

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

(CORAM: MUGASHA, J.A., KITUSI, J.A And MASHAKA, J.A.)

CRIMINAL APPEAL NO. 528 OF 2017

MATONGO CHACHA @ MWITA.....APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

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

(Kibella, J.)

dated the 19th day of August, 2016

in

Criminal Appeal No. 64 of 2016

RULING OF THE COURT

11th & 19th August, 2021.

KITUSI, J.A.:

Matongo Chacha @ Mwita, the appellant, appeared before the District Court of Bariadi, in Bariadi, to answer a charge preferred against him, consisting of five counts. The first count charged the appellant for unlawful entry in the National Park contrary to section 21 (1) (a) and 29 of the National Parks Act [Cap. 282 R.E. 2002], (the Act), it being alleged that he was found at Nyamuma Hill area within Serengeti National Park without a written permit from the Director of National Parks.

The first count was a non – economic offence.

In the second to fifth counts, the appellant was charged for contravening the provisions of the Act, the Wildlife Conservation Act, No 5 of 2009 (the WCA) and the Economic and Organized Crimes Control Act [Cap 200 R.E 2002] (the EOCCA). In the second count he was charged with unlawful possession of weapons in a National Park, contrary to section 24 (1) (b) and (2) of the Act, read together with paragraph 14 (c) of the 1st schedule to and section 57 (1) and 60 (2) of the EOCCA, alleging that the appellant, while at Nyamuma village within Serengeti National Park, was found in possession of a knife, a machete and five trapping wires without permission. Under the third count, the appellant was charged with unlawful hunting in a National Park contrary to section 23 (1) of the Act, read together with paragraph 14 (a) of the 1st schedule to and section 57 (1) and 60 (2) of the EOCCA. In this respect, it was alleged that while in the National Park mentioned in the first two counts, the appellant hunted two zebras, one wildebeest and one warthog, without a written permission of the Director of National Parks.

In the fourth and fifth counts, the appellant was charged for being in unlawful possession of Government Trophies contrary to the WCA and the

EOCCA. In the fourth count it was alleged that the appellant contravened sections 86 (1) (2) (b) of the WCA and paragraph 14 (d) of the 1st schedule to and section 57 (1) and 60 (2) of the EOCCA, by being found in possession of 16 dried pieces of zebra meat and one dried skin of zebra, valued at Tshs. 3, 840,000/=, the property of the United Republic of Tanzania. In the fifth count it was alleged that in contravention of section 86 (1) (2) (c) (ii) of the WCA and Paragraph 14 (d) of the 1st Schedule to and section 57 (1) and 60 (2) of the EOCCA, the appellant was found in possession of 8 dried pieces of wildebeest meat, one dried skin of wildebeest valued at Tshs. 1, 040,000/= and one dried skin of warthog valued at shs. 720,000/=, the property of the United Republic of Tanzania.

The last four counts are economic offences.

The appellant was convicted with all five counts and sentenced to payment of fine in different sums or to jail terms in default of payment of those sums. The maximum sentences were in the fourth count in which the appellant was sentenced to a fine of Tshs. 38,400,000/= or to 20 years in jail in default, and in the fifth count, where he was sentenced to a fine of Tshs. 720,000/= or to 20 years in jail in default. The sentences were ordered to run concurrently.

The High Court to which the appellant appealed, dismissed the first appeal, but varied the sentence in respect of the fifth count. It ordered payment of Tshs. 17,600,000/= or 20 years in jail in default, instead of the fine of Tshs. 720,000/= which had been imposed by the District Court. This is the second appeal.

Before us, the appeal raises four grounds of appeal to challenge the decision of the High Court. However, we shall not refer to those grounds of appeal nor to the evidence because, we think, the two courts below did not address the issue of jurisdiction, which is increasingly becoming a perennial problem in proceedings such as the instant.

Ms. Wampumbulya Shani, learned State Attorney, who represented the respondent Republic at the hearing, had also realized the issue of jurisdiction, so she immediately sought and obtained leave to address that issue, ahead of the substantive grounds of appeal.

The learned State Attorney submitted that jurisdiction of subordinate courts to try economic offences is conferred by, among others, a consent of and a certificate of transfer both issued by the DPP under sections 26 and 12 respectively, of the EOCCA. She went on to submit that in this case the

certificate was issued under section 12 (3) of the EOCCA. The said provision reads: -

"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 may specify in the certificate."

Ms. Shani submitted further that the above provision, confers jurisdiction to the District Court to try economic offences. She argued that, that certificate does not confer jurisdiction to try both economic and non-economic offences. For economic and non-economic offences, she submitted, the certificate of transfer ought to be issued under section 12 (4) of the EOCCA. That provision reads: -

"The Director of Public Prosecutions or any State Attorney duly authorized by him may, in each case in which he deems 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.”

