**IN THE COURT OF APPEAL OF TANZANIA**

**AT DAR ES SALAAM**

**(CORAM: LILA, J.A., KOROSSO, J.A., And LEVIRA, J.A.)**

**CRIMINAL APPEAL NO. 183 OF 2018**

**KULWA NASSORO MOHAMED ..... APPELLANT**

**VERSUS**

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

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

**(Mwandambo, J.)**

**Dated the 28th day of September, 2017**
**in**
**Criminal Appeal No. 39 of 2017**

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## JUDGMENT OF THE COURT

25th August & 4th December, 2020

**KOROSSO, J.A.:**

Kulwa Nassoro Mohamed, the appellant was arraigned in the District Court of Ilala, at Samora Avenue, Dar es Salaam Region on charges of Unlawful Possession of Government Trophies, contrary to section 86(1)(2)(c)(ii) and (3) of Wildlife Conservation Act, No. 5 of 2009 (the WCA) read together with paragraph 14(d) of the First Schedule to and section 57(1) and 60(2) of Economic and Organized Crime Control Act [Cap 200 R.E 2002] (the EOCCA). The appellant denied the charges fronted against her. After a full trial the appellant

was convicted and sentenced to pay a fine of Tshs. 56,000,000/- or twenty years imprisonment in default.

The prosecution produced three (3) witnesses, Flavian Hurbert (PW1), E.775 D/CPL Mselema (PW2), Damas Paschal (PW3) and tendered three exhibits namely; the leopard skin (Exhibit P1), cautioned statement of the appellant (Exhibit P2) and a certificate of value of the leopard skin (Exhibit P3) to prove the offence charged.

The prosecution case was that, on the 1st November, 2013 at Pugu Kajiungeni area within Ilala District in Dar es Salaam, the appellant was found in possession of Government trophy without permit that is, one leopard skin valued at US $3500.0 equivalent to Tshs. 5,600,000/-. The property of the United Republic of Tanzania. This incident occurred when "Operation Tokomeza", which involved Police Officers, Natural Resource Officers and officers from other security organs was being implemented in Dar es Salaam and Coast Regions.

On the date of incident, when the "operation team" was within Kisarawe District, they received information from an informer that there was someone selling leopard skin. Some of the team members followed up the information up to where the appellant was. The

appellant was found with leopard skin at her house, questioned and thereafter put under restraint, the operation team, dissatisfied with her response on why she had the leopard skin. She was kept under custody and was consequently arraigned in the District Court of Ilala on the charges as found in the charge sheet. The leopard skin (Exhibit P1) alleged to have been seized from the appellant was taken to the Police Station and on the 4th November 2014, was evaluated and valued accordingly.

In her defence, the appellant pleaded innocent possession. She contended that she had stayed with Exhibit P1 for five years having been handed the same by a Truck driver after spending a night at her house.

The trial court having heard the appellant's and the respondent's cases believed the prosecution evidence and proceeded to find the appellant guilty as charged and convicted her accordingly. Her appeal to the High Court was unsuccessful.

The appellant was aggrieved with the decision of the High Court and lodged her appeal by way of Memorandum of Appeal containing five (5) grounds of appeal and the Supplementary Memorandum of Appeal with six (6) grounds of appeal. In her oral submission before

the Court, she informed us that only the supplementary grounds of appeal should be considered and sought leave to abandon the grounds in the Memorandum of appeal. We have paraphrased the supplementary grounds of appeal and they now read as follows:

1. The appellate judge erred in law and fact in upholding the conviction against the appellant relying on exhibit P1, un-procedurally tendered by the prosecutor and without asking the appellant whether she objects.
2. The prosecution side failure to prove chain of custody not having tendered the certificate of seizure and the handing over certificate.
3. Exhibit P3 was un-procedurally tendered by the public prosecutor without asking the appellant whether she objects.
4. PW3 testified without being sworn on the 3/09/2015.
5. The appellate judge erroneously invoked section 388(1) of the Criminal Procedure Act to cure the defect on the charging section
6. The appellate judge failed to assess, evaluate and analyze evidence tendered in court to prove the charges.

When the appeal came for hearing, Kulwa Nassoro, the appellant being unrepresented, appeared in person linked to the Court

through Video Conferencing facility from Segerea Prison while the respondent Republic had the services of Ms. Clara Charwe, learned Senior State Attorney assisted by Mr. Candid Nasua, learned State Attorney.

