

**IN THE COURT OF APPEAL OF TANZANIA
AT TABORA**

(CORAM: MSOFFE, J.A., KIMARO, J.A., And MANDIA, J.A.)

CRIMINAL APPEAL NO 88 & 89 OF 2008

1. HUSSEIN SALEHE }
2. CHARLES MAHONA } **APPELLANTS**
VERSUS
THE REPUBLIC **RESPONDENT**

(Appeal from the Judgment of the Court
of Resident Magistrate, E/J at Tabora)

(Mbuya, PRM, E/J)

dated 13th March, 2006

in

Criminal Appeal No 22 & 23 of 2006

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JUDGMENT OF THE COURT

21 & 23 June, 2011

KIMARO, J.A.:

This is a second appeal emanating from the Court of Resident Magistrate, at Tabora, extended jurisdiction, in which Mbuya, PRM/EJ sustained the conviction and the sentence that was imposed on the appellants. The appellants were charged and convicted by the District Court of Nzega with two offences contrary to sections 4(1) and 34 and 4(1) (a) and 34 of Arms and Ammunition Act, for being in possession of one muzzle gun and one round of ammunition respectively. Each appellant

was sentenced to a jail term of fifteen years and five years for the respective offences and the sentences were ordered to run concurrently.

When the appeal came up for the hearing, Mr. Juma Masanja, learned State Attorney who represented the respondent Republic informed the Court that he was supporting the appeal because the trial and the appellate court on first appeal, did not have jurisdiction to entertain the proceedings.

Submitting in support of the appeal, the learned State Attorney said that section 57(1) of the Economic and Organised Crime Control Act, [CAP 200 R.E.2002] (hereinafter referred to as the Act), read together with paragraph 19 of the First Schedule to the Act, makes an unauthorized possession of arms or ammunition contrary to the provisions of Arms and Ammunition Act, an economic offence. He said section 3 of the Act vests the jurisdiction to hear and determine cases involving economic offences to the High Court sitting as an Economic Crimes Court. In terms of section 26 of the Act, contended Mr. Masanja, the prosecution for an economic offence requires the consent of the Director of Public Prosecutions but the perusal of the record of appeal does not show that this requirement of the law was complied with. Under the circumstances, submitted the learned

State Attorney, the trial of the appellants in the trial court and the subsequent proceedings that followed in the first appellate court were a nullity. He prayed that the appeal be allowed.

The perusal of the record of appeal shows that it is true the appellants were charged and convicted of offences of possession of firearm and ammunition under the Firearms and Ammunition Act. The learned State Attorney, submitted, correctly in our view, that under paragraph 19 of the First Schedule to the Act, read together with section 57(1) of the Act, possession of an unauthorized firearms and ammunitions under the Arms and Ammunition Act is an economic offence.

It is also true that in terms of section 3(1) of the Act, the jurisdiction to hear and determine economic crimes cases is vested in the High Court sitting as an Economic Crimes Court as provided for under section 4 of the Act.

An economic offence under the Act can only be tried by a court subordinate to the High Court, where the Director of Public Prosecutions or a State Attorney duly authorized by the him, issues a certificate under sections 12(3) and 12(5) of the Act, to that court, to confer to it jurisdiction to try the case. Section 12(3) of the Act provides:

“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 any offence triable by the Court under the Act be tried by such court subordinate to the High Court as he may specify in the certificate.”

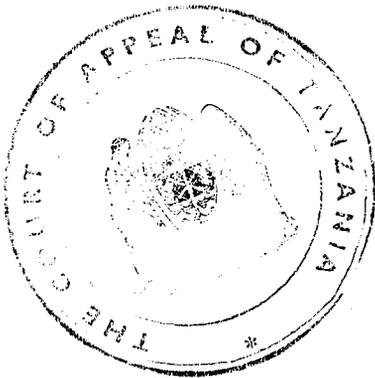
Section 12(5) provides:

“Where a certificate is issued under subsection(3), it shall be lodged in the court concerned, and shall constitute full authority for, and confer jurisdiction upon, the court in which it is lodged to try the case in question.” (Emphasis added).

It is apparent from sections 12(3) and 12(5) of CAP 200 that, for any economic offence to be tried by a court subordinate to the High Court, there must be a certificate issued by the Director of Public Prosecutions or a State Attorney duly authorised by him, to that court, to confer jurisdiction to it to try the case. Short of such a certificate, a court subordinate to the High Court does not have jurisdiction to try economic offences. The record of appeal filed in this appeal does not have such a certificate. This means that the District Court of Nzega which tried the case giving rise to this

appeal had no jurisdiction to try the case. The proceedings therefore, were a nullity. We thus allow the appeal and declare the proceedings in the subordinate courts a nullity and quash them. We order the appellants' release from prison forthwith, unless they are held there for other lawful purpose. It is so ordered. We leave upon the discretion of the Director of Public Prosecutions to decide on a manner he will deem fit to proceed against the appellants.

DATED at **TABORA** this 22nd day of June, 2011.



J.H. MSOFFE
JUSTICE OF APPEAL

N.P. KIMARO
JUSTICE OF APPEAL

W.S. MANDIA
JUSTICE OF APPEAL

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

A handwritten signature in black ink, appearing to read "E.Y. Mkwizu", written over a horizontal line.

E.Y. Mkwizu
DEPUTY REGISTRAR
COURT OF APPEAL