

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

(CORAM: MJASIRI, J.A, KAIJAGE, J.A., And MUSSA, J.A.)

CRIMINAL APPEAL NO. 262 OF 2013

**1. HASHIM TWARIB
2. JOHN NYANGALA APPELLANTS**

VERSUS

THE REPUBLIC RESPONDENT

**(Appeal from the decision of the High Court of Tanzania
at Dar es Salaam)**

(Chingwile, J.)

Dated the 15th day of May, 2013

In

Criminal Appeal Case No. 165 of 2011

JUDGMENT OF THE COURT

9th November, 2015 & 5th February, 2016

KAIJAGE, J.A.:

After the Director of Public Prosecutions had given the necessary consent and issued the mandatory certificate under, respectively, sections 26 (1) and 12 (3) of the Economic and Organized Crimes Control Act, 1984 (the Act), the two appellants were subsequently jointly tried by the Resident Magistrates' Court of Dar es Salaam at Kisutu (the trial court) upon charges preferred on two counts of being in possession of a firearm and being found in possession of three (3) rounds of ammunitions contrary to section 13 (1)

of the Arms and Ammunition Ordinance, Cap 223 read together with paragraph 20 of the first Schedule to and section 59 of the Act.

Following a full trial, the appellants were convicted as charged and each was sentenced to serve terms of fifteen (15) years imprisonment on each count. The trial court did **not** direct that the said punishments should run concurrently. We take it, in terms of section 168 (2) of the Criminal Procedure Act, Cap 20 R. E. 2002 (the CPA) that the punishments were to run consecutively. All the same, the appellants were aggrieved. Their first joint appeal to the High Court against such convictions and sentences was dismissed. They are now appealing to this Court on the strength of a joint memorandum of appeal comprised of five (5) points of grievances.

Before us, the appellants appeared in person, fending for themselves. The respondent Republic had the services of Mr. Nassoro Katunga, learned Senior State Attorney.

Before the commencement of the hearing on the merits of the present appeal, Mr. Katunga sought and we accordingly granted him leave to address us on a point of law pertaining to the jurisdiction of the trial court which imposed the said consecutive sentences against the appellants.

Amplifying on the point of law he raised, Mr. Katunga submitted that the consecutive terms of fifteen (15) years imprisonment on each count against each appellant which, in terms of section 168 (4) of the CPA, makes the aggregate sentence of thirty (30) years imprisonment exceeded the sentencing powers of the trial court and offended the provisions of section 168 (3) of the CPA. He consequently implored us to take appropriate remedial measures under section 4 (2) of the Appellate Jurisdiction Act, Cap 141 R. E. 2002.

The appellants who are, apparently, laymen, made no significant contribution to the jurisdictional issue raised by Mr. Katunga.

On our part we are, with respect, in full agreement with Mr. Katunga. We accept, at the outset, that the aggregate sentences of thirty (30) years imprisonment imposed against each appellant by the trial resident magistrate were in excess of the latter's jurisdiction. Admittedly, section 59 (2) of the Act sanctions a punishment not exceeding fifteen (15) years imprisonment against any person convicted of an economic offence. The appellants herein who were convicted of economic offences preferred on two counts are no exception. That section provides:-

*"S. 59 (2) Subject to subsection (3), any person convicted of an economic offence shall be liable to imprisonment for a term **not exceeding fifteen years**, or to both that imprisonment and any other penal measure provided for in this Act."*

[Emphasis supplied].

But the sentencing powers of the trial court are also regulated by subsections (2) and (3) of section 168 of the CPA which provides:-

*"S. 168 (2) Where a person is convicted at **one trial of two or more offences by a subordinate court** the court may, **subject to the provisions of subsection (3)**, sentence him for those offences to the several punishments prescribed for them and which the court is competent to impose; and those punishments when consisting of imprisonment, shall commence the one after the expiration of the other in such order as the court may direct, unless the court directs that the punishments shall run concurrently.*

*(3) Notwithstanding, the provisions of subsection (2), a subordinate court **shall not**, in any case in which it has convicted a person **at one trial of two or more offences**, be competent:-*

(a) where a court imposes substantive sentences of imprisonment only, to impose consecutive sentences of imprisonment which exceed in the aggregate:-

*(i) in any case in which of any of the offences of which the offender has been convicted is an offence in respect of which a subordinate court may lawfully pass a sentence of imprisonment for a term exceeding five years, a term of imprisonment for **ten years**; or*

*(ii) in any other case, a term for **eight years**."*

[Emphasis supplied].

As earlier hinted upon, the trial court had powers, in terms of the provisions under section 59(2) of the Act to impose, against each appellant, terms of imprisonment not exceeding fifteen (15) years imprisonment on each count. However, it imposed illegal aggregate sentences of thirty (30) years imprisonment against each appellant in violation of section 168(3) (a) (i) of the CPA. By so doing, it flagrantly exceeded its sentencing powers which in law and the circumstances of this case were limited to the aggregate sentence of ten (10) years imprisonment. We hold a firm view that this illegality calls for interference by this Court, at this stage, of the trial court's sentencing discretion. (See, for instance, **SILVANUS LEONARD**

NGULUWE v. R. [1981] TLR 66, **RASHID S. KANIKI v R.** [1993] TLR and **FURAHA ALEX v R.**; Criminal Appeal No. 52 of 2014 (unreported).

Accordingly, in the exercise of our revisional powers under section 4 (2) of the Appellate Jurisdiction Act, we quash and set aside the illegal sentences meted out by the trial court and erroneously confirmed by the first appellate court. Since the appellants have been in prison for the past fourteen (14) years serving illegal sentences instead of the aggregate ten (10) years prescribed under S. 168 (3) (a) (i) of the CPA, we are compelled to substitute thereof a sentence that would result in the appellants' immediate release from prison, unless otherwise lawfully held.

It is so ordered.


DATED at DAR ES SALAAM this 2nd day of January, 2016.

S. MJASIRI
JUSTICE OF APPEAL

S. S. KAIJAGE
JUSTICE OF APPEAL

K. M. MUSSA
JUSTICE OF APPEAL

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


P.W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL