

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SUMBAWANGA DISTRICT REGISTRY

AT SUMBAWANGA

DC. CRIMINAL APPEAL NO. 01 OF 2022

(Original Economic Case No. 08 of 2020 at Mpanda District Court)

MANILAKIZA S/O ROBERT APPELLANT

VERSUS

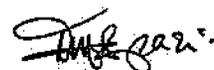
THE REPUBLIC.....RESPONDENT

01/12/2022 & 02/02/2023

JUDGMENT

MWENEMPAZI, J:

In the trial Court, the appellant was charged with two counts of offence, namely Unlawfully possession of firearm contrary to section 20(1) (b) and (2) of the Firearms and Ammunitions Control Act, No. 2 of 2015 read together with paragraph 31 of the First schedule, to and section 57(1) and 60(2) both of the Economic and organized Crime control Act, Cap 200 R.E 2019 and Unlawful possession of Ammunition contrary to section 21(b) of Firearms and Ammunitions control Act No. 2 of 2015, read together with paragraph 31 of the first scheduled to, and section 57(1) and 60(2) both of Economic and organized crime control Act, Cap 200 R.E 2019.



As to the first count it was alleged that on the 7th day of May 2020 at Kajeje Village within Mpanda District in Katavi Region, the accused (Manilakiza s/o Robert) was found in possession of one firearm make SMG/AK 47 without a license; and on the second count, the accused (Malilakiza s/o Robert), on the 7th day of May, 2020 at Kajeje Village within Mpanda District in Katavi Region, was found in possession of one magazine of SMG/AK47 without a license.

When the charge was read over and explained to the accused person, he denied and the plea of not guilty to the charge was entered. The prosecution called three witnesses and the defendant defended himself. At the conclusion the trial Court found the accused guilty and convicted him under contrary to section 21(b) of the Firearm and Ammunitions Act, No. 2 of 2015 read together with paragraph 31 of the First schedule to and sections 57(1) and 60(20) of the Economic and Organized Crimes Control Act, Cap 200 R.E 2019. The appellant was sentenced to serve a term of twenty (20) years in prison in respect of each count and all sentences had to run concurrently.

The appellant is aggrieved by the decision, conviction and sentence. He has filed this appeal raising two grounds of appeal as follows:

- 1. That the trial Court erred both at law and fact by convicting the appellant depending on causation statement which was procured contrary to the law as the person who took it was also the investigation officer of the case.*
- 2. That the trial Court erred both at law and fact by convicting the appellant basing on conflating (sic) and feeble evidence by prosecution which had no value in proving the case beyond reasonable doubt as required by law.*

Wherefore the appellant has prayed for an appeal to be allowed; judgment and sentence be quashed and set aside respectively, and the appellant be released from prison and set free.

At the hearing the appellant was unrepresented and the Respondent enjoyed the services of Mr. John Kabegula. The appellant had brief submission in chief that he prayed the grounds of appeal be received and considered and the Court allows the appeal so that he is set him free.

In reply to the submission in chief, Mr. John Kabengula, Learned State Attorney submitted that the first ground of appeal has no merit. At page 27 of the proceedings when the caution statement was being tendered, the appellant did not object. According to section 58(4) of the

Criminal Procedure Act, Cap 20 R.E 2019, the investigator is allowed to record the statement of the accused person. The same reads as follows;

"(4) subject to the provision of paragraph (c) of section 53, a police officer investigating an offence for the purpose of ascertaining whether the person under restraint has committed the offence may record a statement of that person and shall;

- (a) Show the statement to the person and ask him to read it; or*
- (b) Read the statement to him or cause the statement to be read to him and ask him whether he would like to add or correct anything from the statement".*

In the case of **Msafiri Benjamini vs. Republic**, Criminal Appeal No. 549/2020 at page 24 – 25 the Court of Appeal had similar situation and observed that:

"Similarly, the complaint that PW7 was the investigator and the one who recorded exhibit P4. We first need to point out that section 58 of the Criminal Procedure Act was amended by section 15 of the Written Laws (Miscellaneous Amendment) Act, Act No. 3 of 2011, where subsection (4) was inserted introduced immediately after subsection 3. Under section 58(4) of the

Criminal Procedure Act, it states that a police officer investigating an offence for the purpose of ascertaining whether the person under restraint has committed an offence may record a statement of that person”.

