

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

(CORAM: RUTAKANGWA, J.A., LUANDA, J.A., And MJASIRI, J.A.)

CRIMINAL APPEAL NO. 110 OF 2013

HAFIDHI MOHAMED DELLAAPPELLANT

VERSUS

THE REPUBLIC RESPONDENT

**(Appeal from the Decision of the High Court
of Tanzania at Songea)**

(Mackanja, J.)

dated the 14th day of March , 2000

in

Criminal Appeal No. 46 of 1999

JUDGMENT OF THE COURT

25th & 29th July, 2013

MJASIRI, J.A.:

In the District Court of Songea District, the appellant, Hafidhi Mohamed Della was charged with and convicted of two counts; unlawful possession of firearms on the first count and unlawful possession of ammunition on the second count contrary to paragraph 20 of the First Schedule and Section 59 of the Economic and Organised Crime Control Act 1984 as amended by Act No. 10 of 1989 read together with section 13 (1) of the Arms and Ammunition Ordinance Cap 223. He was sentenced to fifteen (15) years imprisonment with twelve (12) strokes on

*Criminal Proceedings
In the District Court of Songea
in the case of
Hafidhi Mohamed Della
vs
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Criminal Appeal No. 46 of 1999*

the first count and fifteen (15) years imprisonment on the second count. The sentences were to run concurrently. His appeal to the High Court was summarily dismissed by Mackanja J. hence his appeal to this Court.

The appellant appeared in person and was unrepresented and the respondent Republic had the services of Mr. Maurice Mwamwenda, learned Senior State Attorney.

When the appeal was called on for hearing the Court *suo motu* raised two issues relating to jurisdiction of the trial court before the Court. **Firstly**, the trial court commenced the hearing of the case without the consent of the DPP. **Secondly**, the District Court sat as the Economic Crimes Court without certificate of transfer by the DPP under Section 12 (3) of the Economic and Organized Crime Act. Economic cases can only be tried by a subordinate court after a certificate of transfer has been signed and filed by the DPP.

Mr. Mwamwenda readily conceded that the proceedings from the District Court to the High Court were a nullity given the fact that the trial commenced without the consent of the DPP. He also submitted that the

District Court had no power to hear the case in the absence of the certificate of transfer under the hand of the DPP. He asked the Court to nullify the proceedings of the District Court and High Court and quash the decisions of the subordinate court and the High Court.

He submitted further that that under such a situation, the Court should order a retrial so that a trial can be conducted in a competent Court. However he submitted that given the peculiar circumstances of this case it would not be fair and just to ask for a retrial. The appellant was sentenced to 15 years imprisonment on both counts. He has already served 14 years of the imprisonment term.

It is clear from the record that the requirements under the law were not complied with. The proceedings in the District Court and the High Court were indeed a nullity. The trial in the subordinate Court was conducted before the consent of the DPP was filed and before a certificate of transfer was issued and signed by the DPP in order to authorise an economic case to be tried by a subordinate court. The jurisdiction is vested in the High Court sitting as the Economic Crimes Court.

The consent of the DPP was mandatory under section 26 (1) of the Economic and Organized Crimes Control Act 1984 which is now Cap 200 R.E. 2002 (Economic Crimes Act). Section 26 (1) of the Economic Crimes Act provides as under:-

"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."

Emphasis provided.

Section 12 (3) of the Economic Crimes Act provides as under.

"The Director of Public Prosecutions or any State Attorney duly authorised by him, may in each case in which he deems it necessary or appropriate in the public interest by a certificate under his hand, order that any case involving an offence triable by the Court under this Act be tried by such court subordinate to the High Court as he may specify in the Certificate."

As two mandatory statutory documents were missing, the District Court did not have any jurisdiction to hear and determine an economic offence as a trial court.

In **Rhobi Marwa Mgare and Two others v Republic**, Criminal Appeal No. 192 of 2005 CAT (unreported) the requirements under Section 12 (3) and 26 (1) were clearly amplified. The Court stated thus:-

"it follows that in the absence of the DPP's consent and certificate of transfer of the economic offence to be tried by Tarime District Court, in terms of section 12 (3) and 26 (1) of the Act, the subordinate court had no jurisdiction to try the case. The trial was thus a nullity and the ensuing convictions and sentences are nothing but nullities. Even the proceedings before the High Court on first appeal were a nullity".

See also **Cretus Sambu @ Kimbwenga and Geoffrey Chazyu v Republic**, Criminal Appeal No. 270 of 2010, CAT (unreported).

Given the non-compliance with the law, it follows therefore, as the night follows the day that the proceedings in the District Court and the High Court of Songea are a nullity. By the powers vested in us under section 4 (2) of the Appellate Jurisdiction Act 1979 we hereby nullify and quash all proceedings of the District Court and set aside the convictions and sentences, and we also set aside the order of the High Court's summary rejection of the appeal.

appellant has almost served the fifteen years imprisonment term, and in the interest of justice we shall not order a re-trial.

We are strongly of the view that in cases like this which attract a long imprisonment term, the accused person should be availed with legal counsel. The appellant being a layman did not have the opportunity to point out this irregularity which prevailed from the subordinate court to this stage.

In the result, the appellant is to be released from prison forthwith unless otherwise lawfully held. It is so ordered.

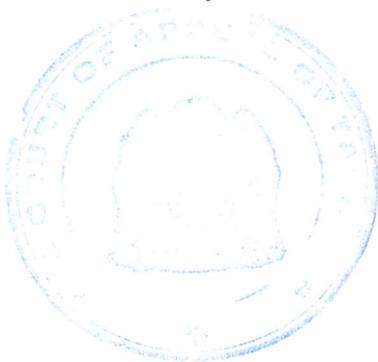
DATED at **IRINGA** this day of 26th July, 2013

E. M. K. RUTAKANGWA
JUSTICE OF APPEAL

B. M. LUANDA
JUSTICE OF APPEAL

S. MJASIRI
JUSTICE OF APPEAL

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



M. A. MALEWO
DEPUTY REGISTRAR
COURT OF APPEAL