

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)**

AT BUKOBA

ECONOMIC CRIMINAL CASE APPEAL NO.09 OF 2022

(Arising from Economic Case No. 22/2020 of Karagwe District Court at Kayanga)

BEYENZA DEUS.....1ST APPELLANT

BINAMUNGU MARKO @ MICHAEL.....2ND APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

Date of last Order: 17.05.2023

Date of Judgment: 17.05.2023

A.Y. Mwenda, J

This is the first appeal. It emanates from the decision of the District Court of Karagwe at Kayanga dated 01.12.2022. Before the trial Court, the Appellants were arraigned for unlawful possession of minerals Contrary to section 18(1) and (4) of the Mining Act, Cap 123 read together with para 27 of the 1st Schedule to Section 57(1) and 60(2) of the Economic and organized Crime Control Act [Cap 200 R.E 2019]. The particulars of the offence as adduced by the prosecution are that on the 12th day of August 2020 at Kaisho Village within Kyerwa District in Kagera Region, the Appellants were found in possession of 232.75 kilograms of TIN minerals valued at Four Million Eight Hundred Seventy One Thousand Six Hundred Thirty (4,872,630.26/=) Only without license. After a full trial, the trial Court was

satisfied that the prosecution side proved its case beyond reasonable doubt. The appellants were then convicted and sentenced to serve twenty (20) years jail imprisonment.

Aggrieved by the trial Court's decision, the Appellant lodged the present appeal containing eight (8) grounds of appeal. For reason apparent herein below, I found no reason to reproduce them.

When this matter was set for hearing, the Appellants were present and were represented by Mr. Ibrahim Muswadik, learned Counsel. On the respondent's side, the Republic was represented by Mr. Noah Mwakisisile, learned State Attorney.

Having introduced himself, Mr. Mwakisisile informed the Court that the Republic is in support of the present appeal. As such, the Court invited him to submit outrightly.

In his submission, the learned State Attorney submitted that the trial Court had no jurisdiction to entertain the matter before it. According to him under Section 2 of the Economic and Organized Control Act, Cap 200, the Court means the Corruption and Economic Crimes Division of the High Court established under Section 3. The learned State Attorney further submitted that section 3(2)(b) of the said Act, describes categories of Economic offences to include unlawful dealing in minerals. He was then of the view that since the offenses under which the appellants were charged are in the category Economic offenses, then vide Section 26 of the same Act, the consent of the DPP before trial commenced was crucial through issuance

of a certificate under Section 12(3) of the same Act. According to him Section 3(3) obliges filing of a certificate which confers jurisdiction to the trial Court.

Having made reference to the relevant laws, the learned State Attorney submitted that in the present matter, there is neither Certificate of DPP nor Consent which were filed and endorsed by the trial Court. According to him, on 23/12/2021 the public prosecutor informed the court that they received a Consent to conduct trial before the trial court and prayed for a preliminary hearing date where the Court fixed the 28/12/2021 for preliminary hearing. According to the learned State Attorney, despite the Public Prosecutor's submission in that regard, the court did not endorse that it was in receipt of the said certificate and as such the trial Court had no jurisdiction to entertain that matter. To support this point, the learned State Attorney cited the case of THADEO JOHN BILUNDA & ANOTHER V R, CR. APPEAL NO. 68 OF 2020. In the end he submitted that the whole proceedings and judgment of the trial court are nullity and prayed them to be nullified. The learned State Attorney was of the further view that under the said circumstances, the republic would have prayed for retrial but according to him, the same would afford the republic with opportunity to fill in many gaps apparent in the prosecution's evidence. The same are that there was no proper admission of exhibits in Court when the appellants objected to their tendering and that the same were not cleared for admission. In support to this point, he cited the case of GEOFFREY JONATHAN @KITOMARI V. R, CRIM. APPEAL NJO. 232 OF 2017. Further to that

the learned State Attorney submitted that the certificate of seizure was not made under emergency situation as the investigators were prepared before they went for arrest and seizure. The learned State Attorney stressed that the OCS did not sign in the said certificate.

Further to that the learned State Attorney submitted that in the certificate of seizure, there is a likelihood that the said exhibits were tampered with. According to him, seizure was done on 12/08/2021 but the whereabouts of the said minerals was not known until the 18/8/2021 when they changed hands from PC EZEKIA to CPL PETER and strangely the seizure certificate shows that the seizure was done on 17/8/2021 while in fact, it was done on 12/08/2021. He then prayed the present appeal to be allowed and the appellants to be released from prison.

On his part, Mr. Ibrahim Muswadik, learned counsel for the appellant submitted that the trial Court had no jurisdiction to entertain the matter before it. According to him, from commencement of trial to the closure of defense, there was neither certificate nor consent of the DPP which was endorsed by court.

Further to that, Mr. Muswadik submitted that the chain of custody was not accounted properly from the date of arrest to the tendering of exhibits which were also not cleared for admission. In conclusion, he prayed the present appeal to be allowed. That marks the end of the summary of the submissions by both parties.

In this appeal, the issue for determination is whether the present appeal is meritorious. In a bid to provide answers to the above issue, this Court found it

apposite to firstly, determine if the trial Court had jurisdiction to entertain the matter before it.

At the Outset, it is important to point out that jurisdiction is of paramount importance and Courts are enjoined to firstly, ascertain if they have jurisdiction before entertaining any judicial matter. This position was emphasized in the case of RUTH VICTOR as the Administratrix of the estate of the Late Benjamin Philip Badehe VERSUS EDWARD EMMANUEL BADEHE AND 1 ANOTHER, Probate Appeal No. 4 of 2022 where this Court (Dyansobera, J), while citing the case of RICHARD JULIUS RUGAMBURA V. ISSACK NTWA MWAKAJILA AND TANZANIA RAILWAYS CORPORATION, Civil Appeal No. 2 of 1998(unreported) held inter alia that:

"The question of jurisdiction is paramount in any proceedings. It is so fundamental that in any trial even if it is not raised by the parties at the initial stages, it can be raised and entertained at any stage of the proceedings in order to ensure that the court is properly vested with jurisdiction to adjudicate the matter before it."

In the present matter, the appellants were, before the trial Court, arraigned for unauthorized possession of minerals contrary to section 18(1) and (4) of the Mining Act, Cap 123 read together with para 27 of the 1st Schedule to Section 57(1) and 60(2) of the Economic and organized Crime Control Act [Cap 200 R.E 2019]. Under section 3(2)(b) of Economic and organized Crime Control Act [Cap

200 R.E 2019], unlawful dealing in minerals is an Economic offence, the prosecution of which requires the consent of the DPP before trial commence by issuance of certificate under Section 12(3) of the same Act.

This Section reads as follows, that:

S.12(3) 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 he may specify in the certificate.

Upon issuance of the certificate, the trial Court shall have jurisdiction to entertain the matter in question. This is by virtue of Section 12(5) of the same Act which reads as follows:

"S.12(5) Where a certificate is issued under subsection (3), it shall be lodged in the court concerned, and shall constitute full authority for, and confer jurisdiction upon, the court in which it is lodged to try the case in question."

From the trial Court's record, the proceedings dated 23/12/2021 reveals that the public prosecutor informed the court that they were in receipt of the consent to

conduct trial of the case before the court. The Public prosecutor put it in the following words.

"PP: We have received consent to conduct trial of this case before this court. I pray for PHG date."

Following that information, the court issued an order which goes as follows, that:

"Order:

1.PHG on 28/12/2021

2.ABE

Sg: E.J.Bingasila-RM

23/12/2021"

After the said order, the hearing of the case took off until it was adjudged by the Hon. Trial Magistrate. As it was rightly submitted by the learned state Attorney, the public Prosecutor's information regarding the Consent was not endorsed by the Court. After receiving the said information, the trial magistrate ought to have dully recorded the information accepting that proper Consent of the DPP and Certificate were on court records conferring jurisdiction on the District Court of Karagwe to try the said economic offence. While emphasizing the importance of endorsing such information, the Court of appeal of Tanzania in the case of THADEO JOHN BILUNDA & ANOTHER V R, CR. APPEAL NO. 68 OF 2020, held inter alia that:

"As far as we are concerned, after receiving information from the public prosecutor about filing the two

documents, the trial magistrate duly endorsed the information. The trial magistrate thus accepted that the proper Consent of the State Attorney in-Charge of Manyara Region and Certificate of the State Attorney in-charge were on court record conferring jurisdiction on the District Court of Babati to try an economic offense. We are, as a result, satisfied the trial court had jurisdiction to try an economic offence...” [emphasis added]

In this matter, since there is no endorsement by the trial magistrate that consent and certificate were on record, that lead to an inference that that the trial court tried the case without having jurisdiction. On that basis, the whole proceedings are a nullity.

Regarding consequences, as it was rightly submitted by the learned State Attorney, this court would have ordered for a retrial. However, based on the weakness and gaps in the prosecution's evidence, the said order would afford an opportunity to the republic to fill in those gaps to the detriment of the appellants. For example, during the trial there was no proper admission of exhibits (purported minerals) and the same were not cleared for admission. See GEOFFREY JONATHAN @KITOMARI V. R, CRIMINAL APPEAL NJO. 232 OF 2017. Further to that the certificate of seizure was not made under emergence situation and on top of that the certificate of seizure indicates the likelihood that the said exhibits were

tempered with because seizure of the minerals was done on 12/08/2021 but the whereabouts of the said minerals was not known until the 18/8/2021 when they changed hands from PC EZEKIA to CPL PETER. Strangely the seizure certificate shows seizure was done on 17/8/2021 while in the record, it was done on 12/08/2021.

On the foregoing reasons, this court finds no reasons to issue an order for retrial. This appeal is thus allowed, conviction quashed, and the sentence passed by the trial court is set aside. I also order that a MOTORCYCLE Reg. No. MC 892 BZE make FEKON to be handled back the 1st Appellant one BEYENZA DEUS.

The Appellants should be released from prison immediately, unless they are lawfully held.

It is so ordered.




A.Y. Mwenda

Judge

17.05.2023

Judgment delivered in chamber under the seal of this court in the presence of Mr. Ibrahim Mswadick learned counsel for the Appellants and in the presence of Mr. Noah Mwakisisile and Mr. Elias Subi learned State Attorneys for the Respondent (Republic).




A.Y. Mwenda

Judge

17.05.2023