

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

(CORAM: MUSSA, J.A., LILA, J.A. And MWAMBEGELE, J.A.)

CRIMINAL APPEAL NO. 355 OF 2016

MAGANZO ZELAMOSHI @ NYANZOMOLA APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

(Appeal from the Judgment of the High Court of Tanzania at Shinyanga)

(Makani, J.)

dated the 17th day of June, 2016

in

DC Criminal Appeal No. 81 of 2016

JUDGMENT OF THE COURT

4th & 7th September, 2018

MUSSA, J.A.:

In the District Court of Bariadi, the appellant was arraigned for unlawful possession of Government trophies contrary to section 86 (1) (2) (b) of the Wildlife Conservation Act No. 5 of 2009 as well as section 57 (1) and paragraph 14 (d) of the first schedule to the Economic and Organised Crime Control Act, Chapter 200 of the Revised Edition 2000 of the Laws of Tanzania (the Act).

The particulars of the charge sheet were that on the 21st October 2013, at Ndengho Village, within Bariadi District, the appellant was found

in unlawful possession of two pieces of elephant tusks valued at Shs. 1,760,000/=, the property of the United Republic of Tanzania.

When the case was presented to the District Court for the first time on the 25th October, 2013 the record indicates that the charge was read over to the appellant who was not asked to plead on account that the charge was not flanked by the requisite consent and certificate from the Director of Public Prosecution. A good deal later, on the 13th November, 2013 the matter was, once again, placed before the District Court and this is what transpired:-

"PUBLIC PROSECUTOR: *The matter is for mention, investigation is ready and facts ready, I pray first to file consent and certificate from the director of public prosecution office and do proceed to remind to read the charge.*

COURT: *The charge has been reminded to the accused before the court interpretor (sic) and he reply (sic) as follow (sic):-*

ACCUSED: *"It is not true."*

A plea of not guilty has been recorded as to accused own plea.”

We pose here to interject a remark that if the consent and the certificate referred to by the prosecutor were, indeed, filed, the same were not acknowledged by the court with an endorsement. Nonetheless, the trial proceeded to a finish at the end of which the appellant was found guilty, convicted and sentenced to a term of thirty years imprisonment as well as a fine of Shs. 17,000,000/=, that is, in addition to the prison term. Dissatisfied, he preferred an appeal to the High Court which was, however, dismissed in its entirety (Makani, J.).

Undaunted, the appellant presently seeks to impugn the verdict of the High Court in a memorandum of appeal which is comprised of six points of grievance. For a reason which will shortly become apparent we need not recite the points raised in the memorandum of appeal and neither do we have to explore the factual setting giving rise to the appellant's conviction.

At the hearing before us, the appellant was fending for himself, unrepresented, whereas the respondent Republic had the services of Ms.

Margareth Ndaweka, learned Senior State Attorney, who was being assisted by Mr. Shaban Massanja, learned State Attorney.

From the very outset, it came to our attention that in both courts below the appellant communicated through an interpreter due to a language inability. Thus, we appointed a court interpreter, namely, Mary Mhozya who was sworn and instructed to facilitate the communication with the appellant, that is, from Kiswahili into Kisukuma and vice versa. As it turned out, the appellant adopted the memorandum of appeal but deferred its elaboration to a later stage after the submissions of the respondent.

For her part, Ms. Ndaweka, declined to support the appellant's conviction, more so for a technical reason. In elaboration, the learned Senior State Attorney submitted that the consent of the DPP to commence a prosecution as well as the certificate to confer jurisdiction on the District Court to try an economic case were not formally filed before the trial court. This, she said, is easily discernible from the purported consent and certificate which, respectively, appear on page 3 and 4 of the record and which were glaringly not endorsed by the trial court. In the result, she concluded, the trial court had no jurisdiction to try the offence charged

much as the Act imperatively requires both the consent and certificate to be in place ahead of the commencement of trial. To redress the mishap, the learned Senior State Attorney urged us to invoke our revisional jurisdiction and nullify the entire proceedings of the two courts below and, in lieu thereof, we should order a new trial before another Magistrate of competent jurisdiction.

Ms. Ndaweka advised that a retrial is fitting given the statement of principle which was laid down in the case of **Adam Sumar Vs The Republic** [1964] EA 481.

In a short rejoinder, the appellant did not wish to canvass the issue which was, understandably, too technical for him. He, thus, left the issue be determined by the Court in the interests of justice.

Having heard either side on this issue, we, respectfully, entirely subscribe to the submissions of the learned Senior State Attorney. Without the requisite consent and certificate of the learned DPP, the entire proceedings of the trial court were a nullity; just as were the proceedings of the High Court which then had no legs to stand on. Acting on the

authority of section 4(2) of the Appellate Jurisdiction Act (AJA), we nullify the proceedings of both courts below.

We are equally, in agreement with Ms. Ndaweka that the interests of justice in the matter at hand demand that there should be a new trial before another Magistrate of competent jurisdiction. We further order that should the fresh trial end with a conviction, in imposing sentence, the convicting Magistrate should take into account the period already spent by the appellant in prison custody. In the meantime, the appellant should remain in custody to await the resumption of the trial. Order accordingly.

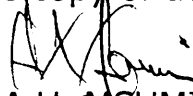
DATED at **TABORA** this 6th day of September, 2018.

K. M. MUSSA
JUSTICE OF APPEAL

S. A. LILA
JUSTICE OF APPEAL

J.C.M. MWAMBEGELE
JUSTICE OF APPEAL

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


A.H. MSUMI
DEPUTY REGISTRAR
COURT OF APPEAL