The appellant upon being invited to amplify on her appeal, began by adopting the grounds of appeal found in the Supplementary Memorandum of Appeal and had nothing further to submit except to pray that the grounds of appeal be considered in her favour, the appeal be allowed and she be set free.

Ms. Charwe commenced her submissions by appraising the Court on some procedural errors discerned. The first one being the fact that the appellant was charged for contravening section 86 (2)(c)(ii) and (3) of the WCA read together with Paragraph 14(d) of the First Schedule to the EOCCA while the proper section to charge her should have been section 86(1)(2)(b) of WCA in view of the particulars of the offence which showed that the Government Trophy which was found in her possession was leopard skin, which is from an animal specified in part I of the First Schedule to the WCA.

The learned Senior State Attorney also conceded the fact that the certificate by the Director of Public Prosecutions (DPP) conferring

jurisdiction on the trial court to try the economic case; referred to a charging provision that differs with the provision used in the charge against the appellant, stating that the error in the charging provision is incurable and fatal, since on the part of the appellant there was no clarity on the nature of the offence she was charged with.

With regard to the substitution of the charging provision by the first appellate court, Ms. Charwe conceded the fact that the learned High Court judge erred in altering the charging provision, contending that altering the charges at the appellate stage is a fatal irregularity having regard to the provision of section 234 of the CPA which provides that it is the duty of the prosecution to inform the trial court of the anomaly in the charge and pray to amend it. She contended that the said provision does not empower the appellate judge to amend the charge.

On the way forward, she urged the Court to invoke its revisional powers vide section 4(2) of the Appellate Jurisdiction Act, Cap 141 Revised Edition 2019 (the AJA) and nullify the proceedings and order a retrial, arguing that there is substantial evidence against the appellant and thus a retrial will be the proper remedy.

Tackling the appellant's defence, the learned Senior State Attorney argued that the appellant's contention that she was an innocent possessor has no legs to stand on and is unbelievable when the time the appellant stated she stayed with the said leopard skin is considered. She contended that the appellant had a long time to act on the leopard skin by reporting it or otherwise even if one was to believe her defence and that the long delay to act upon the leopard skin, a Government trophy, should draw an adverse inference that she was aware of what she had and that it was not with her legally.

Ms. Charwe then proceeded to respond to the grounds of appeal. On the 1st and 2nd grounds of appeal that challenged the admissibility of Exhibit P1 and P2, it was her stand that the certificate of seizure (Exhibit P1) was tendered by PW1 who had testified on how the appellant was arrested and found with leopard skin during a special operation "*Tokomeza*". She reasoned that the obtaining circumstances of arrest and seizure did not warrant having a certificate of seizure. She argued that section 42 of the CPA was not applicable since this was an emergency search together with the fact that the appellant does not deny the fact that she was found with the alleged leopard skin.

On the complaints found in the paraphrased 2nd ground of appeal alleging that the chain of custody of the leopard skin was broken after the seizure, the learned Senior State Attorney vehemently denied this stating that the evidence does not show this arguing that there is ample oral evidence that provides step by step details from the time the leopard skin under scrutiny was seized, to the time it was tendered in court. She implored the Court to be guided by the holding in **Marcelina Koivogui vs Republic,** Criminal Appeal No. 469 of 2017 (unreported), that in proving chain of custody documents alone are not enough. The learned Senior State Attorney asserted that the evidence related to the tendering of the leopard skin, admitted as Exhibit P2 shows that the appellant raised no objection at the time it was tendered and thus she cannot come at this stage to challenge its admissibility.

The other matter which the learned Senior State Attorney addressed related to allegations that Exhibit P1 and P3 were tendered un-procedurally by the prosecutor and the appellant was not accorded an opportunity to object as expounded in the 1st and 3rd grounds of appeal. The learned State Attorney challenged the assertion by the appellant that the said exhibits were tendered by the prosecutor. She

contended that before the said exhibits were admitted, PW1 and PW3 who tendered them each had stated that he was ready to tender the exhibit. That the said exhibits were admitted without any objection from the appellant's side and that PW1 and PW3 had laid foundation with regard to each of the exhibits and it was after this process that the prosecutor had prayed to tender each of the exhibit respectively. She referred the Court to the decision of **Hamisi Said Bakari vs Republic,** Criminal Appeal No. 359 of 2017 (unreported) to cement her assertion.

