

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

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

CRIMINAL APPEAL NO. 148 OF 2009

**1. WAGANA s/o MWITA
2. JOHN s/o GESHMANE @ JUMA s/o PETER** } **APPELLANTS**
VERSUS
THE REPUBLIC..... RESPONDENT

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

(Makuru, J.)

Dated the 24th day of April, 2009

In

Criminal Appeal No. 116 CF 117 of 2007

JUDGMENT OF THE COURT

25th & 30th April, 2013

MANDIA, J.A.:

The accused persons were charged and tried in the District Court of Igunga District at Igunga for the offence of Being in Unlawful possession of firearms c/s 4 (1) and 34 (2) of the Arms and Ammunition Act Chapter 200 R.E. 2002 of the laws. These are Wagana s/o Mwita, John s/o Geshmana @ Juma s/o Peter and Shesha s/o Gisu who appeared in the trial Court as the first, second and third accused persons respectively. After the trial the third accused person was found not guilty and acquitted. The first and second accused persons were found guilty, convicted and sentenced to

fifteen years imprisonment. They preferred an appeal to the High Court of Tanzania at Tabora against both conviction and sentences. Their respective appeals were dismissed in their entirety, hence the present joint appeal.

The appellants have filed separate memoranda of appeal but each one of them has two grounds which query the jurisdiction of the trial Court, amongst other grounds. In the memorandum filed by the first appellant the grounds are number two and three, and in the memorandum filed by the second appellant the grounds are number one and two. In these grounds each one amongst the appellants contends that the trial Court erred in holding the trial when the Director of Public Prosecutions had not consented to the prosecution, neither has the Director of Public Prosecutions transferred the trial of the case to a subordinate Court. Unrepresented, The appellants appeared in person to argue their respective appeals, while the respondent Republic was represented by Ms. Maria Mdulugu, learned State Attorney. The appellants indicated in Court that they had no additional grounds to add to their respective memoranda;

and indicated to this Court that they would only address the Court after the learned State Attorney had made her address.

Ms. Maria Mdulugu, learned State Attorney, did not support the conviction and sentence. In arguing the appeal she zeroed in on the question of the jurisdiction of the trial Court to try the case. To this effect she contended that under the Economic and Organised Crime Control Act, Chapter 200 R.E. 2002 of the laws, the trial Court for an economic offence is the High Court of Tanzania, sitting as an Economic Crimes Court. The relevant provision is Section 3 which reads thus:

"3 – (1) The jurisdiction to hear and determine cases involving economic offences under this Act is hereby vested in the High Court.

(2) The High Court when hearing charges against any person for the purposes of this Act shall be an Economic Crimes Court."

Ms. Maria Mdulugu went on to submit that the trial of the appellants offends Section 26 (1) of the Economic and Organised Crime Control Act which reads thus:

"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."

She also contended that the trial, which was conducted in a subordinate Court, offended Section 12 (3) of the Economic and Organised Crime Control Act which provides:

"12 (1)....."

(2)....."

(3) 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 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.

(4)

(5)

(6)

In view of the lack of consent from the Director of Public Prosecutions, and in view of the lack of a transfer certificate, both of which are mandatory requirements, the District Court of Igunga lacked jurisdictions to try the appellants, she contended. Ms. Maria Mdulugu further submitted, citing the case of **Hussein Salehe & Charles Mahone vs The Republic**, Criminal Appeals 88 and 89 of 2008 (unreported). She went on to submit that since the original proceedings were a nullity, the proceedings of the appellate High Court of Tanzania at Tabora which upheld the conviction and sentence of the appellants were also a nullity, themselves being based on a nullity. She therefore urged us to nullify the

proceedings which have resulted in the present appeal before us, and order a retrial of the appellants.

The appellants had nothing to say in reply except for the second appellant addressing the Court that it should take into account the long period he has stayed in jail.

Like the learned State Attorney, we are also of the opinion that the jurisdictional base of this appeal is sufficient to dispose of the appeal. We agree that the lack of consent and transfer certificate vitiated the proceedings in the trial Court and in the first appellate Court. We therefore invoke our revisional jurisdiction under Section 4(2) of the Appellate Jurisdiction Act, Chapter 141 R.E. 2002 of the laws, and quash the judgment of the appellate High Court as well as the judgment of the trial District Court. We also set aside the sentence passed by the trial Court. In view of the time the appellants have already spent in jail, four years, we leave it to the wisdom of the Director of Public Prosecutions on whether to proceed with the charges or not. In the meantime the appellants should be released from custody forthwith unless they are held on some other lawful cause.

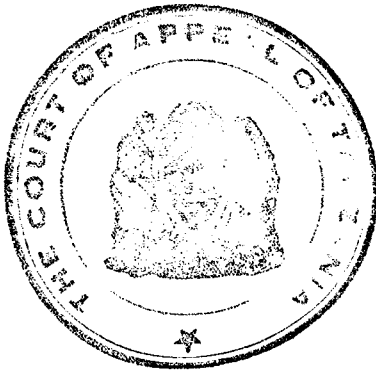
DATED at **TABORA** this 29th day of April, 2013

N. P. KIMARO
JUSTICE OF APPEAL

W. S. MANDIA
JUSTICE OF APPEAL

S. S. KAIJAGE
JUSTICE OF APPEAL

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



M.A. MALEWO
DEPUTY REGISTRAR
COURT OF APPEAL