

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

(CORAM: WAMBALI, J.A., MWANDAMBO, J.A. And MASHAKA, J.A.)

CRIMINAL APPEAL NO. 270 OF 2019

**DILIPKUMAR MAGANBAI PATEL APPELLANT
VERSUS**

**THE REPUBLIC RESPONDENT
(Appeal from the decision of the High Court of Tanzania
at Dar es Salaam)**

(Mgeta, J.)

dated the 28th day of June, 2019

in

HC. Criminal Appeal No. 146 of 2018

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JUDGMENT OF THE COURT

15th September, 2021 & 25th July, 2022

MASHAKA, J.A.:

The appellant DILIPKUMAR MAGANBAI PATEL has appealed against the decision of the High Court of Tanzania sitting at Dar es Salaam which dismissed his appeal against the conviction and sentence by the Resident Magistrate Court of Dar es Salaam at Kisutu (the trial court) in Economic Case No. 58 of 2016.

The appellant was arraigned for unlawful possession of government trophy contrary to section 86(1), (2)(c)(ii) and (3) of the Wildlife Conservation Act No. 5 of 2009, Cap 383 (the WCA) read together with

paragraph 14 of the First Schedule to, and section 57 (1) of the Economic and Organized Crime Control Act, [Cap 200 R.E. 2002] now R.E. 2022 (the EOCCA) as amended. Initially before the trial court, the appellant and two other persons namely; Sanjiv Kumar Patel and Ashok Kumar who are not parties to the instant appeal were charged together with different offences. In the first count, the appellant was charged with unlawful possession of government trophies as stated above. In the second count, the other accused persons were charged with unlawful dealing in government trophies contrary to sections 82 and 84 (1) of the WCA, read together with paragraph 14 of the First Schedule to, and sections 57 (1) and 60 (2) of the EOCCA. Both pleaded guilty to the second count, were convicted and sentenced to pay a fine of TZS. 106,967,000.00 or to serve five years imprisonment in default.

According to the particulars constituting the charge sheet with respect to the appellant, it was alleged that on 19th November, 2016 at the Julius Nyerere International Airport within Ilala District, in the region of Dar es Salaam, the appellant was found in possession of government trophies to wit, seventeen (17) lion claws valued at TZS. 53,483,500.00 the property of the United Republic of Tanzania without a permit from the Director of the Wildlife Division. The appellant pleaded not guilty which

resulted in a trial. The prosecution paraded four (4) prosecution witnesses to prove its case. The appellant was the only witness in the defence case.

After a full trial, the appellant was found guilty, convicted and sentenced to pay a fine of TZS. 539,876,000.00, in default, to serve twenty years imprisonment. The appellant's attempt to vindicate himself on appeal failed before the High Court which dismissed it upon being satisfied that the prosecution evidence proved beyond reasonable doubt that the appellant was found in possession of government trophies.

Still undaunted, he has preferred this appeal before the Court predicated on four (4) grounds in the substantive memorandum of appeal and six (6) grounds in the supplementary memorandum of appeal.

In determining the appeal, we do not intend to preface our judgment with the detailed factual background of the case, the evidence adduced by the prosecution and the defence. Similarly, for reasons which will be apparent shortly, we wish to begin our discussion with ground one in the supplementary memorandum of appeal which was substantially discussed at the hearing of the appeal and run as follows: -

"That, the first appellate judge erred in law by upholding the appellant's conviction while the trial was conducted without jurisdiction against him as

the certificate conferring jurisdiction dated 24/1/2017 named the first accused person as SELEMANI DILIP KUMARI while the same name does not belong to the appellant and neither did the prosecution prove its one and the same person”.

Considering that the determination of this ground could have a bearing on the validity of the proceedings before the trial court together with the conviction and sentence, we invited parties to address us on it before deliberating other grounds of appeal.

At the hearing of the appeal, Mr. Candid Nasua assisted by Ms. Tully Helela, both learned State Attorney entered appearance for the respondent Republic, whereas the appellant appeared in person, unrepresented. Addressing the Court on the first limb regarding the name of the appellant being referred to as Selemani Dilipkumar Maganbai Patel on the certificate conferring jurisdiction on the trial court dated 24/1/2017 which was not the name of the appellant and that the prosecution failed to prove if it is the name of the appellant; Mr. Nasua conceded that the said certificate bearing the name of Selemani Dilipkumar Maganbai Patel was not the name of the appellant, but maintained that it was a typographical error that cannot invalidate the proceedings, conviction and sentence by the trial court. He added that the consent to prosecute the appellant at page 5 of

the record of appeal correctly stated the name of the appellant is Dilipkumar Maganbai Patel. He therefore requested the Court to invoke section 388 of the Criminal Procedure Act (Cap 20 R.E. 2019) now R.E. 2022 (the CPA) as the error had not prejudiced the appellant.