Ms. Nasua thereafter proceeded to respond to the 3rd ground of appeal, that related to the trial court's reliance on Exhibit P1 and P3 when convicting the appellant, a stand which was also supported by the first appellate court. She reminded the Court that this issue had been dealt with when responding to the 1st and 2nd ground of appeal. In addressing complaints that the appellant was denied an opportunity to object when Exhibit P1 and P3 were tendered, she contended that at the time the exhibits were being tendered, the counsel for the appellant is recorded to have stated that there was no objection to admissibility of the said exhibits and prayed the complaints to be found misconceived.

Responding to the paraphrased 4th ground of appeal with complaints on the trial and the first appellate court's reliance on Exhibit P3 when convicting the appellant while the evidence of PW3 who tendered the said exhibit, was not sworn or affirmed before testifying. The learned State Attorney denied the allegation and urged the Court to be guided by the trial court's proceedings found in the record of appeal (page 32). He contended that the record of appeal shows that PW3 was duly sworn before giving his testimony and also reminded of his oath at various intervals during his testimony dependent on the obtaining circumstances (page 33 of record of appeal).

Ms. Charwe then resurfaced again to retort on challenges found in the paraphrased 6th ground of appeal that faults the trial and the first appellate courts for not properly analyzing the prosecution evidence, arguing that the complaints are misconceived since from the record of appeal it is clear that the prosecution evidence was properly analyzed by both the trial and the first appellate courts. That the reasons for the conviction of the appellant by the trial court were provided, the same related to sustaining the conviction on the part of

the first appellate court (pages 55-74 and 90-96 of the record of appeal).

The learned Senior State Attorney then urged the Court to find that all the raised grounds of appeal except for the 5th ground of appeal lacked merit. She urged the Court to be reminded of her earlier submissions on the 5th ground having conceded to the procedural irregularities discerned in the proceedings at the trial and first appellate courts and their fatality and then reiterated her earlier prayer on the consequences thereto.

On the way forward, the learned Senior State Attorney stated that having regard to the fact that the prosecution presented evidence which proved the case against the appellant to the standard required save for the procedural irregularities discussed above, a retrial is the best available option. She also submitted what she termed as an alternative to the said prayer, arguing that if the Court was to find that a retrial cannot be ordered under the circumstances, then the order of the Court should be upon nullification of proceedings, to leave the way forward for the DPP to determine the best way forward against the appellant.

In rejoinder, the appellant had nothing substantive to state other than reiterating her previous submissions and prayers while imploring the Court to be set free.

After a careful scrutiny of the submissions, the evidence on record and cited references from both sides, we have decided to deliberate on an issue which is partly raised in the paraphrased 5th ground of appeal, that is, whether or not the charges against the appellant found in the charge sheet within the record of appeal are proper. We shall also look into the propriety of the Consent to Prosecute the appellant issued by the State Attorney In-charge and the Certificate by the State Attorney In-charge conferring jurisdiction on the District Court to try the appellant against the economic offences for which she is charged with within the confines of the charging sections since we are of the view that the said issues can dispose of the appeal. The charge sheet against the appellant is reproduced together with the consent of the State Attorney In-charge and the Certificate Conferring Jurisdiction on the District Court to try an Economic Offence. They read thus:

***"IN THE DISTRICT COURT OF ILALA***

***AT SAMORA***

***ECONOMIC CASE NO. 15 OF 2013***

***REPUBLIC***

*Versus*

***KULWA NASSORO MOHAMED***

***CHARGE***

***STATEMENT OF OFFENCE***

***UNLAWFUL POSSESSION OF GOVERNMENT TROPHIE:*** *Contrary to Section 86(1)(2)(c)(ii) and (3) 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) both of Economic and Organized Crime Control Act [Cap. 200 R.E. 2002].*

***PARTICULARS OF OFFENCE***

***KULWA NASSORO MOHAMED,*** *on 1st day of November, 2013 at Pugu Kajiungeni area within Ilala District in Dar es Salaam Region, was found in possession of Government Trophies to wit: one Leopard skin valued at USD 3500.0 equivalent to Tshs. 5,600,000/= the property of the Government of the United Republic of Tanzania without permit.*

***Dated*** *at Dar es Salaam this 6th day of November 2013.*

*Signed*

***State Attorney***

***CONSENT OF THE STATE ATTORNEY***

***I, JOSEPH PANDE,*** *State Attorney Incharge Dar es Salaam Zone, in terms of section 26(2) of the Economic and Organized Crime Control Act [Cap 200 R.E 2002] and GN No. 191 of 1994 DO* ***HEREBY CONSENT*** *to prosecute of (sic)* ***KULWA NASSORO MOHAMED*** *for Contravening the provision of section 86(1)(2)(b) and (3) of the Wildlife Conservation Act No. 5 of 2009 as read together with Paragraph 14(d) of the First Schedule to and section 57(1) and 60(2) both of Economic and Organized Crime Control Act [Cap 200 R.E 2002]* ***BE TRIED*** *the particulars which one (sic) stated in the charge sheet.*

*Dated at Dar es Salaam this 6th day of November, 2013*

*Signed*

*Joseph Pande*

***STATE ATTORNEY INCHARGE***

***CERTIFICATE CONFERRING JURISDICTION ON THE DISTRICT COURT TO TRY AN ECONOMIC OFFENCE***

***I, JOSEPH PANDE,*** *State Attorney Incharge Dar es Salaam Zone, in terms of section 12(3) of the Economic and Organized Crime Control Act [Cap 200 R.E 2002] and GN 191 of 1984* ***DO HEREBY ORDER THAT*** *the accused person* ***KULWA NASSORO MOHAMED*** *for Contravening the provision of section 86(1) and (2) (a) of the Wildlife Conservation Act, No. 5 of 2009 as read together with Paragraph 14(d) of the First Schedule to and section 57(1) and 60(2) both of Economic and Organized Crime Control Act [Cap 200 R.E. 2009]* ***BE TRIED*** *by the District Court of Ilala District at Ilala.*

*Dated at Dar es Salaam this 6th day of November, 2013*

*Signed*
*Joseph Pande*
***State Attorney Incharge"***

It should be understood that although the issue of the defect in the charge was raised by the appellant during the trial, the trial court did not deliberate or make a finding on it in the judgment. On appeal, the learned High Court judge had time to consider this issue in the judgment (see page 96 of the record) when addressing the complaints against the trial court's use of section 86(1)(2)(ii) of the WCA to impose the maximum sentence to the appellant upon conviction and disregarding her defence. The leaned High Court Judge, agreed with the learned State Attorney's submissions and stated:

> "*.... I agree that the conviction was based on a wrong provision of the law. However, having determined the rest of the grounds of appeal essentially dismissing the appeal I do not think it will be appropriate route to take the route touted by the learned State Attorney. On the contrary, having regard to the circumstances of this appeal, I would invoke the provisions of section 388(1) of the CPA by substituting section 86(2)(b) of the WCA with section 86 (1)(2)(ii) which, as submitted by both*

*appellant's Advocate and the learned State Attorney was wrongly cited. The appellant's conviction should be recorded to have been made under 86(2)(b) of the WCA to which the appellant stood charged before the trial court."*

With due respect, the concluding remarks by the learned appellate Judge do not truly reflect the contents of the charges against the appellant that is, the charging provisions. As reproduced above, the appellant was charged and convicted for contravening section 86(1)(2)(c)(ii) and (3) of the WCA, together with Paragraph 14(d) of the First Schedule to and section 57(1) and 60(2) the EOCCA and not section 86(2)(b) of WCA as observed by the learned first appellate Judge.

Suffice to say it is important to reproduce the charging provisions relevant for this appeal, that is, section 86(1)(2)(b)(c)(ii) and (2) which state as follows:

*"86(1) Subject to the provisions of this Act, a person shall not be in possession of, or buy, sell or otherwise deal in any government trophy.*

*(2) A person who contravenes any of the provisions of this section commits an offence and shall be liable on conviction-*

*(a) where the trophy which is the subject matter of the charge or any part of such trophy is part of an animal specified in Part I of the First Schedule to this Act, and the value of the trophy does not exceed one hundred thousand shillings, to imprisonment for a term of not less than five years but not exceeding fifteen years or to a fine of not less than twice the value of the trophy or to both; or*

*(b) where the trophy which is the subject matter of the charge or any part of such trophy is part of an animal specified in Part I of the First Schedule to this Act, and the value of the trophy exceeds one hundred thousand shillings, to a fine of a sum not less than ten times the value of the trophy or imprisonment for a term of not less than twenty years but not exceeding thirty years or to both.*

*(c) in any other case -*

*(i) where the value of the trophy which is the subject matter of the charge does not exceed one hundred thousand shillings, to a fine of*

*not less than the amount equal to twice the value of the trophy or to imprisonment for a term of not less than three years but not exceeding ten years;*

*(ii) where the value of the trophy which is the subject matter of the charge exceeds one million shillings, to imprisonment for a term of not less than twenty years but not exceeding thirty years and the court may, in addition thereto, impose a fine not exceeding five million shillings or ten times the value of the trophy, whichever is larger amount."*

As stated hereinabove, a leopard is an animal specified under Part 1 of the First Schedule to the WCA and it thus follows that leopard skin falls within this Part. According to the charge sheet, the value of the leopard skin was stated to be USD 3500.0 equivalent to Tshs. 5,600,000/= and was thus above the threshold of Tshs. 100,000/= as specified under section 86(2)(b) of WCA. Therefore, as observed by the learned High Court Judge the proper sentencing provision having regard to the particulars of the offence as stated was section 86(2)(b) of the WCA which relates to Government trophies related to animals specified in Part I of the First Schedule to WCA and

not Section 86 2(b)(ii) of WCA which addresses charges involving Government trophies of animals other than those specified in Part I of the First Schedule to the WCA and the value of the trophy being above one million shillings. At the same time the charge should show the relevant provisions in the EOCCA, since the offence charged is designated as an economic offence by virtue of paragraph 14(d) and section 57(1) of the EOCCA together with the sentence provision therein that is, section 60(2) of the EOCCA.

From the summation above, it is obvious that as correctly alluded to by the appellant in her grounds of appeal as paraphrased and conceded by the learned Senior State Attorney, we find the charge against the appellant was defective.

Having found that the charge sheet was defective, we now have to consider whether the said defect prevented the appellant from understanding the nature and seriousness of the offence charged and prevented her from entering a proper defence and consequently prejudiced her rights, as observed in **Jamali Ally @ Salum vs Republic**, Criminal Appeal No. 52 of 2017 (unreported).

Indeed, section 132 of the Penal Code, Cap 16 Revised Edition 2002 (the Penal Code) and section 135 (a) (ii) of the CPA govern the

framework of the charge or information; or rather on the format for charging offences. It is required under section 132 of the Penal Code for the offence to be specified in the charge along with all requisite particulars to divulge the nature of the offence charged. Section 135 (a) (ii) of the CPA states:

> *"The statement of offence shall describe the offence shortly in ordinary language avoiding as far as possible the use of technical terms and without necessarily stating all the essential elements of the offence end, if the offence charged is one created by enactment shall contain reference to the section of the enactment creating the offence."*

As we observed in **Mussa Nuru @Saguti vs Republic,** Criminal Appeal No. 66 of 2017 (unreported), section 135(a) (ii) of the CPA is couched in imperative terms and requires the statement of the offence to cite a correct reference of the section of the law which sets out or creates a particular offence allegedly committed. The Court also made reference to an earlier decision which laid a foundation in such situations. That is, **Said Hussein vs Republic,** Criminal Appeal No. 2016 (unreported) and we stated:

> *"... section 131 of the Code provides for punishment for those different categories of rape. This section too has subsections (1),(2) and (3), of which subsection (2) has paragraphs (a) to (c). In our view, this again, explains the reasons why it is often been emphasized by the Court that punishment of each category of the offence must be specifically indicated in the charge sheet"*

As we have alluded to before, in the current appeal, the charges failed to show the relevant sentencing provision leading us to find the charge was defective.

But apart from this, another issue was whether or not it was proper for the first appellate judge to amend the charge at the appeal stage by entering a conviction on a new charging provision. The learned Senior State Attorney conceded that the learned High Court judge erred in altering the charging provision at that level and the error is a fatal irregularity especially when section 234 of the CPA is considered. That under the said provision the duty is on the prosecution side to inform the trial court of the anomaly in the charge and seek to amend the charge.

This Court has through various decisions reminded those drafting charges the need to properly frame the charges and stated that once the charge is found to be defective, the procedure to amend charges as provided under section 234 of the CPA be followed (see **Mohamed Koningo vs Republic** [1980] T.L.R 279). In the case subject of the current appeal, there was no amendment effected to the charge at the trial. Whilst the trial court convicted the appellant on the offence as charged, that is, unlawful possession of Government Trophy contrary to section 86(1)(2)(ii) of the WCA read together with paragraph 14(d) of the First Schedule to and section 57(1) and 60(2) of the EOCCA, the learned High Court Judge upon finding that the conviction was found on a wrong provision of the law proceeded to cure the error vide section 388(1) of the CPA and substituted section 86(2)(b) of the WCA with section 86(1)(2)(ii) of the WCA.

In our deliberation we seek guidance from section 300(1) and (2) and also section 234 of the CPA which reads:

> *"Section 300 (1)- When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved but the*

*remaining particulars are not proved, he may be convicted of the minor offence although he was not charged with it.*

*(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he was not charged with it."*

We find that, when carefully considered, section 300(1) of the CPA envisages the substituted offence to be minor and cognate to the offence that an accused person was charged with. This Court has emphasized this stance in various cases including **Robert Ndecho and Another vs R.** [1951] 18 EACA 171. In **Richard Estomihi Kimei and Another vs Republic,** Criminal Appeal No. 375 of 2016 (unreported), the Court cited a High Court case of, **Elmi bin Yusufu vs Rex,** T.L.R (R) 269 and subscribed to the finding thereto in its interpretation of section 181(1) of the repealed Criminal Procedure Code, which had identical wordings with section 300(1) of the CPA and observed:

"*Though a magistrate [or Judge] has power under this section to convict the accused of a different offence from what he was originally*

*accused of, still this must be done only in cases where the accused is not in any way prejudiced by the conviction on the new charge. The accused person is entitled to know with certainty and accuracy the exact nature of the charge brought against him, and unless he has this knowledge, he must be seriously prejudiced in his defence."*

We also subscribe to the above excerpt, and indeed, when imputed to the current case we are of the view that although the wordings of section 300(1) allow conviction of an accused for a minor offence which the accused might not have been charged with initially (which in effect also extends to the appellate court in substitution of the offence charged), such substitution should not prejudice the rights of the accused (or appellant on appeal). The accused or appellant has a right to know and understand the nature of the charges against him and must be accorded the right of defence on that new charge.

In the case at hand, the substituted charging provisions by the High Court judge related to a different sentence altogether and are not similar as alluded to by the learned State Attorney. While under section 86(2)(b) which was substituted by the first appellate court,

upon conviction, deal with government trophies under Part I of the First Schedule to the WCA and upon conviction, the punishment is "*...where the amount exceeds one hundred thousand shillings, to a fine of a sum not less than ten times the value of the trophy or imprisonment for a term of not less than twenty years but not exceeding thirty years or both...*".

On the other hand, the provisions cited in the charge sheet section 86(1)(2)(c)(ii) and (3) deal with unlawful possession of government trophies not specified in Part 1 of the First Schedule to the WCA and upon conviction the punishment where the value of the trophy exceeds one million shillings, "*...to imprisonment for a term of not less than twenty years but not exceeding thirty years and the court may, in addition thereto, impose a fine not exceeding five million shillings or ten times the value of the trophy, whichever is larger amount..*".

Undoubtedly, the sentences differ in content and magnitude, therefore it was imperative that the appellant be made to understand the nature and its import, thus substituting the charging provision at the appellate level was an irregularity since the only avenue for amending the charge was at the trial. In the premises, substituting

the charging provision at the appellate level clearly denied the appellant an opportunity to properly understand the import of the said substituted provision and was thus prejudicial to his rights as correctly stated by the learned Senior State Attorney (see **Alex Medard vs Republic**, Criminal Appeal No. 571 of 2017; and **Nzararila Alfonce vs Republic**, Criminal Appeal No. 371 of 2017 (all unreported)).

The above finding is further amplified by the fact that as the record of appeal reveals, the purported Consent issued vide section 26(2) of the EOCCA by the State Attorney Incharge already reproduced hereinabove, commenced prosecution of the appellant, with respect to contravening **section 86(1)(2)(b) and (3) of the WCA as read together with Paragraph 14(d) of the First Schedule to and section 57(1) and 60(2) both of EOCCA** on the particulars as stated in the charge sheet. While on the other hand, the Certificate issued under section 12(3) of the EOCCA by the State Attorney Incharge conferred jurisdiction on the District Court of Ilala at Dar es Salaam to try the appellant charged with an economic offence. The relevant economic offence is one related to contravening the provision of **section 86(1) and (2) (a) of WCA as read**

**together with Paragraph 14(d) of the First Schedule to and section 57(1) and 60(2) of EOCCA.**

Again, it is obvious that the Consent relates to an offence on contravening provisions which though found in the charge sheet but in effect differ with the substituted charging provisions by the learned High Court Judge. At the same time, the Certificate conferring jurisdiction for the appellant to be tried in the District Court for economic offences for provisions differs in the charging provisions found in the consent of the State Attorney Incharge to prosecute and the substituted charging provisions by the learned High Court Judge. This being the case we are left with questions whether there was a proper consent and a proper certificate that conferred jurisdiction to the District Court to try the offence charged against the appellant for which she was convicted with.

Certainly, it is undisputable that the consent issued by the DPP must be given before any trial involving an economic offence can commence as provided for by section 26(1) of the EOCCA which also mandates the DPP to delegate his powers to his subordinates in terms of section. This position has been cemented by various decisions of this Court such as **Paulo Matheo vs Republic** [1995] T.L.R 144;

**Abraham Adamson Mwambene vs Republic**, Criminal Appeal No. 148 of 2011 and **Ramadhani Omary Mtiula vs Republic**, Criminal Appeal No. 62 of 2019 (both unreported).

Under the EOCCA, prior to the amendment vesting jurisdiction to try Economic offences in the Corruption and Economic Division of the High Court brought by Act No. 3 of 2016, the Economic Crimes Court envisaged under section 3(1) of the EOCCA was the High Court. Nevertheless, in terms of section 12(3) of the EOCCA, the jurisdiction could be conferred to a subordinate court upon certification under the hand of the DPP or any State Attorney duly authorized by him if he deems it necessary or appropriate in the public interest.

This therefore infers that, before a subordinate court tries an economic offence, it has to be conferred with the jurisdiction to try such a case upon certification by the hand of the DPP or his subordinates to proceed as such. Thus, under the circumstances, where as rightly pointed out by the learned State Attorney, the certificate conferring jurisdiction to the District Court conferred jurisdiction for the appellant to be tried for an offence which was not consented to, it renders the certificate to be erroneous. This coupled with the fact that, the substitution by the High Court of the provision

related to the offence charged against the appellant rendered the consent issued by the DPP for the prosecution of the appellant as per the charge sheet meant in effect the substituted provisions were not consented to by the DPP or his subordinates as required by the law. Accordingly, for the foregoing reasons, the consent and the certificate conferring jurisdiction on the subordinate court to try an economic offence were both erroneous and renders the two documents inconsequential since the law was not complied with. Under the circumstance, undeniably, the District Court of Ilala lacked jurisdiction to try the appellant on the offence charged.

Taking all the circumstances of this case, we firmly hold that the trial against the appellant was a nullity and the proceedings and judgment of the High Court on appeal was thus based on proceedings which were a nullity. Having said so, we find that our analysis of this ground of appeal is enough to dispose of the appeal without deliberating on remaining grounds.

We also refuse to accept the invitation by the learned Senior State Attorney and we find that this is not an appropriate case where a retrial can be ordered for reasons stated hereinabove.

We thus invoke the revisional powers vested in this Court by section 4(2) of the AJA and hereby quash the proceedings and the judgments of both the trial court and the High Court. We similarly quash the conviction and set aside the sentence and orders imposed on the appellant. The immediate release of the appellant from prison unless he is otherwise lawfully held is ordered.

**DATED** at **DAR ES SALAAM** this 2nd day of December, 2020.

S. A. LILA
**JUSTICE OF APPEAL**

W. B. KOROSSO
**JUSTICE OF APPEAL**

M. C. LEVIRA
**JUSTICE OF APPEAL**

The judgment delivered this 4th day of December, 2020 in the presence of the appellant in person through video conferencing facility from Segerea Prison and Mr. Candid Nasua, learned State Attorney for the respondent/Republic is hereby certified as a true copy of the original.

THE COURT OF APPEAL OF TANZANIA

E.F. FUSSI
**DEPUTY REGISTRAR**
**COURT OF APPEAL**