IN THE HIGH COURT OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

DC CRIMINAL APPEAL NO. 42 OF 2023

(Originated from the District Court of Nkasi at Namanyere in Economic Case No. 3 of 2022)

1. SEZALI EMMANUEL @SELESI

2. WILBROAD JEREMINIKO @MTANDA ..... **APPELLANTS**

VERSUS

THE REPUBLIC ..... **RESPONDENT**

JUDGEMENT

14th December, 2023 & 22nd January, 2024

This judgement underscores the importance of ensuring that all the drafted legal documents to be filed with the court of law, are well scrutinized and checked by those with authority to issue them in order to avoid unnecessary inconvenience not only to the trial courts, but also to the parties as a whole.

It relates to the memorandum of appeal filed with the court by **Sezali Emmanuel @Selesi** and **Wilbroad Jeremaniko @Mtanda** who will hereinafter be referred to as the first and second appellants respectively. In

their memorandum of appeal which was filed with the court on 20.06.2023, the abovenamed appellants have fronted a total of six grounds of appeal with a view of expressing their grievances against the whole judgement and sentences imposed upon them by the trial court in respect of Economic Case No. 3 of 2022 which was delivered by the said court on 27.03.2023.

Initially, the two were arraigned before the trial court with four (4) counts involving economic offences. In the first count which was Unlawful Possession of Government Trophy contrary to section 86 (1) and (2) (c) (ii) of the Wildlife Conservation Act No. 05 of 2009 (the WCA) read together with Paragraph 14 of the First Schedule to and sections 57 (1) and 60 (2) of Economic and Organized Crime Control Act Cap 200 R.E 2019 (the EOCCA).

In that count it was alleged before the trial court that on the 12th day of March, 2022 at Mlembwe area within Lwafi Game Reserve in Nkasi District in Rukwa Region the appellants were found in unlawful possession of Government Trophy to wit; 20 tails of Giraffe valued at 15,000 USD (U.S Dollars), one piece of wild cat skin valued at 250 USD, 2 toes of harmer kop valued at 60 USD of which total is equivalent to TZS (Tanzania Shillings) 35,457,960/= the property of the United Republic of Tanzania without a valid licence and permit to posses them from the respective authority.

In the second count of Unlawful possession of fire arms contrary to section 20 (1) (a) and (b) of the Fire arms and Ammunition Control Act No. 2 of 2015 (the FACA) read together with Paragraph 31 of the First Schedule to and sections 57 (1) and 60 (2) of the EOCCA, the allegations were that on the same date and place as mentioned in the first count, the appellants were found in unlawful possession of firm arms to wit; one Muzzle loader gun commonly known as Gobore without a valid licence and permit to possess the same.

Also, in the third count of Unlawful Possession of Ammunition contrary to section 21 (1) (a) and (b) of the FACA read together with paragraph 31 of the First Schedule to, and sections 57 (1) and 60 (2) of the of the EOCCA, it was alleged that on the same date and place mentioned in the first count, the first and second appellants were found in unlawful possession of 257 bullets without a valid licence and permit to possess the same.

And finally in the fourth count of Unlawful Entry into a Game Reserve control to section 15 (1) and (2) of the WCA, the allegations were that on the same date and places as mentioned in the first count, the said appellants did unlawfully enter into the Lwafi Game Reserve particularly at Mlembwe area without a Written Authority of the Director of Wildlife.

The records of the trial court reveal that upon issuance and filing of the Consent and Certificate conferring jurisdiction to the subordinate court to try Economic Crimes Case were filed with the trial court, the trial of the abovenamed two appellants took off. They pleaded not guilty to all the four counts which were read over and explained to each of them in Swahili language of which each of them was conversant to. As a result, the case was heard inter partes.

In the end, the trial court found that the prosecution side which had paraded a total number of four witnesses and tendered eight (8) exhibits, managed to prove their case against the appellants in respect of all four counts the two stood charged with. However, the trial court refrained from finding the second appellant guilty of the first count due to want of proof. Hence, it convicted only the first appellant on that count. Consequently, each of them was found guilty and convicted, as charged.

In passing its sentences, the trial court sentenced the first appellant to serve twenty years in prison in respect of the first count, each appellant to serve twenty years imprisonment in respect of the second count and each appellant to serve twenty years imprisonment in respect of the third count. As for the fourth count, each of the abovenamed appellants was sentenced to pay a fine

of Tshs. 200,000/= or to serve a custodial sentence of one year imprisonment by anyone who could default to pay such amount.