Going to the second limb on whether in view of the defects in the certificate the trial court had jurisdiction to determine an economic offence against the appellant, Mr. Nasua readily conceded to the anomaly in the certificate and consent of the Director of Public Prosecutions (the DPP). He submitted that the charge sheet cited section 86 (1) (2) (c)(ii) and (3) of the WCA read together with paragraph 14 of the First Schedule to, and section 57 (1) of the EOCCA as amended. On the contrary, the certificate conferring jurisdiction to the subordinate court to try the offence together with the consent of the DPP to prosecute, disclosed that the appellant was jointly and together charged with two other persons for contravening sections 82, 84(1), 86(1), (2)(b) and (3) of the WCA read together with paragraph 14 of the First Schedule to, and sections 57(1) and 60(2) of the EOCCA, he argued. The learned State Attorney further reasoned that this implied that the appellant was jointly and together charged with the second and third accused persons while that was not as described in the charge sheet. He added that according to the charge sheet the appellant

was charged personally in the first count while the two accused persons were jointly charged in respect of the second count.

However, Mr. Nasua strongly argued that it was not a fatal error since the trial court in its judgment delivered the sentence relying on the provisions cited in the charge sheet. Upon our probing, he backstepped and implored the Court if it finds otherwise, to nullify the proceedings and judgment of the trial and first appellate courts and order a retrial. Mr. Nasua explained that there is sufficient evidence against the appellant and that the errors touch on the jurisdiction of the trial court only. He concluded that for a fair trial to both parties, the remedy is a retrial commencing at the committal court.

In reply, the appellant being a lay person had nothing to add.

As correctly argued by Mr. Nasua, it is undisputed, and we are totally in agreement that the record of appeal has shown that on account of the defects in the certificate and consent of the DPP the trial court was not conferred with jurisdiction to conduct the trial against the appellant. Having heard the submissions by Mr. Nasua, it is our view that the root of his arguments is that the trial was a nullity on account of the irregularity stated above as the trial court was not vested with requisite jurisdiction.

Having perused the record of appeal and considered the submissions made by the parties, the issue for determination is whether the trial court was properly clothed with jurisdiction to hear and determine the economic offence against the appellant in compliance to sections 26(1) and 12(3) of the EOCCA. As we earlier alluded to, the appellant was charged with unlawful possession of government trophy contrary to section 86(1), (2)(c)(ii) and (3) of the WCA read together with paragraph 14 of the First Schedule to, and section 57 (1) of the EOCCA.

Admittedly, section 3(3) of the EOCCA confers jurisdiction upon the Corruption and Economic Crimes Division of the High Court to hear and determine cases involving economic offences which are specified under paragraph 14 of the First Schedule to the said Act. However, courts subordinate to the High Court have jurisdiction over economic offences where the DPP transfers, by a certificate, any such offence to be tried by the court in terms of section 12(3) of the EOCCA which stipulates that: -

"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”.

It is worthy to note that without the consent of the DPP, no trial of an economic offence can commence before a court entrusted with jurisdiction. On the other hand, section 26(1) of the EOCCA provides that:

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"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”.

The charge against the appellant being an economic offence as prescribed under section 57 of the EOCCA, was to be determined by the High Court, Corruption and Economic Crime Division. However, the DPP conferred jurisdiction on the subordinate court under section 12(3) of the EOCCA to try the economic offence and gave his consent to prosecute the appellant as charged. In this regard, the certificate issued by the DPP reads as follows: -

"CERTIFICATE CONFERRING JURISDICTION ON A SUBORDINATE COURT TO TRY AN ECONOMIC CRIME CASE

*I, BISWALO EUTROPIUS KACHELE MGANGA,
Director of Public Prosecutions, in terms of section*

26(1) of the Economic and Organized Crime Control Act [Cap 200] as amended DO HEREBY ORDER SELEMANI DILIPKUMAR MAGANBAI PATEL, SANJIV KUMAR and ASHOK KUMAR who are jointly and together charged for contravening the provisions of sections 82, 84(1), 86(1), (2)(b) and (3) of the Wildlife Conservation Act, No. 5 of 2009, read together with paragraph 14 of the First Schedule to, and sections 57(1) and 60(2) of the Economic and Organized Crime Control Act [Cap 200] as amended, which are triable by the Economic Crimes Court BE TRIED in the Resident Magistrate's Court of Dar es Salaam at Kisutu.