The learned State Attorney submitted that, the District Court proceeded without the requisite jurisdiction by assuming such jurisdiction from a certificate of transfer wrongly issued under section 12 (3) of the EOCCA. She concluded therefore, that the proceedings before the District Court as well as those before the High Court were a nullity.

Ordinarily, Ms. Shani submitted, she would have prayed for a retrial, but she did not do so in this case. The reason she did not press for an order of retrial, she said, is that there is a procedural irregularity in the proceedings of the trial court which renders the case for the prosecution insufficient to convict the appellant if a retrial will be ordered. Referring to the said infraction, the learned State Attorney submitted that the procedure for admitting documentary exhibits was violated. She cited the oft-referred case of **Robinson Mwanjisi & 3 Others vs. Republic** [2003] T.L.R. 218, which is an authority for the procedure of introducing exhibits into evidence.

So finally, the learned State Attorney, citing the case of **Said Lyangubi vs. Republic**, Criminal Appeal No. 324 of 2017 (unreported), and

section 4 of the Appellate Jurisdiction Act [Cap. 141 R.E. 2002], (AJA), she invited us to invoke our revisional powers to nullify the proceedings, quash the judgments and set aside the sentences, and thereafter order the appellant's release.

The appellant who appeared in person, simply nodded approval of the position taken by the learned State Attorney. He prayed to be released.

It is true that jurisdiction to try economic offences is vested in the High Court in terms of section 3 of the EOCCA. However subordinate courts may be conferred with jurisdiction to try such offences by a consent of the DPP issued under section 26 (1) of the EOCCA and a certificate of transfer issued in terms of section 12 (3) of the EOCCA reproduced above. If, however, a person is tried for both economic and non - economic offences, the certificate of transfer has to be issued under section 12 (4) of the EOCCA, also reproduced above. This is to say, that the certificate of transfer in this case, which was wrongly issued under section 12 (3) of the EOCCA for the trial of both economic and non- economic offences, did not confer the trial court with jurisdiction to try that category of offences. Therefore, we agree with the learned State Attorney, that the trial before it and the subsequent proceedings in the High Court, were a nullity. We have reached that

conclusion in many similar cases such as **Ally Salum @ Nyuku vs. Republic**, Criminal Appeal No. 87 of 2020, cited in our very recent decision in **Kingolo Limbu @ Tina and Another vs. Republic**, Criminal Appeal No. 445 of 2017 (both unreported).

As for the way forward, Ms. Shani desisted from pressing for a retrial because, she said, once the documentary exhibits which were irregularly tendered are expunged from the record, the prosecution case will be rendered hollow. Once again, we agree with the learned State Attorney that the documentary exhibits tendered by PW4, that is the inventory and valuation forms, collectively admitted as Exhibit P2, were not read out after admission, to enable the appellant appreciate their contents. That was against the settled principle in **Robinson Mwanjisi** (*supra*). See also the case of **Emmanuel Kondrad Yosipati vs. Republic**, Criminal Appeal No. 296 of 2017 (unreported). Therefore, those documents that were admitted collectively as Exhibit P2 are liable to be expunged, after which, the prosecution will have no evidence to prove the case against the appellant at the required standards. We are also aware of the principle that a retrial should not be ordered if such order will provide the prosecution with room to rectify errors in their case. See the case of **Fatehali Manji vs. Republic**

[1966] E.A 343 and; **Samwel Lazaro vs. Republic**, Criminal Appeal No. 68 of 2017 (unreported). That means if a retrial is ordered in this case, the prosecution will seize that opportunity to rectify the omission to read the documentary exhibits. That will cause an injustice to the appellant.

Consequently, as prayed by Ms. Shani, we invoke our revisional powers under section 4 (2) of the AJA to nullify the proceedings of both the trial and High Court, quash the judgments and set aside the sentences. We order the appellant's immediate release if he is not being held for another lawful cause.

DATED at **SHINYANGA** this 18th day of August, 2021.

S. E. A. MUGASHA
JUSTICE OF APPEAL

I. P. KITUSI
JUSTICE OF APPEAL

L. L. MASHAKA
JUSTICE OF APPEAL

This Ruling delivered this 19th day of August, 2021 in the presence of the Appellant in person, unrepresented and Mr. Jukael Jairo assisted by Mr. Enosh Gabriel, both learned State Attorneys for the Respondent/Republic, is hereby certified as a true copy of the original.




B. A. MPEPO
DEPUTY REGISTRAR
COURT OF APPEAL