At the hearing of the instant appeal, the appellants who were presented by the prison officers in order to hear their appeal, had no legal representation whilst the respondent Republic was represented by Ms. Maula Tweve, learned State Attorney. Being laymen in the legal arena, the two just urged the court to have their grounds of appeal being adopted in order to form part of their submissions in chief. They also implored the court to allow their appeal and set them free.

Without wasting time, Ms. Maula Tweve began her submission in chief by informing the court that as the respondent Republic, they support the appellants' appeal, not on the grounds raised by the said appellant, but only on a single reason that the Consent and Certificate conferring jurisdiction to the subordinate court to try an economic crimes case which were issued and filed with the trial court, do not have the charging provisions of the law.

Stressing on that legal issue, the learned counsel submitted that it is trite law that under the EOCCA the economic crime cases are triable by the High Court, but the same may also be tried by the subordinate court only where the Director of Public Prosecutions or any Officer authorised by him, has issued

the subordinate court with the Consent and Certificate conferring jurisdiction to the subordinate court to try economic case.

She added that such legal documents must specifically contain the charging provisions of the law, as it was emphasized by the Court of Appeal in the case of **Dilipkumar Maganbhai Patel vs Republic**, Criminal Appeal No. 270 of 2019 CAT, DSM (unreported).

In applying the above principle of law to the case at hand, Ms. Maula Tweve argued that having gone through the Consent and Certificate Conferring Jurisdiction to a Subordinate Court to try Economic Crimes Case which were filed with the trial court, she observed that the same do not contain the charging provisions of the law which appear in the charge sheet containing economic offences.

It was also the submission of the learned counsel for the respondent Republic that although in the case of **Dilipkumar Maganbhai Patel** (supra), the Apex Court ordered a retrial of the appellant's case due to absence of the charging provisions of the law in the consent and certificate which confer jurisdiction to the subordinate court to try an economic crimes case, she refrained from praying to the court to order a retrial of the appellants' case despite the fact that the consent and certificate conferring jurisdiction to the subordinate court to try an economic crimes case which were filed with the trial court, are

tainted with the same irregularity as the one observed by the Court in the case of **Dilipkumar Maganbhai Patel** (supra).

Her reason was that the due to the circumstances of the case at hand, retrial order cannot be ordered because it is the issue of law. Having said so in her submission in chief, Ms. Maula Tweve reiterated her previous position of supporting the appeal and concluded by praying that the convictions entered against the appellants be quashed, the sentences passed thereto be set aside and the appellants be set free.

As indicated above, the appellants were aggrieved by both convictions and sentences, then decided to appeal against the decision of the trial court which led to their incarcerations. Their memorandum of appeal, as I have said earlier, contain six (6) grounds of appeal. I am aware of the legal requirement that the appellate court must consider and address each ground of appeal as raised by the appellant; See **Simon Edson @Makundi vs The Republic**, Criminal Appeal No. 5 of 2017 (unreported).

However, due to the circumstances of the case at hand and the reasons to be assigned shortly through this judgment, I will refrain from dealing with those grounds of appeal, substance of the evidence adduced by both parties before the trial court and the merits or otherwise of the present appeal. My concern,

however, will be on whether the trial court was properly clothed with jurisdiction to try the economic case against the appellants.

In supporting the present appeal, the counsel for the respondent Republic has taken a different approach by raising the issue of jurisdiction to show that the trial court had no jurisdiction to try the economic crimes the appellants stood charged before it.

It is her argument that since the consent and certificate conferring jurisdiction to the subordinate court to try economic crimes case, did not have a charging provision of the law, then the said court did not have jurisdiction to try the appellants' case.

First of all, I wish to say that the issue of jurisdiction is a very important aspect because it is through jurisdiction that the court of law is getting the power to inquire into and determine a particular legal issue tabled before it without which that court cannot be said to have been clothed with jurisdiction to determine a particular case before it. Secondly, it is important to bear in mind that the issue of jurisdiction can be raised at stage of the case, including the appellate stage; See **Sospeter Kahindi vs Mbeshi Mashini**, Civil Appeal No. 56 of 2017 (unreported).

Reverting back to the present case, it appears to me that the counsel for the respondent Republic was quite right to raise the issue of jurisdiction at this

appellate stage. Basically, the economic offences are triable by Corruption and Economic Crimes Division of the High Court, as per section 3 (3) of the EOCCA.

However, such offences may be tried by the court subordinate to the High Court upon been issued by the DPP or any Officer duly authorised by him with the consent and certificate conferring it with jurisdiction to try the cases involving economic crimes. The consent is normally issued by virtue of section 26 (1) of the EOCCA which bars the commencement of the trial of an economic crimes case unless the DPP or any officer authorised by him has issued a consent for trial of a case involving an economic offence to commence.

