

TANZANIA / JUDGMENT

selemanı david shaban others vs the republic 2023 tzhc 19235 21 july 2023

COURT
TZHCDECIDED
21 July 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA THE SUB-REGISTRY OF
TABORA AT TABORA CRIMINAL REVISION NO. 3 OF 2022 (Arising from Kaiiua District Court in
Original Criminal Case No. 147 of 2022) SELEMANI S/O DAVID @ SHABAN----- - 1st
APPLICANT LEONARD S/O GODFREY..... —..... — 2nd APPLICANT YOHANA S/O
JULIUS.....—----- 3rd APPLICANT ADAM S/O
MATHEO..... 4thAPPLICANT HAMIS S/O
MAZIKU..... 5thAPPLICANT AUGUSTINO S/O
ANTHON-----6thAPPLICANT ERICK S/O ANDREA----- 7th
APPLICANT ANDREA S/O JOSEPH----- — 8th APPLICANT ANDREA S/O
LAZARO-----.....9th APPLICANT LULINDA S/O MIHAYO —.....10TM
APPLICANT RICHARD S/O BUNDARA----- 11TM APPLICANT BELNADO S/O
CLEMENT.....-..... -12TM APPLICANT PAUL S/O THOMAS —..... 13TM
APPLICANT BARAKA S/O HAMISI..... -..... 14TM APPLICANT LEONARD S/O
CHARLES..... —..... 15TM APPLICANT PETRO S/O ZEPHANIA----- 16TM
APPLICANT PHABIANO S/O JOSEPH.....17TM APPLICANT VERSUS THE
REPUBLIC -.....RESPONDENT

RULING

Date:13/07/2023 & 21/07/2023 BAHATI SALEMA, J: This Revision application was lodged by the
above-named applicants praying this Court to call and examine the record of the Kaiiua District
Court in Criminal Case No. 147/2022 for the purpose of satisfying itself as to the correctness,
legality or propriety of conviction, sentence meted against the applicants and make necessary
orders it deems fit. i The application was brought under Section 372 (1) and Section 95 of the
Criminal Procedure Act, Cap. 20 [R.E 2019] supported by an affidavit sworn by Mr. Emmanuel
Francis Sululu an advocate duly instructed to represent the applicants. According to the charge
sheet, the applicants were arraigned before the District Court facing six counts of Unlawful entry
into a forest reserve c/s 84(l)(a) (5) and 93(l)(c) of the Forest Act, Cap. 323, Performing activities
prohibited in the forest reserve c/s 84(1) (b) (5) 26 and 93(l)(c) of the Forest Reserve Act, Cap. 323,
Offences related to wild plant c/s 86 and 93(1) (c) of the Forest Act, Cap. 323 as amended Act, No.
02/2016, Unlawful taking possession or receiving of forest produce section 88 and 93 (1) (c) of the

Forest Act, Cap. 323 as amended Act, No. 02/2016, Offence relating to trade in forest produce c/s 89 and 93(1) (c) of the Forest Act, Cap. 323 as amended by Act, No. 02/2016 and Offence connection(sic) with fire c/s 91 of the Forest Act, Cap. 323 as amended by Act No. 02/2016. All applicants pleaded guilty to the offences, they were convicted and sentenced to pay fines to the tune of TZS 500,000/- for each count or to serve a jail term of one year in default of payment of the fine. In a bid to challenge the process and the outcome of the trial, the applicants are praying for the intervention of this court to revise the proceedings and judgment of the trial Court; before the application could be called up for hearing, the respondent filed a notice of preliminary objection to wit;

