

IN THE COURT OF APPEAL OF TANZANIA
AT DODOMA

(CORAM: KISANGA, Ag. C.J., RAMATHANI, J.A., And MFALILA, J.A.)

CRIMINAL APPEAL NO. 59 OF 1994

BETWEEN

PAULO MATHEO APPELLANT

AND

THE REPUBLIC RESPONDENT

(Appeal from the conviction of the
High Court of Tanzania at Dodoma)

(Maina, J.)

dated the 19th day of February, 1993

in

Criminal Appeal No. 103 of 1992

JUDGMENT OF THE COURT

MFALILA, J.A.:

The appellant Paulo Matheo was the first accused at the trial in the District Court at Dodoma where with six other persons he was charged with two counts involving robbery and unlawful possession of firearm. Five accused were acquitted in both counts, the appellant and the fourth accused were also acquitted on the first count but were convicted on the second count i.e. unlawful possession of firearm, and were sentenced to 15 years imprisonment. On appeal to the High Court at Dodoma, the appeal of the fourth accused was allowed and he was set free, the present appellant's appeal was only partially successful in that the sentence was reduced to 7 years imprisonment, his conviction was confirmed. This is his further appeal.

However in view of what transpired at the trial, it is not necessary for us to go into the merits of the case. The trial in this case started as an ordinary trial in March 1990, but

through the trial in October 1991 after nine prosecution witnesses had given evidence, the character of the offences was changed to economic crimes and the Director of Public Prosecutions filed both the transfer of the offences and his consent as required by section 26 (1) of the Economic and Organised Crime Control Act, 1984.

However both the consent and the transfer which are in the record of trial appear to refer to a different case involving different accused persons although the offence is the same. This means that the trial of the appellant and his colleagues in the District Court started without the consent of the Director of Public Prosecutions in clear violation of section 26 (1) which provides as follows:

"26 - (1) 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."

So that even if the consent filed in record was in respect of this case, it would still be invalid because such consent must be given before any trial involving an economic offence can commence. The trial cannot start and obtain the consent posthumously as it were, in other words the Director of Public Prosecutions cannot consent retrospectively. In the circumstances the learned judge on first appeal was wrong to validate the proceedings in the trial court in the following words:

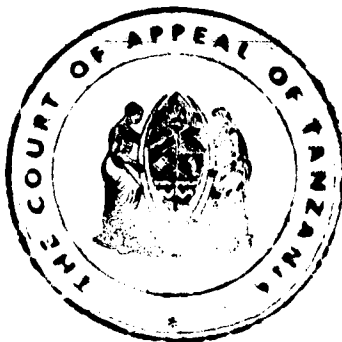
"The required consent by the Director of Public Prosecutions was given as required by law and the transfer of the offence which is an economic offence was also made."

However as indicated there was no consent relevant to this case given in accordance with the law.

Accordingly we declare the entire proceedings in the trial court null and void and quash them.

The fate of the appellant in these circumstances has exercised our minds. He was sentenced to seven years imprisonment which with remission for good conduct amounts to a substantive term of four years and some eight months. He has been in custody since May 1989 this makes it five years to-date. It was in these circumstances that we did not feel inclined to order a retrial of the appellant. But taking into account the nature of the offence involved, we decided to leave the fate of the appellant into the hands of the Director of Public Prosecutions who will decide whether to mount a fresh prosecution against the appellant in accordance with the law. In the meantime, we order the immediate release of the appellant from prison unless he is lawfully held in connection with some other matter.

DATED AT DODOMA THIS 8TH DAY OF MAY, 1995.

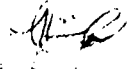


R. H. KISANGA
AG. CHIEF JUSTICE

A.S.L. RAMADHANI
JUSTICE OF APPEAL

L. M. MPALILA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.


(M. S. SIANGALI)
DEPUTY REGISTRAR