Likewise, the jurisdiction of the court to hear and determine the economic crime case, is vested upon the High Court or the subordinate court entrusted to try an economic crimes case where the DPP or any officer authorized by him, has issued a certificate conferring the subordinate jurisdiction to try an economic crime case. This legal requirement is provided under section 12 (3) of the EOCCA which provides that:

> *"(3) The Director of Public Prosecutions or any State Attorney duly authorised 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."

From the above provisions of the law, it crystal clear that an economic crime case cannot be tried by either the High Court or a subordinate court without either of the two being issued with the consent and certificate conferring them with jurisdiction to try a case involving economic offences.

The concern of the present appeal is about a trial of an economic crime case conducted by the trial court upon being issued with the Consent and Certificate conferring it with jurisdiction to try economic crimes case, by the Regional Prosecutions Officers for Rukwa Region. According to the counsel for the respondent Republic, those two legal documents are defective because of lacking the charging provisions.

I had enough time to go through her submission regarding that point and I came to realize that although she did not mention such particular provision of the law, the said counsel was right in her proposition. I am certain on that because in my careful perusal on the charge sheet that was tabled before the trial court and the abovementioned two documents (consent and certificate), it is apparent that the charging provision which is section 86 (1) and (2) (c) (ii) of the Wildlife Conservation Act No. 05 of 2009 (the WCA) read together with Paragraph 14 of the First Schedule to and sections 57 (1) and 60 (2) of

the EOCCA, is not reflected in the certificate allegedly conferring jurisdiction to the trial court to try an economic crimes case, leave alone the consent which also has the same defect.

In order to justify the above court's observation, I propose to reproduce the said document as hereunder:

"IN THE DISTRICT COURT OF NKASI DISTRICT

AT NAMANYERE

ECONOMIC CRIMINAL CASE NO. 03 OF 2022

REPUBLIC

VERSUS

1. SEZALI S/O EMMANUEL @SELISI

2. WILBROAD S/O JEREMANIKO @MTANDA

ECONOMIC AND ORGANIZED CRIMES CONTROL ACT

[CAP 200 R.E. 2019]

UNDER SECTION 12 (3)

CERTIFICATE (SIC) CONFERING JURISDICTION TO A SUBORDINATE COURT TO TRY ECONOMIC CRIMES CASE

I **PASCHAL JULIUS MARUNGU**, Regional prosecutions officer for Rukwa Region, **DO HEREBY**, in (sic) term of section 12 (3) of the Economic and organized crime control Act [CAP 200 R.E 2019] and Government Notice 496H, **ORDER** that **SEZALI S/O EMMANUEL @SELISI** and **WILBROAD S/O JEREMANIKO @MTANDA** who are charged for contravening paragraph 14 and 31 of the First Schedule read together with section 57 (1) and 60 (2) of Economic and Organized Crime Control Act [CAP 200 R.E 2019 **BE TRIED** by District Court of Nkasi District at Namanyere.

DATED at SUMBAWANGA this 04th day of July, 2022

Sgd

REGIONAL PROSECUTIONS OFFICER"

Despite the fact that the said certificate seems to have been prepared under the relevant provision of the law which is section 12 (3) of the EOCCA, the same depicts clearly that the charging provision which as I have pointed above, is section 86 (1) and (2) (c) (ii) of the Wildlife Conservation Act No. 05 of 2009 (the WCA) read together with Paragraph 14 of the First Schedule to and sections 57 (1) and 60 (2) of the EOCCA, is not indicated in that important legal document which, as per its wording, is used to confer the subordinate court with jurisdiction to try an economic crimes case.

Since the above cited charging provision of the law was correctly cited in the charge sheet, it was incumbent upon the drafter of both the certificate conferring the trial court with jurisdiction to try an economic crimes case and the consent, to insert such provision of the law and not to cite paragraph 14 and 31 of the First Schedule to, read together with sections 57 (1) and 60 (2) of the EOCCA in isolation of the former provision of the law which in my considered opinion, was fatal and make the said documents (certificate and consent) incurably defective.

In the case of **Dilipkumar Maganbai Patel** (supra) the Court of Appeal stated that:

> *"This Court in its various decisions had emphasized the importance of compliance with the provisions of section 12 (3) and 26 (1) of the EOCCA and held that the certificate and consent of the DPP must be given before the commencement of a trial involving an economic offence before subordinate courts"*

In my view, once a court of records has delivered an instructive decision as the Court of Appeal did in the above cited case, those concerned must abide to such instructions in order to ensure that the defects and/or irregularities pointed out by the court of records, are not repeated. This is because such decision is binding upon the courts subordinate to that court.