1. The application is incompetent for citation of a dead law
2. The application is wrongly invoking the revision powers of the Court as an alternative to appeal. 2 In the hearing, Mr. Haruna Hamis learned counsel appeared for the applicants while Ms. Wivina Rwebaningira, Idda Rugakingira, and Charles Magonga learned State Attorneys fended the Republic. Submitting on the first point of objection, Ms. Rwebangira stated that in the application the applicants referred to a dead law, that section 95 of the Criminal! Procedure Act, [R.E 2019] cited by the applicants has been repealed by section 31 of Act No. 27/2008 and the revised edition of 2019 is no longer in use because the current Revision of the Criminal Procedure Act is that of 2022. She, therefore, prayed for an order to strike out the application. As to the second point of objection Ms. Rwebangira stated that it is a principle of law that revisionary powers of the Court cannot be invoked as an alternative to appeal, in this case, the applicants had the right to appeal to this Court. To cement her argument, she referred this court to the case of Augustino Lyatonga Mrema vs R, [1996] TLR 267 and the case of Hallai Pro-Chemi Industry Ltd vs AG Wella, [1996] TLR, 296. In reply, Mr. Haruna admitted that he has cited the defunct Revised Edition of 2019 instead of the 2022 edition but he pleaded with the court to invoke the principle of overriding objective and Article 107A (2) of the Constitution of the United Republic of Tanzania, Cap.2 to disregard the error because section 372 in the defunct 2019 edition reads the same in the current 2022 edition. As to the second point of objection, Mr. Haruna stated that this is the only remedy the applicants have because they were convicted on their own plea of guilty and according to section 360 of the Criminal Procedure Act, Cap. 20 [R.E 2022] the applicants are barred from appealing. He prayed the Court to overrule the objections. 3 In a short rejoinder, Ms. Rwebangira stated that Article 107A (2) of the Constitution (supra) should not be applied blindly as the application is incompetent for it did not pass the tests set in the case of Laurence Mpinga vs Republic, [1983] TZHC 24 (15 June 1983). Having heard the submissions from both parties, the issue is whether the objections raised are meritorious. Going East or West, citing a non-existing or wrong enabling provision of law has never been a curable defect when it comes to applications of this kind. The Court of Appeal of Tanzania in Director of Public Prosecutions vs Elizabeth Michal Kimemeta @ Lulu, (Criminal Appeal No. 6 of 2012) [2012] TZCA 3(17 September 2012) while citing the case of Edward Bachwa & Three Others vs The Attorney General and Another, Civil Application No. 128 of 2008 emphasized that non-citation or wrong citation renders the proceedings incompetent. In the application

at hand, Mr. Haruna has acknowledged that the enabling provision cited in the face of the chamber application refers to a law that is no longer in use which is the repealed section 95 of the then Criminal Procedure Act and the 2019 edition of the same law. Through the Laws Revision (Specific Laws) Notice of 2022 G.N No. 461 published on 24/06/22 the Criminal Procedure Act, Cap. 20 was declared to have been revised and the revision superseded other previous editions including the 2019 edition. Moving the Court under a non- operational law renders the application incompetent; since the court was moved under a repealed and non-existing law this application is incompetent; that being said the first point of objection is hereby sustained. 4 Regarding the second point of objection, Section 360(1) of the Criminal Procedure Act, Cap. 20 [R.E 2022] provides that;

- (1) "No appeal shall be allowed in the case of any accused person who has pleaded guilty and has been convicted on such plea by a subordinate court except as to the extent or legality of the sentence." As pointed out earlier, the applicants were convicted on their own plea of guilty so under the above-cited provision they are not allowed to appeal unless their appeal is directed to the extent or legality of the sentence. Mr. Haruna firmly stated that since the appellants pleaded guilty to the charge, they have no room to appeal that is why they preferred this application but, going through the pleading documents the same counsel is stating that the applicants moved the Court to investigate the legality of the sentence meted against the applicants. Again, in the supporting affidavit at paragraph 3 the deponent is challenging the plea of guilty that was entered by the appellants, these two grounds are sufficient for an appeal as they cannot be entertained through revision before an appeal is preferred. For that reason, the objection raised is sustained. As discerned above, this application is therefore incompetent for citing the wrong enabling provision of law and for being preferred as an alternative to appeal, consequently, it is hereby struck out.

Order accordingly. ' , ^ 3 — 0 / ■ ■ v > ' or j k r • 7 \ T-A A. BAHATI SALEMA JUDGE

- 7 21/07/2023 CdOfirRuling delivered in presence of both parties. 5 A. BAHATI SALEMA JUDGE 21/07/2023 Right of Appeal fully explained. A. BAHATI SALEMA JUDGE 21/07/2023 6

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CASE PAGE	https://chat.esheria.ai/case-law/tanzania/selemani-so-david-shaban-v-the-republic-revision-tzhc-2023--6a3ea52d3b1caa9129826150

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