

IN THE HIGH COURT OF TANZANIA
AT Mtwara

(Mtwara Registry)

APPELLATE JURISDICTION

CONS. ECONOMIC CRIME APPEAL NOS: 4/2000
(C/F ECONOMIC CRIME APPEAL NO. 5/2000)
ORIGINAL ECONOMIC CRIME CASE No. 4/99
OF THE DISTRICT COURT OF NACHINGWEA AT NACHINGWEA
BEFORE: J.K.A. KHALIKI, ESQ., P.D. MAGISTRATE

ESTHER MBALALE.....APPELLANTS
AND ANOTHER versus:
THE REPUBLIC.....RESPONDENT

JUDGMENT

Mandia, J.

Esther Mbalale and Jonas Ng'ata were jointly arraigned in the District Court of Nachingwea at Nachingwea on a charge of Unlawful Possession of Government Trophies. Both were convicted and sentenced to imprisonment for twenty years each. Aggrieved with the convictions, they both preferred appeals to this court. Their appeals were consolidated and heard as one. Just before the hearing of the appeal, this court was informed that Esther Mbalale was granted a Presidential pardon on 9/12/2001 and had since withdrawn her appeal. This left Jonas Ng'ata alone to prosecute his appeal.

Evidence adduced during the trial in the District Court of Nachingwea at Nachingwea showed that on 20/7/99 at 8 p.m. an informant volunteered information to the Officer in Charge of Nachingwea Police Station, PW1 ASP Rajab Mwinyijuma Mgoya that one Esther Mbalale was arranging to travel to from Nachingwea to Dar es Salaam on the following day i.e. 21/7/99 at that the purpose of the trip was to transport elephant tusks to Dar es Salaam. The informant volunteered information that a bus Regd Number T2B 9122 called S.M. B.B.A Bus was to be used to transport the elephant tusks. ASP Rajab Mwinyijuma Mgoya detailed PW5 B 7545 Detective Corporal Jabil to lead a team of policemen to waylay the bus. On the morning of 21/7/99 at 4 a.m. Det. Cpl Jabil stopped the bus and directed it to Nachingwea Police Station with the passengers

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still inside the bus. At Machingwa Police Station Det. Cpl Jabil ordered all passengers to disembark one after another. The passengers and their luggage were searched but nothing was found on them. One of the passengers is Esther Mbalale. Then the search party went up to the roof of the bus for a search and found nothing like elephant tusks. The search then moved to the first bus boot which served as a tool box but nothing was found there. The search then moved to the second bus boot where the bus spare tyre is kept. A search there revealed two bags hidden under the spare tyre. The evidence of PW5 Detective Corporal Jabil showed that the boot door was locked and the second appellant had to use a spanner to open the boot door. When the bags were searched in front of the policemen and the bus driver PW2 Yasini Yusuphu they were found to contain a total of twenty six (26) pieces of elephant tusks. When asked to account for the presence of the bags containing elephant tusks inside the boot he had opened, the second appellant said he was given the bags by the first appellant Esther Mbalale to store in the bus. Both Esther Mbalale and the second appellant Jonas Ng'ata were duly charged.

In his defence the second appellant reiterated the story that he was given the bags by the first appellant Esther Mbalale to store. The second appellant told the trial court that the first appellant directed that the two bags be put inside the boot and not in the carrier where other passenger luggage is kept because the bags contained fragile things which can break when put in the carrier with other passenger luggage. On her part the first appellant denied that she had anything to do with the bags containing the elephant tusks.

From the resume of the evidence adduced in court it is established that two bags containing elephant tusks were recovered from a bus stopped for a search by the police. The bags were ordinary travelling bags which should have been with other passenger luggage but was put in the boot used normally to keep the spare tyre. The second appellant in his defence said the reason for keeping ordinary travelling bags inside the boot was because the bags contained fragile things which will break if kept with other passenger luggage. If he agreed with this reason, why did he put the bags under a heavy bus tyre? Removing ordinary passenger travelling bags from where they are normally kept in the bus carrier and

putting them in the bus boot under a heavy bus tyre and then locking the boot can only mean that the second appellant did not want other passengers to know what the bags contained. The evidence of the Game Officer PW4 Ali Saidi Ohuma showed that the pieces of elephant tusk weighed 49 kilogrammes and had a value of sh. 1,470,000/-. If the second appellant was all that innocent of the contents of the bags which he said contained "fragile things" he should have been surprised at their weight. That he was not, plus the fact that he put "fragile" things under something heavier and locked the place where the supposedly fragile things were kept shows that the second appellant received the bags knowing they carried things which needed to be concealed.

As noted earlier, the first appellant Esther Mbalale withdrew her appeal at the last moment after receiving a Presidential pardon. Even if she had continued with the appeal, however, she would not have succeeded. The evidence on record shows that she was the owner of the two bags which were found to contain the elephant tusks and she was the one who suggested that the bags be hidden in the boot. All in all the trial court made a careful analysis of the evidence before entering a finding of guilt. This finding cannot be faulted. I find the appeals filed devoid of merit and dismiss them in their entirety.

Dated this 30th July, 2002.

W. S. MANDIA
JUDGE.

Date: 31/7/2002

Coram: Hon. W.S. Mandia, J.

For the Republic: Mr. Elly, S.A.

For the Appellants: 1st Absent (Released)

2nd Absent (Does not wish to appear)

B/C: Sakina.

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Order: Judgment read this 31st July, 2002 in the presence
of Mr. Elly, learned State Attorney appearing on
behalf of the Republic.



W. S. MANDIA
JUDGE.