

IN THE COURT OF APPEAL OF TANZANIA

AT TABORA

(CORAM: LUANDA, J.A., ORIYO, J.A. And KAIJAGE, J.A.)

CRIMINAL APPEAL NO. 128"B" OF 2011

JOSEPH RASHIDI.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

Appeal from Ruling of the High Court of Tanzania at Tabora)

(Hon. Songoro, J.)

Dated the 7th day of November, 2011

In

Miscellaneous Criminal Application No. 55 of 2010

JUDGEMENT OF THE COURT

20th & 24th April, 2015

KAIJAGE, J.A.:

In the District Court of Kasulu at Kasulu, the appellant and another were jointly arraigned for offences preferred in three (3) counts namely; 1st count of unlawful possession of firearms, 2nd count of unlawful possession of psychotropic substance and 3rd count of unlawful possession of firearms and ammunitions. Following a full trial, the appellant was convicted as charged on the first two counts and was sentenced to serve fifteen (15) and ten (10) years imprisonment, respectively, on the 1st and 2nd counts.

The sentences were ordered to run concurrently. The appellant was aggrieved.

Section 361 (1) of the Criminal Procedure Act, Cap 20 of R.E 2002 (the CPA) enjoins the intending appellants to the High Court to file notices of their respective intentions to appeal within ten (10) days of the decision desired to be appealed against. Realizing that he was late in appealing within the said prescribed period, the appellant correctly invoked the provisions of sub-section (2) of section 361 of the CPA and lodged an application in the High Court for enlargement of time to appeal out of time. The High Court (Songoro, J.) heard the application on merit and dismissed it. The appellant is presently appealing against that decision of the first appellate court.

Before us, the appellant appeared in person, fending for himself. Ms. Pendo Makondo, learned Principal State Attorney, appeared for the respondent Republic.

When the appeal was called on for hearing, we raised, ***suo motu***, a jurisdictional issue for which we asked the learned Principal State Attorney to give us her comments and views. The issue we raised is whether in view of the provisions under sections 3, 12 (3) and (4) and 26 (1) of the

Economic and Organized Crimes Control Act, Cap 200 R.E. 2002 (the Act), the District Court of Kasulu at Kasulu had jurisdiction, first, to try and determine, as it did, charges involving economic offence and, second, to entertain conjunctively and to determine a case involving economic offences and a non-economic offence.

Addressing the issue we raised, the learned Principal State Attorney submitted, correctly in our view, that an offence of unlawful possession of firearms with which the appellant was charged and eventually convicted of was, at the material time, an offence under the Act, triable by the High Court with the prior consent of the Director of Public Prosecutions (the D.P.P.). Kasulu District Court, a court subordinate to the High Court, had no jurisdiction to try the appellant unless the D.P.P. or the State Attorney duly authorized by him had certified that he be tried by such subordinate court, she contended. Furthermore, an offence of being found in possession of psychotropic substance being a non-economic offence could not be validly prosecuted conjunctively with economic offences, as in this case, without the sanction of the D.P.P, she stressed.

In the light of the foregoing fundamental procedural irregularities, the learned Principal State Attorney urged us to find that the appellant's purported trial was a nullity. As such, she implored us to invoke our

revisional powers under Section 4(2) of the Appellate Jurisdiction Act, Cap 141 R.E. 2002 and give consequential orders.

With respect, we are in full agreement with the learned Principal State Attorney.

We entertain no doubt that when the appellant and his co-accused were arrested and charged sometimes in January, 2007 and subsequently convicted towards the end of the same year, the offences of unlawful possession of arms and ammunitions were economic crimes under paragraph 19 of the first schedule of the said Act and were triable by the High Court sitting as an Economic Crimes Court in terms of section 3 (1) of the Act which provides:-

*"... S.3 (1) **The Jurisdiction** to hear and determine cases involving economic offence under this Act is hereby vested in the High Court..."*

[Emphasis supplied.]

Indeed, no trial in respect of an economic offence may be commenced under the Act save with the consent of the D.P.P. In this case, the trial District Court of Kasulu could not have validly tried offences in respect of the 1st and 3rd counts without a prior consent of the D.P.P given under section 26 (1) of the Act which reads:-

*"S.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.**"*

[Emphasis ours.]

Besides, a certificate under section 12(3) of the Act was imperative before commencing prosecution of the appellant in the District Court of Kasulu at Kasulu. That section provides:-

*"...S. 12(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 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...**"*

[Emphasis ours.]

We also wish to point out that in the absence of a certificate issued under section 12(4) of the Act, it was legally inappropriate for the appellant to be prosecuted in respect of an economic crime in conjunction with a non-economic crime. As rightly argued by the learned Principal State

Attorney, the appellant and his co-accused were tried in violation of section 12 (4) of the Act which provides:-

*"... The Director of Public Prosecution 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 a certificate under his hand order that any case** instituted or to be instituted before a court subordinate to the High Court and which involves a non-economic offence or both an economic offence and a non-economic offence, be instituted in the Court."*

From the foregoing brief discussion, we are satisfied that in the absence of the D.P.P's consent given under Section 26 (1) of the Act and the requisite certificates given under subsections (3) and (4) of section 12 of the Act, the trial District Court had no jurisdiction to hear and determine charges against the appellant, as it did. We further firmly hold that the purported trial of the appellant and his co-accused was a nullity. In similar vein, the proceedings and the order made by the High Court in its ruling dated 7/11/2011 based on null proceedings of the trial court were also a nullity.

In the exercise of our revisional powers under section 4(2) of the Appellate Jurisdiction Act, we hereby quash and set aside the null

proceedings in, and the decisions/orders of the two courts below as well as the sentences meted out against the appellant and his co-accused. Considering the fact that the appellant and his co-accused have so far served substantial parts of the illegal sentences imposed on them, and bearing in mind the learned Principal State Attorney's views, we decline, in the circumstances, to order a retrial. Meanwhile, we order the immediate release of the appellant and his co-accused from prison unless they are otherwise lawfully held.

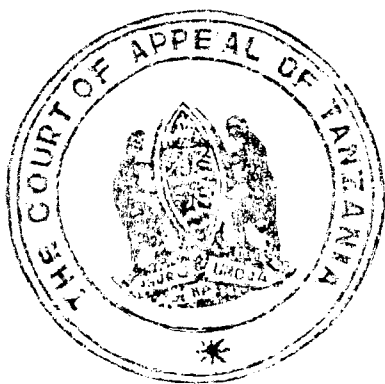
DATED at TABORA this 23th day of April, 2015.


B. M. LUANDA
JUSTICE OF APPEAL

K. K. ORIYO
JUSTICE OF APPEAL

S. S. KAIJAGE
JUSTICE OF APPEAL

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




E.F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL