

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(IN THE SUB REGISTRY OF KIGOMA)**

**AT KIGOMA**

**ECONOMIC APPEAL NO. 2 OF 2023**

(Arising from Economic Case No. 10 of 2020 in the District Court of Kibondo)

**KATOTO PETRO.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

Date of Last order: 28.08. 2023

Date of judgement: 22 .09. 2023

**JUDGEMENT**

**MAGOIGA, J.**

The appellant, **KATOTO PETRO** was on 22<sup>nd</sup> day of February, 2022 arraigned in the District Court of Kibondo charged with the following counts of offences to wit; **First Count**, unlawful entry in Game Reserve contrary to section 15(1) (2) of the Wildlife Conservation Act No.5 of 2009. **Second Count**, unlawful possession of weapons in a Game Reserve contrary to section 103 of the Wildlife Conservation Act No. 5 of 2009 and **Third Count**, unlawful possession of Government Trophies contrary to section 86 (1) and (2) part (c) (ii) of the Wildlife Conservation Act No. 5 of 2009 as amended by section 39 of written laws (Miscellaneous Amendments No. 2) Act of 2016 read together with paragraph 14(d) of the First Schedule to, and Sections 57(1) and 60(2) of the Economic and Organised Crimes Control Act [Cap 200 R.E 2019]



The particulars of the offence as per charge sheet were that, on 23<sup>rd</sup> day of October, 2020 at Nyankabafinyi area at Moyowosi Game Reserve within Kakonko District in Kigoma region, the appellant was found by Wildlife warden namely HappyGod Maleo and others in the Game Reserve without a valid permit from the Director of wildlife previously sought and obtained. While therein, the accused was also found in possession of one bush knife (panga) and one spear raising a doubt to be used to kill or wound the wildlife animals and lastly found with unlawful possession of Government Trophies to wit; two(2) piece of Buffalo meat, three(3) limbs of buffalo, four(4) pieces of skin Buffalo, one(1) tail of Buffalo and piece of Buffalo ear valued at USD.2500 equivalent to Tshs. 5,800,000/=the property of the United Republic of Tanzania without a permit from the Director of Wildlife.

When the charge was read over and explained to the accused, the accused entered the plea of not guilty to counts Nos. 1 and 3 while pleaded guilty to count No. 2. Basing on the accused's plea of guilty in the 2<sup>nd</sup> count, the court proceeded to convict him and sentenced him to serve 20 years imprisonment.

Aggrieved by conviction and sentence, the appellant preferred this appeal to this Court faulting the trial Resident Magistrate on the following grounds, namely: -

- 1. That, the trial resident magistrate erred in law and fact on convicting the appellant relying on equivocal plea of guilty which resulted from a mistake or misapprehension.*
- 2. That the trial resident magistrate erred in law and facts in failure to take into consideration the facts the appellant plea was imperfect, ambiguous and unfinished.*
- 3. That, the entire proceeding was marred by the procedural irregularities fatal. Hence, there is miscarriage of justice.*

On the strength of the above grounds of appeal, the appellant prayed that this Court be pleased to allow the appeal, quash the conviction, set aside the sentence and set him free.

When this appeal was called on through video conference for hearing, the appellant was present and unrepresented, while the Republic was represented by Mr. Samwel Vitalis and Fortunatus Maricha learned State Attorneys.

When the appellant was called on to argue his appeal, he preferred to hear the State Attorney first and will reply thereafter.

Mr. Vitalis when rose to argue the appeal and upon probed by the court on the certificate and consent of the DPP which were lodged before the trial court, the learned Attorney readily conceded that, the certificate and consent intended to give the court jurisdiction to try the case before subordinate court were defective for failure to cite all sections subject of



the charge sheet. Mr. Vitalis went on telling the court that, the fact that certificate and consent did not include all offences which the appellant was charged, then, the trial court did not have proper jurisdiction to the case.

According to the learned State Attorney, the decision of the trial court was reached without jurisdiction and cannot stand because was done without jurisdiction.

Mr. Vitalis finally urged this court to allow the appeal and order the case to be retried denovo with a proper consent and certificate.

Responding to the above submissions, the appellant told the court that his prayer is to be free because he had a permit to enter the Game Reserve as a bee keeper.

This marked the end of hearing of this appeal. The task of this court now is to determine the merits or otherwise of this appeal in the legal issue raised by the Court suo motto and conceded by the learned State Attorney.

Having heard the submissions by the parties and having myself gone through the trial record proceedings without much ado, I entirely agree with the learned Attorney that, the fact that the certificate and consent did not include all offences which the appellant was charged, then, the trial court did not have proper jurisdiction to the case.



I have also taken trouble to revisit the trial court records, I have found that, though the charge sheet and the certificate conferring jurisdiction on a subordinate court to try an economic offence and non-economic offence contain the provisions to which the appellant is charged with, still the the consent of the State Attorney In charge did not cite the provisions of law creating the respective economic offences.

It is a trite law that the legal consequence of the omission to cite the provision of the law in the consent is to vitiate the trial proceedings as the trial court acted without jurisdiction.

Now back to the issue, it goes without saying that, from the above section of Wildlife Conservation Act, no doubt, the consent of the Regional Prosecution In-charge was supposed to contain the said provisions which at the end, the appellant suffered its consequences.

The above stance was insisted by the Court of Appeal in **Peter Kongori Maliwa & 4 others vs Republic, (Supra)** the Court of Appeal citing in approval with the case of Dilipkumar Maganbai Patel v. Republic, Criminal Appeal No. 270 of 2019 (unreported) where it was held inter alia that;

*We have no doubt that in view of our deliberation above the consent and certificate conferring jurisdiction on the trial court were defective, though they were made under the appropriate provisions;*



*section 12(3) and 26(1) of the EOCCA but referred to the provisions which the appellant was not charged with. The consent and certificate did not refer to section 86(1), (2) (ii) and (3) of the WCA which was clearly cited in the charge sheet. The certificate and consent were therefore incurably defective and the trial magistrate could not cure the anomaly in judgment as suggested by the learned State Attorney for the respondent. The defects rendered the consent of the DPP and the certificate transferring the economic offence to be tried by the trial court invalid. For that reason, we are constrained to find that the trial and proceedings before the Resident Magistrate Court of Dar es Salaam at Kisumu in Economic Case No. 58 of 2016 and the High Court in Criminal Appeal No. 146 of 2018 were nothing but a nullity”*

Guided by the case law above, I am bound to find that failure to cite the provisions of the law in the consent vitiates the trial proceedings and renders the whole proceedings and judgement of the trial court a nullity.

Consequently, therefore, in this appeal, I exercise my powers under the provision of section 43(1) of the Magistrates Courts Act, [Cap 11 R.E.2019] and I nullify the proceedings of the trial court, quash the conviction and set aside the sentence thereof.



On the way forward, the learned State Attorney prayed the court to order a retrial. On the other hand, the appellant prayed to be acquitted and set free.

To my considered opinion, this a fit case to order retrial because, though not argued on merits, there are some irregularities as raised in the grounds of appeal such as equivocal of plea of guilty which if retrial is ordered parties will be able to address it.

That said and done, I allow this appeal, and consequently I set aside conviction and sentence meted out against the appellant and order the retrial de novo before another magistrate with competent powers to try this case with immediate effect after being conferred with powers to do so.

It is so ordered and directed.

Dated at Kigoma this 22<sup>nd</sup> day of September, 2023



A handwritten signature in blue ink, consisting of a series of vertical lines followed by a horizontal stroke and a small flourish at the end.

**S.M. MAGOIGA**

**JUDGE**

**22/09/2023**