

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

(CORAM: MUGASHA, J.A., MWANGESI, J.A. And NDIKA, J.A.)

CRIMINAL APPEAL NO. 62 OF 2019

**RAMADHANI OMARY MTIULA..... APPELLANT
VERSUS
THE REPUBLIC.....RESPONDENT**

(Appeal from the decision of the High Court of Tanzania at Songea)

(Mwipopo, J.)

**dated the 21st day of January, 2000
in
HC. Criminal Appeal No. 15 of 1997**

JUDGMENT OF THE COURT

18th & 19th August, 2020.

MUGASHA, J.A.:

The appellant was charged with one count of unlawful possession of arms and ammunition contrary to sections 13 (1) and 31 (2) of the Arms and Ammunition Ordinance Cap 223 read together with paragraph 20 of the First Schedule and Section 59 (2) both of the Economic and Organised Crime Control Act of 1984 as amended by Act No 3 of 1992. The said Economic case was filed in the District Court of Songea, where it was alleged that, on 25/5/1995 at Litunu Street within the Township and District of Songea in

Ruvuma Region, the appellant was found in unlawful possession of one Russian made pistol with its four rounds of ammunition without a licence.

When the charge was read over to the appellant on 25/5/ 1995, apart from being required not to make any plea, he was addressed in terms of section 29 (3) of the Economic and Organised Crimes Control Act, that he will be tried later in the High Court sitting as an Economic Crimes Court. However, on 21/8/1995, the record shows that, the Prosecutor merely stated that the DPP's consent had been obtained and thereafter, the charge was read over to the appellant who upon being required to plead, he entered a plea of not guilty. However, we have noted that the respective consent is not in the record before us.

Subsequently, a trial ensued whereby to prove its case, the prosecution called four witnesses and tendered two documentary exhibits namely, the search order (Exhibit P1) and the cautioned statement of the appellant (Exhibit P2). The appellant was the sole witness for the defence. After a full trial, the appellant was acquitted upon being found not guilty. Unamused, the respondent herein successfully appealed to the High Court which reversed the verdict of the trial court and sentenced the appellant to imprisonment of fifteen (15) years. Aggrieved, the appellant initially

preferred an appeal to the Court which was struck out on account of the defective notice of appeal. Subsequently, having complied with the requisite requirements, the appellant lodged the present appeal challenging the verdict of the High Court. However, for reasons to be apparent in due course we shall not reproduce the grounds of appeal.

At the hearing before us, the appellant appeared in person, unrepresented, whereas the respondent Republic had the services of Ms. Tumaini Ngiluka, learned Senior State Attorney. In order to satisfy ourselves if the trial court had jurisdiction to try the case which is the subject of the present appeal, we invited the parties to address us on the matter.

The learned Senior State Attorney started by submitting that, the trial court did not have the jurisdiction to try the matter in the absence of consent and certificate from the Director of Public Prosecutions conferring jurisdiction on that court to commence the trial. On the way forward, she invited the Court to invoke its revisional jurisdiction under section 4 (2) of the Appellate Jurisdiction Act [CAP 141 RE.2002] to nullify the proceedings and judgments of the two courts below, quash and set aside the conviction and the sentence. In this regard, considering that the appellant has remained behind bars for more than twenty years (20), she prayed for the release of the

appellant. On the other hand, this being a point of law, the appellant had nothing in reply apart from urging us to allow the appeal and set him at liberty.

According to the record before us, Criminal Case No. 8 of 1995 which involved an Economic offence by then, was lodged before the District Court of Songea in anticipation of having the appellant committed for trial before the High Court and the Economic Crimes Court. However, after the prosecutor intimated that the DPP had given the consent, the charge was read over to the appellant which was followed by a full trial before that court. At this juncture, the issue for our determination is whether the trial court had jurisdiction to try Criminal Case No. 8 of 1995.

We are aware that prior to amendment of the Economic and Organised Crime Control Act vide Act No. 2 of 2011, unlawful possession of arms and ammunition was an economic offence under paragraph 19 of the First Schedule to the Act which stipulated as follows:

"A person is guilty of an offence under this paragraph who is found in unauthorised possession of arms or ammunition contrary to the provisions of the Arms and Ammunition Act."

The trial of every economic offence under the Act has to be preceded by the consent of the DPP under section 26 (1) of the Act which stipulates as follows:

"(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].

The DPP is mandated to delegate his powers to his subordinates in terms of sub section (2) which states:

"(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."