There is nothing wrong for an investigator to record a statement and also to raise that argument at this level, it is an afterthought. He prayed the ground to be dismissed.

On the second ground, that the offence was not proved beyond reasonable doubt; the counsel submitted that it was proved as required by law, beyond reasonable doubt. Witnesses testified that while on patrol, they found the appellant on the road they suspected him, he also was apprehensive he hid himself in the bush, they pursued him, arrested him and after search they found the appellant possessing a firearm and ammunition. A certificate of seizure was prepared, signed and tendered in Court as Exhibit P1; also the gun and a chain of custody form was also tendered without any objection.

In general, the evidence was not shaken by cross examination and defence evidence. The allegation that the evidence was conflicting and feeble is not founded. He prayed the Court to uphold the findings of the trial Court.

In rejoinder the appellant denies that he did not object to the tendering of evidence. He states that he was found at the immigration office after he had been arrested by the immigration officer. They questioned his residence and he told them that he resides at Kajeje village. They told him that there are suspects they are looking for, he thus stayed in remand for two months. He prayed the Court to revisit the evidence and allow the appeal.

I have read the record and submissions made thereto, and I have no doubt on the position in respect of the ground one of appeal that the investigator is empowered by law to record an accused cautioned statement as per section 58(4) of the Criminal Procedure Act and the cited case of **Msafiri Benjamini Vs. Republic**, Criminal Appeal No. 549 of 2020 [2021] TZCA 447 (27 August 2021). For the reasons the ground No. 1 fails and is accordingly dismissed.

On the second ground as to whether the charges were proved beyond reasonable doubt, I have reviewed the trial Court's proceedings. PW1 Inspector Sebastian Tema, Prison Officer and chairman of the Task Force formed by the Regional commissioner Katavi, testified how they found the appellant on the road, arrested and interrogated him, searched and found a firearm AK 47 and magazine without bullets. The appellant

was arrested at Kajeje while the team was coming from Kanoge Village heading for Katumba. They seized it under certificate of seizure admitted as exhibit P1. The same was introduced, identified, received and admitted and read over in Court according to the law. The firearm was admitted in Court as exhibit P2 chain of custody form was also admitted as exhibit P3. The appellant did not object to the admissions.

The accused person, was interrogated by PW2 G. 5696 Augustino who recorded a cautioned statement where in the appellant admitted the allegations leveled against him and the same was tendered in Court as exhibit p4. It was read over in Court as required by law.

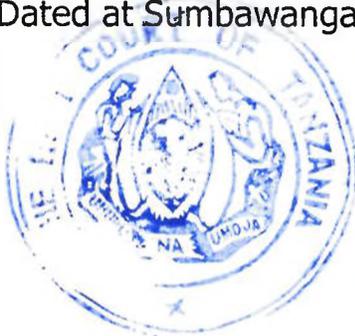
In his defence the appellant narrated a long story commencing on 04/04/2020 when he travelled from Tanga to Kajeje Village. That he was taken to lock up at Mpanda police station on 12/04/2020 and the present case is a framed up against him. In fact, he alleges to have first been alleged to be an illegal immigrant, he was suspected to be a poacher and implicated to be the possessor of the firearm and the magazine. However, I have failed to find logic and flow of the story, as the appellant could have easily defeated the prosecution by objecting to the tendering of the exhibits, cautioned statement, certificate of seizure, fire arm and magazine. He did not do that even when the caution statement was tendered. In

conclusion I am of a view that the defence story is an afterthought, given the time lapse from the time the prosecution case was closed to the time the defence was entered as reflected in proceedings of the trial Court.

Under the circumstances, the appeal has no merit. The prosecution did prove the case against the accused beyond reasonable doubt. Conviction and sentence of the trial Court are therefore upheld.

It is ordered accordingly.

Dated at Sumbawanga this 2nd day of February, 2023.



T.M. Mwenempazi
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JUDGE
02/02/2023

Judgment delivered in Court in the presence of the appellant and Ms. Marietha Maguta, State Attorney.



T.M. Mwenempazi
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JUDGE
02/02/2022

Right of further appeal explained.




T.M. MWENEMPAZI
JUDGE
02/02/2023