

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

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

CRIMINAL APPEAL NO. 257 OF 2010

**GERALD PAUL NIYONZIMAAPPELLANT
VERSUS
THE REPUBLIC.....RESPONDENT**

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

(Rwakibarila, J.)

**dated 13th day of August , 2010
in
Criminal Appeal No. 86 of 2009**

JUDGMENT OF THE COURT

24th July, 2013

MSOFFE, J.A.:

It is common ground that when the appellant was charged and eventually convicted on 10/11/2008 the offence of being in unlawful possession of a firearm was on economic offence under paragraph 19 of the First Schedule to the Economic and Organized Crime Control Act (CAP 200 R.E. 2002) the Act). Under section 26(1) of the Act it was imperative that the consent of the Director of Public Prosecutions be obtained before commencement of the trial. A look at the record before us shows that no

consent was ever sought for and obtained before trial. In view of this state of affairs, Mr. Castus Ndamugoba, learned State Attorney appearing on behalf of the respondent Republic, was of the view that the lower court's proceedings were a nullity. With respect we agree with him.

Since the requisite consent as mandated by section 26(1) of the Act was never obtained we are in agreement with Mr. Ndamugoba that the proceedings at the trial were a nullity. In similar vein, the proceedings of the High Court in the first Appeal were also a nullity because they have no leg to stand on. In the premise, we hereby declare a nullity the proceedings of the courts below.

Mr. Ndamugoba was of the view that subsequent to the above nullification we could order a trial *de novo* or leave upon the wisdom of the Director of Public Prosecutions to determine on how best to proceed against the appellant. After giving this point careful thought, we are inclined to go along with the latter suggestion.

Henceforth, having nullified the above proceedings we hereby quash the conviction and set aside the sentence meted on the appellant. He is to

be released from prison unless he is lawfully held. We leave upon the wisdom of the Director of Public Prosecutions to decide on how best to proceed with the appellant in the circumstances.

DATED at MWANZA this 24th day of July, 2013.


J.H. MSOFFE
JUSTICE OF APPEAL

N.P. KIMARO
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