Moreover, since prior to the Amendment vesting jurisdiction to try Economic offences in the Corruption and Economic Division of the High Court, in this matter the Economic Crimes Court was the High Court. However, in terms of section 12 (3) of the Act, the jurisdiction could be conferred to the subordinate court which gives the following directions:

*"(3) 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 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].

In terms of section 26 (1) and (2) of the Act, the consent of the DPP must be given before any trial involving an economic offence can be tried.

See - **PAULO MATHEO VS REPUBLIC** [1995] T.L.R 144. Moreover, since by then the Economic Crimes Court was the High Court, the subordinate court could only be vested with requisite jurisdiction to try an economic case if in terms of section 12 (3) of the Act, the DPP issues a certificate that any offence involving an offence triable by the High Court be tried by a subordinate court to the respective High Court. As earlier intimated, trial commenced without obtaining the consent of the DPP and the certificate conferring jurisdiction to the District Court of Songea.

In any adjudication the initial question to be determined is whether or not the court or tribunal is vested with requisite jurisdiction. See -**RICHARD JULIUS RUKAMBURA VS ISSACK NTWA MWAKAJILA AND ANOTHER**, Civil Application No 3 of 2004 (unreported). Before the said decision, this Court in **FANUEL MANTIRI NG'UNDA VS HERMAN MANTIRI NG'UNDA & 20 OTHERS**, (CAT) Civil Appeal No. 8 of 1995 (unreported) had held thus: -

*"The question of jurisdiction for any court is basic, it goes to the very root of the authority of the court to adjudicate upon cases of different nature ... The question of jurisdiction is so fundamental that courts **must as a matter of practice on the face of it be***

certain and assured of their jurisdictional position at the commencement of the trial.... It is risky and unsafe for the court to proceed with the trial of a case on the assumption that the court has jurisdiction to adjudicate upon the case.”

[Emphasis supplied].

Jurisdiction of courts is a creature of statute and not what the litigants like or dislike. We are fortified in that account because our courts are creatures of statutes and they have such powers as are conferred upon them by statute. See – **ISRAEL MISEZERO @ MINANI VS REPUBLIC**, Criminal Appeal No. 117 of 2006 and **MADENI NINDWA VS REPUBLIC**, Criminal Appeal No. 350 of 2016 (both unreported). As to the fate of a decision made without jurisdiction, a judgment of a court without jurisdiction is a nullity and where a Court takes it upon to exercise a jurisdiction which it does not possess its decision amounts to nothing. See **DESAI VS WARSAMA** [1967] E.A 351.

What was said in the above decisions is applicable to the matter under scrutiny because jurisdiction is vested by the law and it cannot be assumed. The Court was faced with a similar scenario in the case of **MHOLE SAGUDA NYAMAGU VS REPUBLIC**, Criminal Appeal No. 337 of 2016 (unreported)

where the economic case was tried by the subordinate court without the consent of the DPP and the certificate conferring jurisdiction to that court.

The Court held:

"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 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 was a nullity. In similar vein, the proceedings and judgment made by the High Court dated 8/06/2016 based on null proceedings of the trial court were also a nullity."

Thus, without the DPP's consent and certificate conferring the respective jurisdiction, the District Court of Songea embarked on a nullity to try Criminal Case No. 8 of 1995. On that account, since the first appeal stemmed from null proceedings this adversely impacted on the appeal before the High Court and the present appeal. This is because a judgement in an appeal from proceedings which were a nullity is also a nullity.

On the way forward, we agree with the learned Senior State Attorney and accordingly invoke our revisional jurisdiction, and revise and quash the lower courts' proceedings and judgments. We also quash and set aside the conviction and the sentence. Considering the circumstances of the case we order the immediate release of the appellant unless he is otherwise held for another lawful cause.

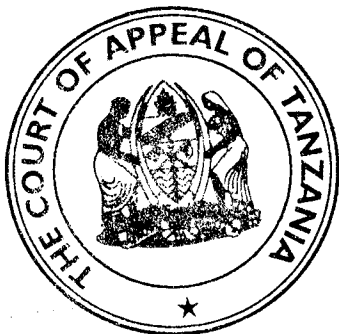
DATED at **IRINGA** this 19th day of August, 2020.

S. E. A MUGASHA
JUSTICE OF APPEAL

S. S. MWANGESI
JUSTICE OF APPEAL

G. A. M. NDIKA
JUSTICE OF APPEAL

The Judgment delivered this 19th day of August, 2020 in the presence of the Appellant in person and Ms. Edna Mwangulumba assisted by Ms. Jackline Nungu, learned State Attorneys for the Respondent/Republic, is hereby certified as a true copy of the original.




H. P. NDESAMBURO
DEPUTY REGISTRAR
COURT OF APPEAL