

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

**(CORAM: MJASIRI, J.A., JUMA, J.A., And MUGASHA, J.A.)**

**CRIMINAL APPEAL NO. 403 OF 2015**

**GAITAN S/O SUSUTA .....APPELLANT**

**VERSUS**

**THE REPUBLIC .....RESPONDENT**

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

**(SHANGALI, J.)**

**Dated the 26<sup>th</sup> day of June, 2015**

**in**

**DC Criminal Appeal No. 22 of 2014**

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**JUDGMENT OF THE COURT**

25<sup>th</sup> & 27<sup>th</sup> day of July, 2016

**JUMA, J.A.:**

The appellant Gaitan Susuta has preferred this second appeal to manifest his grievance with the judgment of the High Court of Tanzania in DC Criminal Appeal No. 22 of 2014 following the dismissal of his first appeal. Earlier on, the appellant was convicted by the Resident Magistrate's Court of Iringa (Economic Case No. 20 of 2013) on the following three counts:—

(1) Unlawful entry into the National Park (*contrary to section 21 (1) (2) and 29 (1) (2) of the National Parks Act, Cap. 282 R.E. 2002*);

(2) Unlawful possession of Government trophies (*contrary to section 86 (1), (2) (c) (ii) of the Wildlife Conservation Act No. 5 of 2009 read together with paragraph 14 (d) of the First Schedule to and section 57 (1) and 60 (2) of the Economic and Organized Crime Control Act, Cap. 200*); and

(3) Unlawful possession of ammunition (*contrary to section 4 (1) (2) and 34 (1) and (2) of the Arms and Ammunition Act, Cap. 223 as amended by Act 17 of 2011*).

The background to this appeal traces back to the 22<sup>nd</sup> August, 2013. Two Park Rangers at Ruaha National Park, one Sofareti Wanjara (PW1) and Steven Magombi (PW2) whilst on a routine patrol within the national park; received information about sounds of shotgun being heard by certain people from Kilombero North. Concerned, the rangers decided to find out for themselves. As they approached the area where the information had directed them, they saw carnivorous birds flying overhead. This was an ominous sign of animal carcass in the nearby bushes. On further approach

the rangers heard voices of people. The appellant Gaitan Susuta who was amongst the people the rangers discovered in the bushes was accosted and arrested before he could escape. His colleagues escaped from the imminent arrest by the park rangers.

Upon searching the appellant's bag at the scene of his arrest, the rangers found 10 elephant tusks, one weighing machine and rounds of ammunition. According to the rangers, the appellant even showed them where the carcass of the dead elephant was. The appellant was taken to the police station. On 25<sup>th</sup> August, 2013 Majid Selemeni (PW3) also a Park Ranger, visited the police station where he valued the elephant tusks and compiled a report (exhibit P2). The tusks weighed 55 kilogrammes and he valued them at Tshs. 120,000,000/=.

In his defence, the appellant gave a very different account on how he was arrested. He recalled how on 23<sup>rd</sup> August, 2013 the Park Rangers, who were driving by, stopped and forced him into their vehicle. Once inside the vehicle, the rangers showed him the elephant tusks and they literally falsely accused him of being found in possession of the elephant tusks. His protestations were to no avail because the rangers took him first to their office, before handing him over to the police.

At the conclusion of his trial, the Resident Magistrate's Court (Issaya-RM) was satisfied that the prosecution had to the required standard, proved the three counts. He convicted the appellant accordingly. For the sentence in the first count, the trial magistrate ordered the appellant to pay a fine of Tshs. 50,000/= or serve six months imprisonment in default. For the second count, he was ordered to pay a fine of Tshs. 80,000,000/= or serve twenty (20) years term in prison. For the third count, the appellant was ordered to pay a fine of Tshs. 50,000/= or serve six months imprisonment.

After the dismissal of his first appeal, the appellant filed a notice of appeal on 9<sup>th</sup> July, 2015. He followed it up with his memorandum of appeal containing six grounds of complaints.

At the hearing of this appeal on 25<sup>th</sup> July, 2016, the appellant appeared in person without the assistance of learned counsel. He informed this Court that he would prefer the learned State Attorney to address the Court first on his grounds of appeal. Ms. Pienza Nchombe learned State Attorney who appeared for the respondent Republic sought our leave to withdraw the point of preliminary objection that respondent had filed to contend that the notice of appeal is defective.

But before Ms. Pienza Nichombe could address us in opposition to the grounds of complaints which the appellant had raised in his two sets of Memorandum of Appeal, we *suo motu* asked the learned State Attorney to first address herself on the jurisdictional question. We wanted to know where the trial District Court of Iringa derived the requisite statutory authority to simultaneously try counts disclosing Economic Offences under Economic and Organized Crime Control Act, Cap 200 together with counts disclosing non-economic offences falling outside Cap 200.

After perusing through the record of appeal, Ms. Nchombe conceded that there was no Certificate issued under section 12 (4) of Cap 200 vesting the trial District Court of Iringa to try counts disclosing Economic Offences together with those disclosing Non-Economic Offences. She submitted further that the entire proceedings before the trial court and those in the High Court on first appeal are a nullity. Ms. Nchombe urged us to order a fresh trial based on a fresh charge sheet before the court with competent jurisdiction.

When asked for his response, the appellant had nothing to say.

We are settled in our minds that the second count of unlawful possession of Government Trophy for which the appellant was charged

with, is an Economic Offence within the meaning ascribed under section 26 (1) of the Economic and Organised Crime Control Act, Cap 200 (hereinafter referred to as **CAP. 200**). The trial of Economic Offence required a prior Consent of either the Director of Public Prosecutions or of any officer acting in accordance with the general or special instructions of the DPP. The relevant section 26 (1) and (2) provides:

*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.*

*(2) The Director of Public Prosecutions shall establish and maintain a system whereby the process of seeking and obtaining of his consent for prosecutions may be expedited and may, for that purpose, by notice published in the Gazette specify economic offences the prosecutions of which shall require the consent of the Director of Public Prosecutions in person and those the power of consenting to the prosecution of which may be exercised by such officer or officers subordinate to him as he may specify acting in accordance with his general or special instructions.*

[Emphasis added].

It is appropriate to observe here that the Consent, appearing on page 31 of the record dated on 17/10/2013 was issued with respect to the second count as an Economic Offence. No similar Consent was issued to cover the first count of UNLAWFUL ENTRY INTO THE NATIONAL PARK c/s 21 (1), (2) and 29 (1), (2) of the National Parks Act, Cap 282 or for the third count, of UNLAWFUL POSSESSION OF AMMUNITION c/s 4 (1), (2) and 34 (1) and (2) of the Arms and Ammunition Act. The operative part of that Consent exclusively covers the second count on the offence of unlawful possession of trophy which is envisaged under paragraph 14 (d) of the First Schedule to Cap. 200:

**"CONSENT OF STATE ATTORNEY IN-CHARGE**

*I, ISMAIL A. MANJOTI, Senior State Attorney in Charge of Iringa Zone, do hereby in terms of section 26 (2) of the Economic and Organized Crime Control Act, [Cap 200 R.E. 2002] and GN 191 of 1984 **CONSENT** to the prosecution of **GAITAN S/O SUSUTA @ SADALA for contravening the provisions of Paragraph 14 (d) of the first schedule** to and section 57 (1) and 60 (2) of the Economic and Organized Crime Act, ..... "[Emphasis added].*

In terms of section 12 (3) of CAP 200, jurisdiction to try Economic Offences vests in the High Court, and can only be tried in a subordinate

court upon a prior Certificate being issued for that purpose by either the Director of Public Prosecutions (DPP) himself or by any State Attorney duly authorized by the DPP. Page 32 of the record shows that on 17/10/2013 a Certificate was issued to transfer the charge of unlawful possession of Government Trophy levelled against the appellant in the second count to be tried by the District Court of Iringa at Iringa. The relevant part of the Certificate exclusively relates to an Economic Offence:

**"CERTIFICATE CONFERRING JURISDICTION ON A  
SUBORDINATE COURT TO TRY**

**AN ECONOMIC CASE**

*I, ISMAIL A. MANJOTI, Senior State Attorney In Charge, Iringa Zone, do hereby, in terms of section 12 (3) of the Economic and Organized Crime Control Act, .....and GN 191 of 1984 ORDER that **GAITAN S/O SUSUTA @ SADALA** who is charged for contravening the provisions of **paragraph 14 (d) of the first schedule** to and section 57 (1) and 60 (2) of the Economic and Organised Crime Act....., BE TRIED by the District Court of Iringa."*[Emphasis added].

There is no Certificate issued to transfer the trial of combined Economic and Non-Economic Offences to any subordinate court, not even to the District Court of Iringa. It seems clear to us that if the DPP or his designated officer had intended the District Court of Iringa to combine the



trial of an Economic Offence together with a Non-Economic Offence, a Certificate should have been filed in compliance with sub-section (4) of Section 12 of Cap 200. This Certificate of Transfer would have seized the District Court of Iringa with requisite jurisdiction to try a combination of economic offences and non-economic offences. The relevant provision states:

***12 (4).*** - *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 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.* [Emphasis added].

The jurisdiction-vesting role of the above provision was underscored by the Court in **Abdulswamadu Azizi vs. R.**, Criminal Appeal No. 180 of 2011 (unreported) by reiterating the need to obtain prior CONSENT under section 26 (2) of Cap 200 and CERTIFICATE CONFERRING JURISDICTION on a subordinate court to try counts of an economic offence in combination with counts of non-economic offence at the same trial. The Court stated:

*"...In the instant case, **the counts against the appellant combined the economic and non-economic offences, but again no certificate of the DPP was issued.** This Court in its various decisions had emphasized the compliance with the provisions of section 12 (3), 12 (4) and 26 (1) of the Act and held that the consent of the DPP must be given before the commencement of a trial involving an economic offence. For instance, See, the decisions in the cases of **Rhobi Marwa Mgare and Two Others v. The Republic**, Criminal Appeal No. 192 of 2005, **Elias Vitus Ndimbo and Another v. The Republic**, Criminal Appeal No. 272 of 2007, **Nico s/o Mhando and Two Others v. The Republic**, Criminal Appeal No. 332 of 2008 (all unreported).*

*As pointed earlier herein above, in the instant case the appellant was charged with a combination of economic and non-economic offences, but the requirements of section 12 (3), 12 (4) and 26(1) of the Act were not complied with. There was no consent of the DPP and certificate of transfer of the economic offence to be tried by Bukoba District Court. For that reason, we are constrained to find that the trial and proceedings before the District Court of Bukoba in Criminal Case No. 153 of 2008 and the High Court Criminal Appeal No. 8 of 2010 at Bukoba were nothing but a nullity. That also leads us to the finding that even the conviction and sentence were null and void."*[Emphasis added].

The first count against the appellant, of unlawful entry into the National Park, is not specified under Cap 200 to be an Economic Offence. It is therefore not an Economic Offence. Similarly, the third count on unlawful possession of ammunition is no longer an Economic Offence. This follows the deletion of paragraph 19 from the First Schedule to CAP 200 by the Written Laws (Miscellaneous Amendments) Act No. 2 of 2010. With that deletion, the offence of unlawful possession of arms or ammunition contrary to the provisions of the Arms and Ammunition Act was thenceforth removed from the purview of Economic Offences under CAP. 200 in the following way: "**11.** *The principal Act is amended in the First Schedule by deleting paragraph 19.*"

In the final analysis, we are inclined to agree with Ms. Nchombe that the trial court lacked requisite jurisdiction over the combined economic and non-economic counts and the resulting jurisdictional irregularity skipped the attention of the High Court at Iringa in DC Criminal Appeal No. 22 of 2014 when it sat as the first appellate court. This calls for the exercise our powers of revision under section 4 (2) of the Appellate Jurisdiction Act, Cap 141. The entire proceedings in the trial District Court of Iringa and those in

the High Court at Iringa on purported first appeal are quashed and set aside as we hereby do.

We order that the matter be remitted to the court with competent jurisdiction for a trial *de novo* which should be based on the charge sheet that reflects the provisions of Sections 12 (4) of Cap. 200. And should the appellant be found guilty and convicted after his fresh trial, the period the appellant has spent in custody should be taken into account in the resulting sentence. It is so ordered.

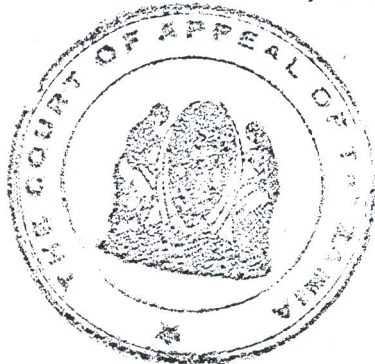
**DATED at IRINGA** this 26<sup>th</sup> day of July, 2016.


S. MJASIRI  
**JUSTICE OF APPEAL**

I.H. JUMA  
**JUSTICE OF APPEAL**

S.E.A.MUGASHA  
**JUSTICE OF APPEAL**

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



  
B.R.NYAKI  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**