

IN THE HIGH COURT OF TANZANIA
(SUMBAWANGA DISTRICT REGISTRY)
AT SUMBAWANGA

CRIMINAL APPEAL NO. 30 OF 2021

(Originating from Economic Case No. 6 of 2018 from Mpanda District Court)

WILLIAM PIUS APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

29th December, 2023 & 04th January, 2024

MRISHA, J.

In the District Court of Mpanda, the appellant was arraigned for unlawful possession of Government trophies contrary to section 86(1) and (2)(c)(ii) of the Wildlife Conservation Act No. 5 of 2009 (the WCA) as well as section 57(1) and section 60(2) and paragraph 14 of the first Schedule to the Economic and Organized Crime Control Act, [CAP 200 R.E. 2002] (the EOCCA) as amended by sections 16(b) and 13(b) of the Written Laws (Miscellaneous Amendments) (No. 3) Act of 2016.

The particulars of the charge sheet were that on 26th January, 2018 on or about 4:00 hours at Sango Village within Tanganyika District in Katavi region, the appellant was found in possession of government trophies to wit; four (4) pieces of elephant tusks valued at USD 15,000 equivalent to Tshs 32,050,000/=, the property of the United Republic of Tanzania. The appellant pleaded not guilty which resulted to a full trial. The prosecution paraded four (4) prosecution witnesses to prove its case. On the other side, the appellant was the only witness in the defence case.

After a full trial, the appellant was found guilty, convicted and sentenced to serve a term of twenty (20) years in prison. The appellant is dissatisfied with both conviction and sentence. He has therefore, preferred the present appeal before this court which is predicted into six (6) grounds in the petition of appeal. However, on account of reasons to be apparent in due course, I shall not reproduce the said grounds of appeal. At the hearing of the instant appeal, the appellant appeared in person, unrepresented whereas the Respondent Republic had the service of Ms. Maula Tweve, learned State Attorney.

As matter of practice, the appellant started throw the ball by adopting his grounds of appeal as stipulated in his petition of appeal in order to form

part of his submission in chief. Further, he prayed to this court to consider those grounds of appeal, allow his appeal and set him free.

Responding to the appeal, Ms. Maula Tweve supported the appeal and argued that the certificate conferring jurisdiction to the subordinate court to try the offence the accused person stood charged before it together with the consent issued by the State Attorney in charge, lack the charging section. In her submission, she referred section 3(3) of the EOCCA which confers jurisdiction the High Court with jurisdiction to hear and determine cases involving economic offences; whereby the DPP or State Attorney in charge may transfer the case by issuing the certificate and consent to the subordinate court to hear and determine the economic case.

The learned Stated Attorney also submitted that the certificate which confer jurisdiction to the subordinate court and consent that was issued to the said subordinate court, lack the charging section and for those circumstances, that irregularity makes all proceedings of the trial court to become nullity. To supports her stance, she cited the case of **Mauli Ismail Ndombe v Republic**, Criminal Appeal No. 319 of 2019 CAT and **Salum Andrea Kawande v Republic**, Criminal Appeal No. 513 of 2020 CAT (both unreported).

Finally, she argued that the defect which she has pointed out on the certificate which confer jurisdiction to the subordinate court as well as the consent thereto, goes to the root of the case. Hence, she implored this court to quash both the conviction and sentence and order a retrial of the accused person because prosecution side has enough evidence to ground convict upon the appellant.

In reply, the appellant being a lay person had nothing to add. He prayed to this court to consider the time he had spent in prison remand which is six years since he was convicted.

Having heard the submissions of both sides and read the cases referred therein, I subscribe to the submissions of the learned State Attorney for the respondent Republic lacking of charging section in the certificate and consent of State Attorney in charge the trial court was not conferred with jurisdiction to conduct the trial against the appellant, makes the whole proceedings of the subordinate court/the trial court to be a nullity. The root of her argument is that the trial was nullity on account of the defectiveness of the certificate and consent, thus the trial court was not vested with requisite jurisdiction.

I have thoroughly read the trial court records and considered the learned State Attorney submissions. The issue for determination is whether the trial court was properly clothed with the requisite jurisdiction to hear and determine the case against the appellant. As stated earlier, the appellant was charged with the offence with unlawful possession of the government trophy contrary to section 86(1), (2)(c)(ii) of the WCA read together with paragraph 14 of the First Schedule to the said Act, and section 57(1) and section 60(2) of the EOCCA.

According to the provisions of section 3 of the EOCCA, it is the High Court which is vested with jurisdiction to try economic offences. The said section provides as follows: -

"3(1) the jurisdiction to hear and determine cases involving economic offences under this Act are hereby vested in the High Court."

It is important to note that, the economic offences cannot be commenced without obtaining the consent of the DPP as required under section 26(1) of the EOCCA which provides that:

"Subject to the provisions of this section, no trial in respect of an economic offence may be commenced under this Act save with the consent of the Director of Public Prosecutions"

The appellant was charged with an economic offence under section 57(1) of the EOCCA, which as a matter of practice and procedure, had to be determined by the High Court. However, the State Attorney in charge of Katavi Region conferred jurisdiction on the subordinate court under section 12(3) of the EOCCA to try the economic offence and give his consent to the said court to prosecute the appellant, as charged. In the present case, as earlier stated, the certificate which was issued by the State Attorney in charge under section 12(2) of the EOCCA, is reflected in the trial court records as hereunder:

***"CERTIFICATE CONFERRING JURISDICTION ON A
SUBORDINATE COURT TO TRY ECONOMIC CRIMES CASE"***

*I, **ACHILES PAUL MULISA** Senior State Attorney in charge of Katavi Region, do hereby, in terms of section 12(3) of the Economic and Organized Crimes Control Act [Cap 200 R.E. 2002] read together with Government Notice No. 284 of 2014 **ORDER** that **WILLIAM S/O PIUS** who is charged for contravening the provisions of Paragraph 14 of the First Schedule there to, read together with*

sections 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) of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016 **BE TRIED** by **RESIDENT MAGISTRATE COURT OF KATAVI REGION**.

Dated at Mpanda this 12th day of 02, 2018.

Sgd

Achiles Paul Mulisa

SENIOR STATE ATTORNEY"

Additionally, the consent of the State Attorney In charge, to prosecute the appellant stated that:

"CONSENT OF THE STATE ATTORNEY IN CHARGE

I, **ACHILES PAUL MULISA** Senior State Attorney in charge of Katavi Region, do hereby, 26(2) of the Economic and Organized Crime Control Act, [Cap 200 R.E. 2002] and Government Notice No. 284 of 2014 **CONSENT** to the prosecution of **WILLIAM S/O PIUS** for contravening the provisions of Paragraph 14 of the First Schedule there to read together with sections 57(1) and 60(2) of the Economic and Organized Crime Control Act [Cap 200 R.E. 2002] both as amended by sections 16(b) and 13(b) The Written Laws (Miscellaneous Amendments) Act No. 3 of 2016 the particulars of which are stated in the charge sheet.

Dated at Mpanda this 12th day of 02, 2018

Sgd

Achiles Paul Mulisa

SENIOR STATE ATTORNEY"

In the present case, the appellant was charged with the offence of unlawful possession of government trophy contrary to section 86(1),(2)(c)(ii) of the WCA read together with paragraph 14 of the First Schedule to the said Act, and section 57(1) and section 60(2) of the EOCCA, where the charging section 86(1) and (2)(c)(iii) of the WCA which is clearly shown in the charge sheet containing economic offences the appellant charged with, was not indicated in the certificate which conferred jurisdiction to the trial court, and in the consent.

In the circumstances, it is my finding that the appellant was charged with an offence, tried and convicted by the subordinate court without it being fully clothed with jurisdiction to try the appellant with the offence charged.

There numerous decisions of the Court of Appeal on the same aspect where the Court of Appeal nullified the proceedings of the trial court where the certificate and consent is defective. See the cases of **Mhole Saguda**

Nyamangu v Republic, Criminal Appeal No. 334 of 2016; **Mauli Ismail Ndombe v Republic** (supra), **Adam Seleman Njalamoto v Republic**, Criminal Appeal No. 196 of 2016 and **Manganzo Zelamoshi @Nyanzomola v Republic**, Criminal Appeal No. 233 of 2016. In the latter case, the Court of Appeal stated, inter alia:

"Without the requisite consent and certificate of the learned DPP, the entire proceedings of the trial court were a nullity, just as were the proceedings of the High Court which then had no legs to stand on"

Since, the certificate and consent issued by State Attorney in charge do not have an insertion of the charging section 86(1) and (2)(c)(iii) of the WCA which is clearly shown in the charge sheet containing economic offence the appellant charged with, it is my settled view that the said certificate and consent issued are incurably defective and for that reason, I am persuaded to find that the trial court proceedings were a nullity. Consequently, I quash the conviction entered by the trial court and set aside the sentence passed thereto.

I equally agree with the submission of the learned state Attorney that the remedy is to order retrial of the appellant's case before another Magistrate with competent jurisdiction. I further order that should the case end with a

conviction, then in the course of assessing and imposing sentence, the assigned trial magistrate should consider the period which the appellant has spent in prison custody. Meanwhile, the appellant should remain in custody to wait for the reopening of the trial subject to the above directions.

It is accordingly so ordered.


A.A. MRISHA
JUDGE
04.01.2024

DATED at **SUMBAWANGA** this 04th day of January, 2024.


A.A. MRISHA
JUDGE
04.01.2024

