

IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA

(CORAM: MWARIJA, J.A., MAIGE, J.A. And MASOUD, J.A.)

CRIMINAL APPEAL NO. 05 OF 2021

LAURENT BARNABAS @ SHIO APPELLANT
VERSUS

THE REPUBLIC RESPONDENT

**(Appeal from the decision of the Resident Magistrates
Court of Arusha at Arusha)**

(Temu, SRM – Ext. Jur.)

dated the 13th day of November, 2020
in
Criminal Appeal No. 23 of 2019

JUDGMENT OF THE COURT

6th & 15th December, 2023
MWARIJA, J.A.:

This appeal arises from the decision of the Resident Magistrate's Court of Arusha (Temu, SRM – Ext. Jur.) in RM Criminal Appeal No. 23 of 2019. That appeal originated from Economic Crime Case No. 48 of 2017 in which the appellant, Laurent Barnabas @ Shio was charged with and convicted of the offence of unlawful possession of Government trophy. He was charged in the Resident Magistrate's Court of Arusha with the said offence contrary to s. 86 (1) and (2) (a) of the Wildlife Conservation Act, No. 5 of 2009 (the WCA) read together with Paragraph 14 of the First Schedule to, and s. 57 (1) of the Economic and Organized Crime Control

Act Chapter 200 of the Revised Laws (the EOCCA). It was alleged that, on 18/7/2017 at Narakauo area within Simanjiro District in Manyara Region, the appellant was found in unlawful possession of zebra meat valued at USD 1,200 equivalent to TZS 2,684,940.00 (the value of one zebra), the property of the Government of the United Republic of Tanzania.

The appellant denied the charge and as a result, the case proceeded to a full trial. Having heard the evidence of five prosecution witnesses and the appellant's defence, the trial court found that the case had been proved beyond reasonable doubt. It believed the evidence of the prosecution witnesses including PW2, Ezekiel Loserian and PW3 Gerald Raphael, the head of Anti-poaching Unit (KDU) and a Game Warden respectively. Their evidence was to the effect that, upon information that there was a person who was conducting illegal hunting at Narakauo area, they went there. They found a hut which was being used by the appellant. It was their evidence further that, they searched the hut and found wild meat which according to the trophy identification and valuation conducted by Naonawelu Michael Mkali (PW5), was zebra meat. The appellant was consequently convicted and sentenced to pay a fine of TZS 26,849,400.00 or an imprisonment term of twenty (20) years.

Aggrieved by the decision of the trial court, the appellant appealed to the High Court. The appeal was, however, transferred to the Resident Magistrate's Court of Arusha to be heard by Temu, SRM (Ext. Jur). In his decision, the learned appellate Magistrate upheld the findings of the trial court that, the charge against the appellant was proved beyond reasonable doubt. The appeal was consequently dismissed.

Dissatisfied with the decision of the first appellate court, the appellant preferred this appeal. He initially filed a memorandum of appeal consisting of four grounds but later on filed a supplementary memorandum containing five additional grounds, thus forming a total of nine grounds of appeal.

At the hearing of the appeal, the appellant appeared in person, unrepresented while on its part, the respondent Republic was represented by Ms. Amina Kiango learned Senior State Attorney assisted by Mr. Charles Kagirwa, Ms. Tusaje Samwel, Mr. Stanslaus Halawe and Ms. Helena Sanga, all learned State Attorneys.

As stated above, the appellant raised a total of nine grounds of appeal. For reasons to be apparent shortly, the parties submissions were confined to only one ground, the 1st ground raised in the supplementary memorandum of appeal. In that ground, the appellant challenges the

jurisdiction of the trial court to hear the economic crime case. He contends as follows:

"That the two courts below erred in law and fact in not finding that, the trial court had no jurisdiction to try economic case No. 48 of 2017."

When he was called upon to express his stance on the ground of appeal reproduced above, Mr. Kagirwa, readily conceded that the trial court did not have jurisdiction to try the case. He argued that, ordinarily, economic crime cases are triable by the High Court, Corruption and Economic Crimes Division. According to the learned State Attorney, such cases may be tried by a subordinate court only when such jurisdiction has been conferred on it by the Director of Public Prosecutions or the Prosecuting Attorney Incharge of the respective Region. Citing the case of **John Julius Martin and Another v. Republic**, Criminal Appeal No. 42 of 2020 (unreported), Mr. Kagirwa submitted that, the trial court lacked jurisdiction and thus the proceedings were a nullity. He urged us to allow the appeal, quash conviction and set aside the sentence.

