

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

**(CORAM: RUTAKANGWA, J.A., LUANDA, J.A., And JUMA, J.A.)**

**CRIMINAL APPEAL NO. 148 OF 2011**

**ABRAHAM ADAMSON MWAMBENE ..... APPELLANT**

**VERSUS**

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

**(Appeal from the decision of the  
High Court of Tanzania at Mbeya)**

**(Moshi, J.)**

**dated the 19<sup>th</sup> day of November, 1999**

**in**

**Criminal Appeal No. 60 of 1998**

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**JUDGMENT OF THE COURT**

**5<sup>th</sup> & 7<sup>th</sup> June, 2013**

**RUTAKANGWA, J.A.:**

The appellant and two others were jointly charged before the District Court of Sumbawanga District (the trial court) with five counts of armed robbery, one count of being in unlawful possession of a firearm and one count of being in unlawful possession of two rounds of ammunition. The robbery charges were laid under sections 285 and

286 of the Penal Code. The last two counts were based on sections 13(1) and 31 (2) of the Arms and Ammunitions Ordinance, Cap. 223. All the offences were allegedly committed on 27<sup>th</sup> and 28<sup>th</sup> October, 1997.

The appellant and his co-accused first appearance before the trial court was on 31<sup>st</sup> October, 1997. They denied the charges and the trial commenced immediately. The trial was conducted with commendable speed as it was over on 6<sup>th</sup> November, 1997 and judgment was delivered on 12<sup>th</sup> November, 1997. The accused were convicted as charged and sentenced to thirty two (32) years on each count and twelve strokes of the cane. The appellant unsuccessfully appealed to the High Court at Mbeya against the convictions. His appeal against the sentences partly succeeded as the prison sentences were reduced to thirty (30) years imprisonment. Aggrieved by the dismissal of the appeal, he has lodged this appeal.

In his memorandum of appeal, he has listed ten (10) grounds of complaint against his trial and the decisions of the two courts below. The most telling, in our opinion, is ground three, in which he is complaining that his trial was a nullity as he was prosecuted and convicted of economic crimes (in counts six and seven) without the consent of the Director of Public Prosecutions (the D.P.P.). On this, he has had the support of the respondent Republic, which was represented before us by Ms. Catherine Gwaltu, learned State Attorney.

In supporting the appeal, Ms. Gwaltu argued that by October and November, 1997, the offences of unlawful possession of firearms and/or ammunitions were still economic offences under the Economic and Organised Crimes Control Act. As such, she contended, they were triable by the High Court sitting as an Economic Crimes Court and further, that prior consent of the D.P.P. was required before a prosecution for the same was commenced. Further to that, she

submitted, District Courts could try such offences only after the D.P.P. had transferred the cases to these courts. As there was no D.P.P.'s consent and transfer by a certificate under his hand under sections 26 (1) and 12(1) respectively, the prosecution and trial of the appellant and his colleagues were a nullity, she contended. Relying on the decision of the Court in **Rhobi Marwa Mgare and 2 Others v. R.**, Criminal Appeal No. 192 of 2004 (unreported), she urged us to nullify the trial of the appellant and proceed to quash and set aside the proceedings in and the decisions and sentences of, the two courts below. Considering the fact that the appellant has already served over half of the sentence imposed, she was of the opinion that the interests of justice would be best served if no re-trial were ordered.

In the light of the strong submissions of Ms. Gwaltu, we have encountered no difficulties in upholding the appellant's chief grievance. There is no gainsaying that at the time when the appellant and his colleagues were prosecuted and tried for the armed robbery

offences and those of being in unlawful possession of a firearm and ammunitions, all in one charge sheet, the latter two offences had yet to be delisted from the Economic and Organised Crimes Control Act, Cap 200 (the Economic Crimes Act). Under paragraph 19 to the First Schedule of the said Act, they were economic offences, only triable by the High Court sitting as an Economic Crimes Court. Subordinate courts had no jurisdiction to try such offences unless and until the D.P.P. or State Attorney duly authorised by him, had "by certificate under his hand," ordered under s. 12(3) that they be tried by such courts, as correctly submitted by Ms. Gwaltu. Furthermore, an economic crime could not be prosecuted in conjunction with a non-economic crime in a subordinate court without the D.P.P.'s sanction under section 12(4) of the same Act. Worse still, as contended by the appellant and Ms. Gwaltu, "no trial in respect of an economic offence may be commenced under [the] Act save with the consent of the Director of Public Prosecutions": s. 26(1) of the Economic Crimes Act.

In this case, we have regrettably noted, the mandatory requirements of sections 26(1) and 12(3) and (4) of the Economic Crimes Act were flagrantly violated by both the prosecution and the trial court. We are accordingly constrained to agree with the appellant and Ms. Gwaltu that the prosecution and trial of the appellant and his co-accused were a nullity *ab initio*. As the Court did in **Rhobi Mgare** (supra), **Samuel Mwita v.R**, Cr. Appeals No. 34,35,36 & 66 of 2009, **David Mwita Marwa & Two Others v. R.**, Criminal Appeal No. 251 of 2010, **Nico Mhando & 2 Others v. R.**, Criminal Appeal No. 332 of 2008 (all unreported), etc, we invoke our revisional powers under s. 4(2) of the Appellate Jurisdiction Act, Cap. 141 and nullify the trial of the appellant and his co-accused. We hereby quash and set aside the null proceedings in, and the judgments of, the two courts below as well as all the sentences imposed on the appellant and his co-accused who, we have learnt, were acquitted by the High Court at Mbeya in Criminal Appeals No. 70 and 71 of 1998 but on the basis of a totally different reason. For the good reason assigned by Ms. Gwaltu

and the improbability of getting the witnesses for both sides either at all or easily, we shall not order a re-trial.

In fine, we allow this appeal in its entirety. The appellant should be rereleased forthwith from prison unless he is otherwise lawfully held.

**DATED** at **MBEYA** this 6<sup>th</sup> day of June, 2013.

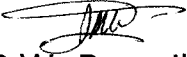
E.M.K. RUTAKANGWA  
**JUSTICE OF APPEAL**

B.M. LUANDA  
**JUSTICE OF APPEAL**

I.H. JUMA  
**JUSTICE OF APPEAL**

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



  
P.W. Bampikya  
**SENIOR DEPUTY REGISTRAR**  
**COURT OF APPEAL**