

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
SUMBAWANGA DISTRICT REGISTRY
AT SUMBAWANGA
CRIMINAL APPEAL NO. 81 OF 2021

(Original from Economic Case No. 91 of 2016 in the Resident Magistrate Court of Katavi at Mpanda)

SADIKI S/O ISMAIL APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

Date of last Order: 16/05/2022
Date of Judgment: 17/05/2022

NDUNGURU, J.

Before the trial court, the appellant was charged and convicted of two counts the 1st count of Unlawful Possession of Fire Arms contrary to section 20(1) (b) and (2) of Firearms and Ammunition control Act No. 2 of 2015 read together with paragraph 31 of the first schedule to and section 57(1) and 60(2) of the Economic and organized crime control Act Cap. 200

R.E. 2002 as amended by section 16 (b) and 13(b) respectively of the written Laws (Miscellaneous Amendments) Act No. 03 of 2016. And the 2nd count is Unlawful Possession of Ammunitions contrary to section 21(b) 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) of the Economic and organized crime control Act Cap. 200 R.E. 2002 as amended by section 16 (b) and 13(b) respectively of the written Laws (Miscellaneous Amendments) Act No. 03 of 2016. The trial court found the appellant guilty and sentenced him to serve twenty (20) years imprisonment for each count. The court further ordered sentence to run concurrently. Being dissatisfied, the appellant appealed to this court. The main ground of appeal was that the charge against him was not proved beyond reasonable doubt.

When the appeal was called up for hearing, the appellant prayed the grounds of appeal be adopted.

The Republic supported the appellant's appeal. The learned State Attorney Mr. Peres supported the appellant's appeal. He said the certificate and consent were filed in court. But page 16 of the proceedings reveals that consent was given to court but the record does not show if the

consent was received by the court. The record is silent if the court received the consent and certificate. Yet there is no endorsement of the record by the court which received it. It is the position of the court in the case of **Adam Seleman Njalamoto V. Republic** Criminal Appeal No. 196 of 2016 (CAT) Unreported at page 4-7 the court discussed the endorsement in the certificate. The court held that in the absence of endorsement the proceedings is a nullity. The fact that it is not featured if the certificate and consent were endorsed means they were as if as not received.

He further said, page 36 of the proceedings reveals that the prosecution having closed the case, the court did not address the appellant if he had a case to answer, neither his right were explained to him.

In the premises due to all short falls he inclined to support the appeal.

On the evidence on record, the counsel said, to revealed that there was no ballistic report and evidence on the ammunitions. He said in the absence of such a report it was difficult for prosecution to prove those were ammunitions

I agree with the appellant and the learned State Attorney that in such a circumstances the case against the appellant cannot be said to have been proved particularly taking into account the nature of said offence.

That the appellant is alleged to have been in possession of the locally made ammunition, there was a need for an expert evidence to prove where what the appellant was found with was ammunitions or otherwise. In the absence of such evidence the prosecution case remains hanging.

I allow the appeal, judgment of the trial court is hereby quashed. Conviction and sentence meted against the appellant are set aside.

The appellant be released from the prison forthwith unless held lawfully for any other cause.

It is so ordered.




D.B. NDUNGURU

JUDGE

17/05/2022