*Signed at Dar es Salaam this 24th day of
January, 2017.*

*Biswalo Eutropius Kachele Mganga
DIRECTOR OF PUBLIC PROSECUTIONS"*

On the contrary, the consent of the DPP to prosecute the appellant stated that: -

"I, BISWALO EUTROPIUS KACHELE MGANGA, Director of Public Prosecutions, in terms of section 12 (3) of the Economic and Organized Crime Control Act [Cap 200] as amended DO HEREBY CONSENT to the prosecution of DILIPKUMAR

MAGANBAI PATEL, SANJIV KUMAR PATEL AND ASHOK KUMAR for contravening the provisions of sections 82, 84(1), 86(1), (2)(b) and (3) of the Wildlife Conservation Act, No. 5 of 2009, read together with paragraph 14 of the First Schedule to, and sections 57(1) and 60(2) of the Economic and Organized Crime Control Act [Cap 200] as amended, the particulars of which are stated in the charge sheet.

*Signed at Dar es Salaam this 24th day of
January, 2017.*

Biswalo Eutropius Kachele Mganga

*DIRECTOR OF PUBLIC
PROSECUTIONS".*

On the other hand, according to the charge sheet, the appellant stood charged with contravening section 86(1), (2)(c)(ii) and (3) of the WCA for unlawful possession of government trophies read together with the provisions of the EOCCA indicated above and not sections 82, 84(1), 86(2)(b) of the WCA reflected in the above stated certificate and the consent; an offence which was never preferred against the appellant. In the circumstances, the appellant was charged with an offence, tried and convicted by the subordinate court without it being clothed with jurisdiction

to try the economic crime case and without the certificate and consent of the DPP to prosecute him. The charge sheet was not sanctioned by the dictates of sections 12(3) and 26(1) of the EOCCA.

This Court in its various decisions had emphasized the importance of compliance with the provisions of section 12 (3) and 26 (1) of the EOCCA and held that the certificate and consent of the DPP must be given before the commencement of a trial involving an economic offence before subordinate courts. For this stance, see, **Rhobi Marwa Mgare and Two Others v. The Republic**, Criminal Appeal No. 192 of 2005, **Elias Vitus Ndimbo and Another v. The Republic**, Criminal Appeal No. 272 of 2007, **Nico s/o Mhando and Two Others v. The Republic**, Criminal Appeal No. 332 of 2008 (all unreported).

In view of the irregularities in the consent and certificate of the DPP with regard to the name and propriety of the provisions of law, the trial court was not properly seized with jurisdiction to try the appellant as charged.

We have no doubt that in view of our deliberations above the consent and certificate conferring jurisdiction on the trial court were defective, though they were made under the appropriate provisions; sections 12(3) and 26(1) of the EOCCA but referred to the provisions which

the appellant was not charged with. The consent and certificate did not refer to section 86(1), (2)(c)(ii) and (3) of the WCA which was clearly cited in the charge sheet. The certificate and consent were therefore incurably defective and the trial magistrate could not cure the anomaly in the judgment as suggested by the learned State Attorney for the respondent. The defects rendered the consent of the DPP and certificate transferring the economic offence to be tried by the trial court invalid. For that reason, we are constrained to find that the trial and proceedings before the Resident Magistrate Court of Dar es Salaam at Kisutu in Economic Case No. 58 of 2016 and the High Court Criminal Appeal No. 146 of 2018 were nothing but a nullity.

In the event, having held that the consent and certificate were incurably defective there could not have been any valid proceedings before the trial court resulting in the conviction and sentence handed out to the appellant, we allow this ground of appeal. As this ground suffices to dispose of the appeal, we accordingly, in terms of section 4 (2) of the Appellate Jurisdiction Act, Cap 141 R.E. 2022 nullify the proceedings of the trial court, quash the conviction and set aside the sentence. To follow suit, the proceedings before the first appellate court are similarly quashed and the judgment and orders set aside.

On the other hand, having considered the circumstances of the case and parties' arguments for and against, we hold that a retrial will be in the interest of justice. We thus order a retrial of the case, subject to a certificate conferring jurisdiction and consent of the Director of Public Prosecutions to prosecute the appellant. In the meantime, the appellant shall remain in custody pending retrial before a competent court.

Order accordingly.

DATED at DAR ES SALAAM this 20th day of July, 2022.


F. L. K. WAMBALI
JUSTICE OF APPEAL

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

L. L. MASHAKA
JUSTICE OF APPEAL

This Judgment delivered this 25th day of July, 2022 in the presence of the Appellant through video conference and Mr. Tumaini Maingu Mafuru, learned State Attorney for the Respondent, is hereby certified as a true copy of the original.




C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL