

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
SUMBAWANGA SUB-REGISTRY  
AT SUMBAWANGA**

**MISC. CRIMINAL APPEAL NO. 18 OF 2023**

*(Originating from the District Court of Mpanda at Mpanda, Katavi Region, in  
Criminal Case No. 14 of 2020)*

**BETWEEN**

**NZEYIMANA s/o FARES @ FIDELIS .....APPELLANT**

**VERSUS**

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

Last order: March 12, 2024

Ruling : March 18, 2024

**RULING**

**NANGELA, J.:**

The appellant herein was found guilty of illegally possessing government trophies in violation of Sections 57(1) and 60(2) of the Economic and Organized Crimes Control Act, Cap. 200 R.E. 2019, as well as Sections 86(1) and (2) (b) of the Wildlife Conservation Act, No. 5 of 2009, read in conjunction with paragraph 14 of the first schedule. He received a 20-year prison sentence after being found guilty.

Following his conviction, he filed an appeal with this court, claiming he was wrongfully convicted and sentenced, and he wants to be freed as well as have his conviction and sentence overturned. He raised four grounds regarding why

this court should allow his appeal and set him free. The grounds, which I have slightly rephrased for clarity purposes, are as follows:

1. When the trial court admitted the seizure certificates and the items that were taken without issuing a receipt acknowledging the seizure, it committed a legal error.
2. When the trial court admitted the prosecution's evidence and the extrajudicial statement—obtained through coercion and torture—it committed a legal and factual error.
3. When the trial court rendered its decision without considering the evidence presented by the appellant—as if the appellant had provided no evidence at all—it committed a legal and factual error.
4. That, the appellant's conviction for the offense without proof beyond a reasonable doubt was a legal and factual error made by the trial court.

The appeal was scheduled for a hearing on March 12, 2024. On the crucial date of the parties' court appearance, the appellant was not represented by legal counsel.

Conversely, the State Attorney, Ms. Neema Nyagawa, provided the respondent with legal services. In his submission, the appellant pleaded with the court to accept and take into consideration his four grounds of appeal in their current form and to grant his appeal without delay in order to free him from prison.

He told the court that even though the alleged consignment of government trophies was not found with him, he was severely beaten and rendered unconscious during his arrest, and that he subsequently learned that the alleged consignment of trophies had been found in his home. He also informed the court that he was hospitalized because of a broken leg resulting from the beatings he sustained. He urged this court to allow his appeal.

In her submission on the respondent's behalf, Ms. Nyagawa told the court that, while she was not opposing the appeal on the grounds given by the appellant, she was doing so for other technical reasons, specifically the jurisdiction of the court that heard the case.

Ms. Nyagawa argued that the High Court has the sole jurisdiction to hear and make a decision in cases that are

similar to the ones the appellant was involved in under Economic and Organized Crimes, Cap. 200 R.E. 2022, specifically Sections 3(1) and (3)(a) and b). She argued that under Section 12(3) of the same Act, lower courts are only permitted to hear and decide cases of that kind after receiving a jurisdiction-granting certificate from the DPP, which must be presented in conjunction with the prosecution's certificate in accordance with Section 26 of the same Act.

Moreover, the charge sheet and the two certificates, according to Ms. Nyagawa, must demonstrate the legal provisions that are purportedly violated. Taking into account these prerequisites and examining the appeal record, she argued that the two certificates were flawed because they lacked the clauses necessary to constitute an offense and that this flaw was incurable.

Ms. Nyagawa cited the case of **DilipKumar Maganbai Patel vs. Republic**, Crim. Appeal No. 270 of 2019 (CAT), (unreported), to support her submission. In that case, the Court of Appeal was of the view that the failure to

show the provisions that create the offence renders the certificates defective and the whole proceedings a nullity.

Ms. Nyagawa further asserted that despite the prosecutor's request to file the two certificates, they were never received and were never presented as exhibits during the trial court's proceedings. She contended that, since there is no record showing that the court received such essential documents, the court was not seized with jurisdiction. She also relied on the case of **Hashim Nassoro @ Almas vs. The DPP**, Crim. Appeal No. 312 of 2019, to support her stance.

At the end, she urged this court to order a retrial on the ground that there was sufficient evidence. In response to a question from this court regarding the alleged torture and how it affected the case as a whole, Ms. Nyagawa argued that because this is the first appellate court, it has the authority to evaluate the evidence and provide the parties with justice.

I have read the record of appeal and analysed the arguments put forth by both parties. I do agree with Ms.

Nyagawa that there are incurable defects that affect the whole proceedings. In the case of **Hashim Nassor** (supra), the Court of Appeal had the following to say:

"It is a settled law that a certificate and consent of the DPP or State Attorney without reference to the relevant provisions of the law creating economic offences are incurably defective and render the trial court's proceedings a nullity."

In that same decision, the Court of Appeal observed that it had observed multiple instances in which the trial court had previously failed to formally admit the certificate and consent as exhibits. Even in this appeal before me, a similar scenario took place. In view of that, given that no consent or certificate to confer jurisdiction had been granted in those circumstances, the trial court lacked jurisdiction to try the appellant and the trial court's proceedings were nullity.

To bolster such a position, the case of **Aloyce Joseph vs. Republic**, Criminal Appeal No. 35 of 2020 [2022] TZCA 771 (5 December 2022 TANZLII), should be cited. In the earlier cited case of **Hashim Nassoro** (supra), the Court of



Appeal considered whether there was a need to order a retrial. It did not order a retrial and ordered that the appellant be released immediately, as it did not see the need for it.

The State Attorney, who is representing the respondent in this appeal, has asked me to order a new trial because the record shows that there is enough evidence. However, I do not think that this is an appropriate case to order a retrial. I hold that opinion because the record demonstrates that the appellant claimed, both in trial court and in this court, that he had been subjected to severe torture that left him unconscious and with a broken leg when he was arrested.

Despite accepting a PF-3 that the appellant had submitted to the court as proof of the suffering he had endured during his arrest, the trial magistrate did not appear to focus his attention on that issue either, based on what I can see in the appeal record. In those circumstances, I do not think that it would be just to order a retrial based on evidence that is tainted.

Taking into consideration what I have said thus far, I will decline the request for an order directing a new trial and, instead, I hereby proceed to declare the trial court's proceedings invalid, overturn the conviction, and set aside the sentence. Consequently, I hereby order an immediate release of the appellant unless he is otherwise held for another lawful cause.

It is so ordered.

**It is so ordered.**



**DATED ON THIS 18<sup>th</sup> DAY OF MARCH 2024**

A handwritten signature in blue ink, which appears to read "Deo Nangela".

.....  
DEO JOHN NANGELA  
**JUDGE**