2446 D/CPL Ally, Pw6. It was admitted after a trial within a trial, which found, it was voluntarily made. Since the appellant was arrested on 1st of October and the same was recorded at the police station by Pw6 on 7th October, it was recorded out of 4 hours, time prescribed by the law. It goes without saying therefore that the same contravened section 50(1)(a) of the Criminal Procedure Act [CAP 2022 R.E.2022]. The prosecution ought to show why was the same taken after 7 days from the date of arrest. Upon admission, yet, it was not read in court. The dire effect of not reading out the contents of an exhibit after its admission in evidence has always been considered by courts as a fatal irregularity, which violates the accused's right to a fair trial, see the case Zheng Zhi vs. The DPP, (CAT), Criminal Appeal No. 506 of 2019. Another, important exhibit, is an extra-judicial statement tendered without objection from the accused and admitted as P6. It was executed by the appellant as alleged before Pw7 a justice

of the peace on 11th October 2022. Imagine, the appellant was arrested on 1st October, until on the 11th October was still in the hands of his arrestors without any reason. This however, is unlawful and ought to be subjected to section 32(1) of the CPA, which provides for taking him to court within 24 hours or admit him to bail. The record is silent as to whether he was admitted to bail at some point in time before he was arraigned on 12th October. Without strong evidence on what happened, one wouldn't find such an extra-judicial statement valid or that it was obtained voluntarily. The trial court, ought to interrogate the procedure at the trial in order to protect the rights of the appellant. Page. 2 Hon. AUGUSTINE RWIZILE But all in all, an extrajudicial statement, has to be recorded in compliance with the C. Js guidance, a guide for justices of the peace in recording extra-judicial statements. Inter alia, it provides that at least the following must be adhered to; The time and date of his arrest, the place he was arrested, the place he slept before the date he was brought to him, whether any person by threat or promise or violence has persuaded him to give the statement, whether he really wishes to make the statement on his own free will, that if he makes a statement, the same may be used as evidence against him. Having examined the same, I hasten to hold, the above were not complied with. It has always been observed that the Chief Justice's instructions in recording such statements have to show, in case the suspect decides to give such a statement, he should be aware of the implications involved. Ultimately, compliance of the rules, will enable the trial court to know the surrounding circumstances under which the statement was taken and decide whether or not it was given voluntarily or not. It appears, non-compliance renders the statement invalid as taken without free will of the suspect. see Japhet Thadei Msigwa vs The Republic, (CAT), Criminal Appeal No. 367 of 2008, on page 11. All done and said, the chain of custody is an important tool to employ if the prosecutor intends to prove his case. It is settled that the case which involves arrest and search of the suspect, seizure of anything in relation to the offence must be carefully and properly monitored on how it moved from the point of seizing it to when it is tendered in court. The appellant was arrested on 1st October as shown in exhibit P2. It was in the hands of his arrestors, not until the 5th when it was taken to the police station and handed to D.9766 Sgt Jumanne Pw4. The prosecution did not give an account of the status of the same exhibit from 1st October to 5th October when Pw4 took charge. Worse still, even in exhibit P4, the so-called chain of custody record does not account for days from 1st to 5th October. The prosecution did not give any evidence to that effect, whether oral or documentary. Pw3 who seized it, did not say where it was on the dates under question. Therefore, the chain was broken. This court finds it pressing, I have to expunge from the record all exhibits that is P1, P2, P4, P5 and P6. It follows therefore that expunging the same cannot still have the prosecution case intact. I have to hold so. But if I am wrong, and it is otherwise found that the same remains intact even after the identified gaps in the exhibits, still the prosecution case is not safe with the charge sheet. It has been stated times without number that a charge sheet is a road map through which the prosecutor travels on, towards conviction. Messing up with the charge sheet is as good as driving a motor car without a steering. The record has it that when the appellant was arraigned, a charge sheet signed by unnamed prosecutor was filed in court on 12th October 2022. It has an endorsement on top that it was admitted, and

the case was assigned to Mushi PRM on the same day. It seems, the same charge sheet which contained two counts of unlawfully presence in the game reserve as first count, and second count of possession of firearms, was having two vertical lines in its face, suggesting it was perhaps cancelled. When was that done, the trial court may be in the position to know. It would appear, maybe, it was cancelled on some other day following its admission, since it defeats the logic that the trial Page. 3 Hon. AUGUSTINE RWIZILE court would have admitted a charge that is cancelled. It follows therefore that as the record stands the appellant, may have pleaded onto the cancelled charge. Following the record closely, months later, it is shown that on 19th June 2023, the prosecutor informed the court that his office had been served with the consent and certificate. On 30th June, it was recorded that the trial court got a consent and certificate conferring jurisdiction to the court to try the matter. This is because the offence charged, was an economic offence not in the mandate of the District court to try unless empowered by the prosecutor under section 14 and 26 of the Economic and Organised crimes control Act (EOCA). On 4th July 2023, the charge was read over to him, he pleaded guilty to the second count and was sentenced accordingly. However, the record does not show, which chargesheet the trial court was dealing with having cancelled the one filed on 12th October 2022. But further, the record shows, there are other charge sheets dated 26th June 2023, containing two counts as the that dated 12th October 2022 and another one containing three counts, also facing same accused person. The first count in is on possession of firearms contrary to section 20(1) and (2) of the firearms and Ammunitions Control Act, No, 2 of 2015 read with paragraph 14 of the first schedule to section 57(1) and 60(2) of the Economic and organized crimes control Act [Cap 200. R.E 2022]. The second count is unlawful possession of weapons in a game reserve and last is unlawful entry into the game reserve. This court remains confused as to which charge sheet was used by the trial court to trial the offence charged. Actually, it is not known, which charge sheet was the basis of plea and trial. It is clear to me that the trial court mishandled the record leading to confusion. This being the court of record, it expects a clear and self-telling record which is not depicted in the case at hand. Still, the certificates conferring jurisdiction, are executed in three documents two signed by Shaban Juma Masanja, District Prosecutors officer on 26th June 2022 and 26th June

2023. If for instance one was erroneously date it, which may be the case, the trial court ought to admit a new one and make an endorsement and then cancel another. Having the same all in record taints the entire proceedings. It may have perhaps been filed after the case has been heard. It seems, the trial court may be, dealt with the charge sheet having two counts, while the consent is given for the charge comprising three counts. Therefore, the trial court, it may otherwise be found, may have tried a case not clothed with jurisdiction to try the said offence. Based on the above findings, it is clear that the trial court convicted the appellant on the sham charge sheets and therefore the trial was not deserving. The case was not proved as I have shown before. The appeal has merit. The appellant be released from prison since his convicted and sentence are quashed and set aside. Dated at KIGOMA ZONE this 22nd of October 2024. A. K. RWIZILE, J Page. 4 Hon. AUGUSTINE RWIZILE

JUDGE OF THE HIGH COURT Page. 5 Hon. AUGUSTINE RWIZILE

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