On the way forward, the learned State Attorney submitted that, an order of retrial will not be appropriate in the particular circumstances of the case. Referring to the evidence of the prosecution witnesses, particularly PW2, PW3, PW4 and PW5, he argued that, the witnesses gave

evidence which was contradictory as to whether the appellant was found with zebra meat. While PW2 and PW3 said that the appellant was found with zebra meat, PW4 and PW5 gave contradictory evidence that the appellant was found with meat and a piece of zebra skin. In that respect, Mr. Kagirwa submitted that, the adduced evidence is not watertight and therefore, a retrial order will not be appropriate as it will enable the prosecution to fill in the gaps. He submitted further that the meat, which was the subject matter of the charge, was not destroyed in the presence of the appellant and therefore, the inventory (exhibit P8) will not be a valid evidence at the retrial. He urged us to release the appellant.

On his part, the appellant did not have anything substantial to add to what was submitted by the learned State Attorney, understandably because the argued point was one of law.

From the record, it is an undisputable fact that, apart from the consent of the Prosecuting Attorney In-charge for the prosecution of the appellant for the economic crime offence, there was no certificate of transfer of the case to be tried by the subordinate court, that is, the Resident Magistrate's Court of Arusha. As submitted by the learned State Attorney, economic crime offences are ordinarily triable by the Corruption

and Economic Crimes Division of the High Court. This is by virtue of the provisions of s. 3 of the EOCCA. The section provides as follows:

*"3 – (1) There is established the Corruption and Economic Crimes Division of the High Court with the Registry and sub-registries as may be determined by the Chief Justice, **in which proceedings concerning corruption and economic cases under this Act may be instituted.**"*

[Emphasis added]

Being found in unlawful possession of Government trophy is an economic offence in terms of the provisions of s. 86 (1) of the Wildlife Conservation Act, 2009 read together with Paragraph 14 of the First Schedule to, and s. 57 (1) of the EOCCA. The case ought, therefore, to have been heard by the High Court, Corruption and Economic Crimes Division. The Resident Magistrate's Court of Arusha would have jurisdiction had the Director of Public Prosecutions or Regional Prosecuting Attorney, ordered that the case be heard by the said subordinate court. This is by virtue of the provisions of s. 12 (3) of the EOCCA which provides that:

"The Director of Public Prosecutions or any State Attorney duly authorized by him, may, in each case in which he deems it necessary or

appropriate in the public interest, by certificate under his hand, order that any case involving an offence triable by the Court under this Act be tried by such court subordinate to the High Court as may specify in the certificate.”

It is plain from the record that, the Resident Magistrate’s Court was not vested with jurisdiction because there was no certificate issued under the section of the EOCCA reproduced above for it to try the case. In the circumstances, since the trial court lacked jurisdiction, we agree with the learned State Attorney that the proceedings were a nullity. We thus hereby nullify them, quash the appellant’s conviction and set aside the sentence.

On the way forward, we also agree with Mr. Kagirwa that an order of retrial will not be appropriate. Apart from the other ground relied upon by the learned State Attorney in his argument, the ground concerning the procedure used to dispose of the meat, the subject matter of the charge, is, in our considered view, sufficient to decline to order a retrial. The disposal of the meat in the absence of the appellant was a serious irregularity because he was entitled to be present. See for instance the cases of **Michael Gabriel v. Republic**, Criminal Appeal No. 240 of 2019

and **Mohamed Juma @ Mpakama v. Republic**, Criminal Appeal No. 385 of 2017 (both unreported).

Obviously therefore, it will not be appropriate to order a retrial because at the first trial, the prosecution relied on the Inventory Form (exhibit P8) prepared out of the item which was destroyed in the absence of the appellant. From that irregularity, it will not be in the interests of justice to subject the appellant to a fresh trial to be based on the evidence that is clearly of no evidential value. We thus order that the appellant be released from prison forthwith unless he is held for other lawful cause.

DATED at ARUSHA this 15th day of December, 2023.

A. G. MWARIJA
JUSTICE OF APPEAL

I. J. MAIGE
JUSTICE OF APPEAL

B. S. MASOUD
JUSTICE OF APPEAL

The Judgment delivered this 15th day of December, 2023 in the presence of the appellant in person and Mr. Charles Kagirwa, learned Senior State Attorney for the Respondent/Republic is hereby certified as a true copy of the original.


E. G. MRANGU
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL

