

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

**(CORAM: MUGASHA, J.A., MZIRAY, J.A., And KWARIKO, J.A.)**

**CRIMINAL APPEAL NO. 397 OF 2015**

**PETER ALLEN MOYO..... APPELLANT**

**VERSUS**

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

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

**(Ruhangisa, J.)**

**dated the 29<sup>th</sup> day of May, 2015**

**in**

**Economic Appeal No. 1 of 2013**

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**JUDGMENT OF THE COURT**

31<sup>st</sup> August, & 25<sup>th</sup> October, 2018

**MZIRAY, J. A.:**

The appellant along with two other persons namely Geoffrey Isdory Nyasio @ Geof and Esther Keneth Masumbigana appeared in the Resident Magistrate's Court of Kinondoni at Kinondoni on a charge sheet containing four counts, the particulars of which were shown in the charge sheet. All counts were in relation to two offences which are first, being in unlawful possession of fire arms contrary to sections 4(1) and 34(1) and (2) of the Arms and Ammunitions Act, (Cap. 223 R.E. 2002) read together with sections 12(3), 12(4) and 26(1) of the Economic and

Organized Crimes Control Act (Cap 200 R.E. 2002); second, being in unlawful possession of ammunitions contrary to sections 4(1) and 34(1) and (2) of the Arms and Ammunitions Act (Cap. 223 R.E. 2002) read together with sections 12(3), 12(4) and 26 (1) of the Economic and Organized Crimes Control Act (Cap 200 R.E. 2002), henceforth to be referred as the Act.

Following a full trial in the Resident Magistrate's Court, the learned trial Resident Magistrate found that the prosecution had proved its case beyond reasonable doubt against the appellant. For that matter, only the appellant was found guilty as charged on the two counts. Consequently, a sentence of fifteen (15) years imprisonment was meted out against him for each count. The custodial sentences were ordered to run concurrently. The appellant was aggrieved and thus appealed to the High Court. He was unsuccessful as his appeal was dismissed. Aggrieved further, he has appealed to this Court.

At the hearing of this appeal, the appellant appeared in person, fending for himself whereas, Mr. Credo Rugaju, learned Senior State Attorney assisted by Ms. Batilda Mushi, learned State Attorney, appeared for the respondent Republic.

When called upon to argue his appeal, the appellant adopted his grounds of appeal and opted to respond after the learned State Attorneys had made their submissions.

On his part, before he made his submission on the appeal, Mr. Rugaju raised and addressed us on two main legal points; firstly that the charge sheet filed in the Resident Magistrate's Court against the appellant was defective and secondly, on the legality of the proceedings and judgments of both the trial and the first appellate court.

On the contention that the charge sheet was defective, Mr. Rugaju, learned Senior State Attorney submitted that the offences of unlawful possession of firearms and ammunitions with which the appellant and his companions were charged and eventually the appellant convicted of, were not crimes falling under the economic offences in terms of the amendment enshrined in the Written Laws (Miscellaneous Amendments) Act No. 3 of 2010, which deleted paragraph 19 of the First Schedule to the Economic and Organized Crimes Control Act. The learned Senior State Attorney submitted further that even sections 12(3) and 12(4) of the Economic and Organized Crimes Control Act cited, does not create an economic crime. From that

basis, the learned Senior State Attorney was of the view that the appellant was charged with non-existence offences.

The learned Senior State Attorney did not end up there. He submitted further that since the unlawful possession of firearms and ammunitions were not offences falling under economic offences, it was therefore not proper in the circumstance to register the case in the Economic and Organised Crimes register.

He pointed out that if the offences committed were to be considered as economic offences which is not the case, then, the same ought to have been tried by the Resident Magistrate's Court with the prior consent of the Director of Public Prosecutions (the D.P.P). Courts subordinate to the High Court had no jurisdiction to try such offences unless the D.P.P. certifies that they be tried by such subordinate courts, he contended. Indeed, non – economic offences without the sanction of the D.P.P could not, as in this case, be validly prosecuted in conjunction with economic offences, he said.

In the light of the foregoing, the learned Senior State Attorney was of the view that, in this case, the charge as framed was defective and

that the Resident Magistrate's Court had no jurisdiction in the circumstance to try economic offences without obtaining the requisite consent and certificate authorizing and sanctioning it to hear and determine economic crimes in conjunction with non-economic crimes, as it did. Upon these shortcomings, the learned Senior State Attorney asserted that the appellant's purported trial was a nullity. As such, he urged us to quash and set aside the null proceedings and judgments of both courts below as well as the sentences imposed on the appellant.

As to the legality of the proceedings, the learned Senior State Attorney submitted that there was a procedural irregularity in receiving exhibits. He stated and correctly in our view that the appellant was not given the opportunity to comment on them before were received and admitted as exhibits. After a brief dialogue with the Court on the irregular admission of exhibits by the trial court, the learned Senior State Attorney did not press for a retrial.

When called to respond, the appellant entirely supported all what was submitted by Mr. Rugaju and prayed for his release from gaol.

Having considered the submission made by the learned Senior State Attorney, we unhesitatingly agree with him that the points which he raised are substantial. To begin with the charge sheet, undoubtedly the same suffers from serious defects. There can be no doubt at all that when the appellant was arrested and charged sometimes in the year 2010 and eventually convicted in 2012, the offences of unlawful possession of arms and ammunitions were not economic offences.

The Resident Magistrates' Court could have validly tried the offences in terms of section 12 and upon obtaining a requisite prior consent of the D.P.P. Under section 26 (1) of the Act which provides:-

*"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 supplied}.*

Furthermore, if the same were considered as such, a certificate under section 12 of the Act was imperative before commencing the prosecution of the appellant. The relevant subsection of that section provides:-

*"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 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 supplied].*

As correctly submitted by the learned Senior State Attorney, it was legally wrong for the prosecution to combine the offences which the Resident Magistrate's Court had jurisdiction to try, with those it had no jurisdiction to try without the authority envisaged under section 12 (4) which provides:-

*"S.12 (4) The Director of Public Prosecution 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 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...”*

That being the position, 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 certificate under subsections (3) and (4) of section 12 of the Act, the Resident Magistrate’s Court had no jurisdiction to hear and determine charges against the appellant, as it did. On this, we are settled in our minds that the purported trial of the appellant was a nullity, right from the beginning. (See, for instance, **Rhobi Marwa Mgare and 2 others v. R.**, Criminal Appeal No. 192 of 2004, **Abraham Adamson Mwambene v. R.**, Criminal Appeal No. 148 of 2011 and **David Mwita Marwa and Two Others v. R.**, Criminal Appeal No. 251 of 2010, CAT (all unreported). In a similar vein, the appeal to the High Court based on nullity proceedings and judgment of the Resident Magistrate’s Court was in the circumstance incompetent.

In the event, and for reasons stated herein above, we allow the appeal. 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 and the judgments of the two courts below as well as all the sentences imposed on the appellant. We further order that the appellant be released from prison forthwith unless otherwise lawfully detained.

It is so ordered.

**DATED** at **DAR ES SALAAM** this 17<sup>th</sup> day of October, 2018.

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

R. E. S. MZIRAY  
**JUSTICE OF APPEAL**

M. A. KWARIKO  
**JUSTICE OF APPEAL**

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

  
B. A. IMPEPO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**