It is still surprising to find the repetition of the same errors in the preparation of the consent and certificate conferring the subordinate court with jurisdiction to try economic crimes cases. This appears to be the problem in many places. I would therefore, remind and urge the State Attorneys In charge/ the Regional Prosecutions Officers, the Resident Magistrates In charges and District Resident Magistrates In charges in their respective areas, to ensure that those documents are well prepared and checked before they are admitted to form part of the court proceedings.

It is my hope that if that is done properly, there will be no cases which are ordered to be retried due to irregularities as indicated above, and mostly important, the parties to the cases will not encounter inconvenience of having their cases being retried by the courts entrusted to try them.

In the present appeal, since it has been observed that the consent and certificate conferring jurisdiction to the subordinate court to try economic crimes case do not have the charging provision, it is my finding that the said consent and certificate were incurably defective and the trial court tried the appellants without being clothed with jurisdiction to do so.

Having found so, I am therefore constrained to nullify all the proceedings conducted by the trial court, quash the convictions entered against the appellant and set aside the sentences passed thereto. As for the way forward,

the counsel for the respondent Republic has proposed that due to the circumstances of the case at hand, this is not a fit case to order a retrial because that is the issue of law.

However, I have failed to be convinced by her point because from what I know, it is not enough to just say the circumstances of the case do not suggest the need for the court to order a retrial of the appellant's case. Likewise, it is not enough to say retrial is the issue of law. Being an officer of the court, the learned counsel ought to have gone far by giving reasons for her proposition in order to assist the court to arrive at a just decision.

On my part, I have considered such proposal by the respondent counsel, but I am sorry to say I cannot not accept it. This is because before deciding whether or not to order a retrial, the court has to consider if there is enough prosecution evidence which will warrant conviction should the matter be retried.

A retrial will not be ordered where upon scrutinization of the prosecution evidence on record, the appellate court has observed that the same is weak and that ordering a retrial will prejudice the appellant for the adverse side will use such opportunity to fill in some gaps. It will also be ordered where upon going through the proceedings of the lower court, the appellate court has

detected that there are illegalities and defects in the trial of the appellant's case.

The above position of the law was established by the Court of Appeal for East Africa in the case of **Fatehali Manji v. The Republic** (1966) E.A. 343 where it was held that:

> *"In general, a retrial will be ordered only when the original trial was illegal or defective; it will not be ordered where the conviction is set aside because of insufficiency of evidence or for the purposes of enabling the prosecution to fill gaps in its evidence at the first trial...each case must depend on its own facts and circumstances and an order for retrial should only be made where the interests of justice require it."*

Following such decision, courts of law in our jurisdiction have been applying the principle contained therein; see for example the cases of **William Pius v Republic**, Criminal Appeal No. 30 of 2021 HCT, **Wilbert Lugasio @Seleman v Republic**, DC Criminal Appeal No. 01 of 2023 HCT (both unreported) **Adam Seleman Njalamoto v Republic**, Criminal Appeal No. 196 of 2016 and **Godfrey Ambros Ngowi v Republic**, Criminal Appeal No. 420 of 2016 (unreported).

This means, the appellate courts in our legal system are also bound to follow that principle before deciding whether or not to order a retrial of the

appellant's case. Having cited the above authorities and gone through the prosecution evidence as per the trial court typed proceedings, it is my settled view that this is a fit case to order a retrial in order to meet the ends of justice.

This is because, it is only the certificate and consent which have been found to be defective, but the evidence of the prosecution Republic does not appear to be weak to the extent of giving the prosecution an opportunity to fill in gaps.

It follows, therefore, that owing to the reasons given above, I hereby order for the retrial of the appellants' case before another magistrate with competent jurisdiction subject to the condition that the trial court be issued with proper consent and certificate conferring it with jurisdiction to try an economic crimes case.

Also, I direct the trial court to expediate the trial of the appellants and consider the time the said appellants have spent in prison custody in the course of assessing the proper sentence (s) to be imposed upon the appellants should it find them guilty of the charged offences and convict them accordingly. Meanwhile, the appellants shall remain in prison remand to wait for retrial of their case.

Ordered accordingly.

A. A. MRISHA
JUDGE
22.01.2024

DATED at **SUMBWANGA** this 22th day of January, 2024

A. A. MRISHA
JUDGE
22.01.2024