

UGANDA / JUDGMENT

Gbonyo Joseph v Uganda (Revision Order No. 29/91) [1991] UGHC 87 (3 May 1991)

[1991] UGHC 87**COURT**

High Court of Uganda

BEFORE

GM OKELLO, J

CASE / FILE NUMBER

Revision Order No. 29/91

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TOE REPUBLIC OF UGANDA**IN TOE GW MAGISTRATE'S COURT AT KITGUM****REVISION ORDER NO. 29/91**

| GBONYO JOSEPH | | | | | | | | ACCUSED |

|-----|---|-----|---|---|-----|

| | | | VRS | | | | |

UGANDA <sup>3</sup> s ? PROSECUTOR

BEFORE? TOE HON, MR. JUSTICE G. M. OKELLO

REVISION ORDER NO. 29/91:

The accused was charged with and was convicted on his- own plea of guilty of being in -unlawful possession of Ammunition without a valid Firearm certificate contrary to section 2 (2) of the Firearm Act. He was subsequently sentenced to a fine of shs, 10,000/*= or in default to 10 months imprisonment*

The Chief Magistrate of Gulu sent the relevant case file to this court for a possible Revision order on the ground that the plea on which the conviction was bused is equivocal and that the resultant conviction is bad in law, Secondly that the default sentence of 10 months imprisonment for a fine of shs. 10,000/= is illegal as it violates section 192 (d) of the MIA'YO as amended by Act 4 of 19^5 •

For a conviction to be properly based on a plea of guilty, the plea must unequivocally admit all the essential ingredients of the offence alleged. (see ADAN Vs, The Republic (1973) EA 449)*

The plea, on which the conviction in the instant case was based is recorded thus "I admit". Upon this plea, a plea of guilty was entered. After this the facts were narrated and when they were put to the accused, who admitted the correctness of them. Following that admission the accused was convicted.*

Mauroon Owor, a State Attorney who wrote for the DPP in her letter Ref? 6/4/2 of 16/11/90 expressed the view that the plea is equivocal and that the conviction is bad in law. She dismissed the default sentence of 10 months imprisonment for a fine of 10,000/= as being illegal

for violating section 1^2 (d) of the IKA'70 as amended by Act 4 of 1\65* She was further of the view that a fine of 10,000/= was harsh and excessive in the circumstances of the case. She

did not wish to be heard in the event of a Revisional order

** &*

being made.

I am in agreement with both the Chief Magistrate and the State Attorney that the plea of "I admit" as recorded is not unequivocal. It does not admit all the essential ingredients of the offence alleged. It is vague. That vagueness however can be cured if the narrated facts reveal all the ingredients of the alleged offence and the accused admit the truth and correctness of them. Authority for this proposition is ADAIJ vs. Republic (1973) EA 445.

In the instant case the narrated facts show that the accused was found with a sack which contained a Jerrycan of Enguli and some 36 ammunitions for ST®. That when he was confronted about them, the accused replied that he was taking them to be sold in Karamoja. There was nothing in the fact showing that the accused had no valid Firearm certificate. So when the above facts were put to him, the accused admitted the truth and correctness of them.

Clearly the above facts do not constitute the offence alleged. They do not reveal all the essential ingredients of the offence alleged. In the first place, there are no sufficient facts to show that the objects alleged to be firearms ammunitions for SID. are in fact firearm ammunitions. This requires identification by an expert in Guns and ammunitions. But there was no such fact. Secondly there was no averment in the facts that the accused had no valid Firearm Certificate. This is a very serious omission because under this section the offence can only be committed by a person who possesses ammunitions without a valid firearm certificate. Admission by the accused that those objects which are alleged to be live view ammunitions were live ammunition do not in my / absolve the state from discharging its duty to show by sufficient proof that the objects were what they are alleged to be.

.. /3.

Since the narrated facts do not reveal all the essential ingredients of the offence alleged, the vague plea of "I admit" remains equivocal and the conviction which was based thereon is bad in law. On that ground the conviction of the accused on the above plea and with the above narrated facts, notwithstanding his admission, can not stand. It is bad in law and must be quashed, so it is.

The default sentence for a fine of shs. 10,000/= must not exceed ¹ month, (see section 192 (d) MCA'70 as amended by Act 4/85. The 10 months imprisonment which was imposed as the default sentence for a fine of shs. 10,000/= is therefore illegal. It violates the above section of the MCA' 70.

In any case since the conviction was quashed on the ground of illegality, the resultant sentence is also set aside.

Order; Any payment of fine made by the Accused in this regard must be refunded to him forthwith. In case he is being detained in default of payment of the fine, he should be released forthwith unless he is being held on some other lawful cause.

G.II. OKELLO

JUDGE.

3/5/91

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