

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

**SUMBAWAGA DISTRICT REGISTRY**

**AT SUMBAWANGA**

**CRIMINAL APPEAL NO. 25 OF 2023**

**(Appeal from the decision of the District Court of Mlele at Mlele in  
Economic case no 11 of 2021)**

**KAYANGE KINENEKE @ MASESA.....APPELLANT**

**VERSUS**

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

**JUDGMENT**

**MRUMA, J;**

Before the District Court of Mlele at Mlele the Appellant Kayange Kineneke @ Masesa was charged with the offence of Unlawful possession of Government Trophy contrary to section 86 (1) and (2) (c) (ii) of the wildlife conservation act no. 5 of 2009 s amended by Section 59 (a) and (b) of the Written Laws (Miscellaneous Amendment No. 2) Act No. 4 of 2016 read together with paragraph 14 of the first schedule to and section 57 (1) and (2) of the Economic and Organised Crime Control Act [Cap 200 RE 2019]

According to the particulars constituting the charge sheet it was alleged that on 26<sup>th</sup> day of June 2021 at Luchima Village within Mlele District in Katavi Region, the Appellant was found in possession of 05 kilograms of Giraffe Meat valued at USD 15,000 which is equivalent to Tanzanian Shillings 34,650,000/=only, the property of Government of Tanzanian without a written permit from the Director of Wildlife. The Appellant

pleaded not guilty to the charge. In its bid to prove its case the prosecution paraded a total of six (6) witnesses and tendered several exhibits which included a Certificate of Seizure (Exhibit P.1), Chain of Custody Form (exhibit P2), and an Inventory Form (Exhibit P.3).

Upon full trial the court found that the prosecution had proved its case beyond reasonable doubt and went on to convict the accused and sentenced him to serve 20 years imprisonment.

Aggrieved with the conviction and sentence passed the Appellant have appealed to this court with three grounds of appeal namely;

1. That, the trial Court erred at law to convict the appellant with the offence of unlawful possession of Government trophies which was not proved beyond reasonable doubt.
2. That the trial court erred at law by admitting the caution statement which was procured by torture and deception contrary to law and its contents were not read for the appellant before signing the same.
3. That the trial court erred in fact to convict the appellant by depending on the evidence of prosecution witnesses which is unclear on how the said trophies came to the hand of the appellant.

When the appeal was called for hearing, the Appellant appeared in person and was unrepresented while the Respondent /Republic was represented by Mr. Mwigune, learned State Attorney.

As expected the Appellant had nothing material to submit to this court. He simply asked the court to allow his appeal based on his grounds of appeal reiterating that he didn't commit the charged offence. The Respondent/Republic supported the appeal on the ground that the trial court lacked jurisdiction to entertain the matter because the consent and certificate which conferred jurisdiction to the trial court lacked the enabling section of the law. To nourish his stance the learned State Attorney cited the case of **Hashim Nasoro @Almas vs. DPP**, Criminal Appeal no. 312 of 2019 (CAT) Sumbawanga, where it was held that a certificate and consent of DPP without reference to the relevant provision of the law creating economic offence are incurably defective and renders the trial court's proceedings a nullity. Mr Mwigune submitted that in the circumstances the case the best remedy is retrial order because the evidence on record prosecution proved the case.

Having perused the record of appeal and considered the submissions made by the learned State Attorney, I agree with him that the trial court had no jurisdiction to try and determine this case in absence of a properly

drafted Certificate and Consent from the Director of Public Prosecutions conferring jurisdiction to it.

As indicated earlier, the Appellant was charged with unlawful possession of government trophy contrary to section 86 (1) (2) (c) (ii) and of the Wildlife Conservation Act read together with paragraph 14 of the First Schedule to, and section 57 (1) of the Economic Organized Crime Control Act. Admittedly, Section 3 (3) of the Economic Organized Crimes Act confers jurisdiction upon the Corruption and Economic Crimes Division of the High Court to hear and determine cases involving economic offences which are specified under paragraph 14 of the First Schedule to the said Act. However, courts subordinate to the High Court have jurisdiction over economic offences where the DPP transfers, by a certificate, any such offence to be tried by the court in terms of section 12 (3) of the Economic Organized Crime Act which stipulates 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 he may specify in the certificate"*

On the other hand, section 26 (1) of the Economic Organized Crimes Control Act 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 charge against the appellant being an economic offence as prescribed under section 57 of the Economic Organized Crimes Control Act, was to be determined by the High Court, Corruption and Economic Crime Division. However, the DPP conferred jurisdiction on the subordinate court under section 12 (3) of the Economic Organized Crimes Control Act to try it and gave his consent. In this regard, the certificate issued by the DPP reads as follows:

***"CERTIFICATE CONFERRING JURISDICTION TO  
SUBORDINATE COURT TO TRY AN ECONOMIC CRIME  
CASE***

*I, **ABEL M. SANGA**, Regional Prosecutions Officer of Katavi Region, **DO HEREBY** in terms of section 12(3) of the Economic and Organized Crime Control Act [Cap 200 RE 2019] read together with Part III of the Schedule to Government Notice No. 296H of 2021 ORDER that **KAYANGE S/O KINENEKE @***

**MASESA** who is charged for contravening the provision of paragraph 14 of the First Schedule to, and Section 57(1) and 60 (2) of the Economic and Organised Crime Control Act, [Cap 200 RE 2019] **BE TRIED** by the DISTRICT COURT OF MLELE at MLELE.

*Dated at Mpanda this 22<sup>nd</sup> day of December 2021*

*SIGNED*

*Abel M. Sanga*

**REGIONAL PROSECUTION OFFICER**

The said certificate was prepared under the relevant provision of the law to wit section 12 (3) of the Economic Organised Crime Control Act. It is that document which is used to confer jurisdiction to subordinate court to try an economic offence case the charging provision as per the charge sheet is not reflected in it. Since the charging provision was correctly cited in the charge sheet it was incumbent upon the drafter of the certificate and consent to insert such provision of the law in the Certificate and failure to do so is fatal and make the said documents incurably defective as it was stated in the case of **Hashim Nassoro Almas** (supra).

In the circumstances it cannot be safely concluded that the trial court was properly vested with the requisite jurisdiction by the DPP as required by sections 26 (1) and 12 (3) of the Economic Organized Crimes Control Act to try the case since such jurisdiction cannot be simply assumed or presumed but vested by the law.

Since the certificate conferring jurisdiction and the consent of the DPP do not have a charging provision it is my finding that the said certificate was incurably defective and the trial court tried the appellant without being clothed with jurisdiction to do so. Having found so, I am therefore inclined to nullify the proceedings of the trial court, quash the conviction entered against the appellant and set aside the sentence meted against him.


On what should be the way forward after nullification of the judgment and proceedings of the trial court, the learned State Attorney urged this court to order a retrial. In the case of **Fatehali Manji vs. The Republic** (1966) E.A 343 where it was held that:

*"In general, a retrial will be ordered 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 purposes of enabling the prosecution to fill the 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 interest of justice require."*

I have carefully considered the records of this case at the trial and I find that this is a fit case to order retrial which I hereby order before another magistrate. While awaiting his retrial, the Appellant should be granted police bail. I therefore direct that the Appellant should be released from prison and handed over to the Police at Mpanda Central Police Station for bail consideration and other legal procedures regarding his appearance in court when so required.

It is so ordered.

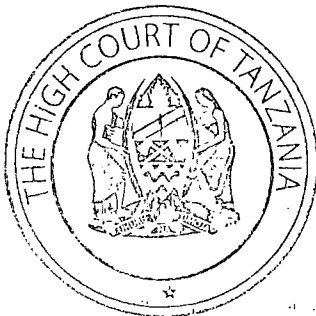
  
A.R. MRUMA

**JUDGE**

**29. 2. 2024.**

**Delivered online from the High court of Tanzania at**

**Morogoro District Registry this 29<sup>th</sup> Day of February 2024.**



  
A. R. MRUMA

**JUDGE,**

**29. 2. 2024.**