IN THE COURT OF APPEAL OF TANZANIA
AT SHINYANGA

(CORAM: MWARIJA, J.A., KEREFU, J.A., And KENTE, J.A.)

CRIMINAL APPEAL NO. 167 OF 2019

SHUSHA SITA .....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

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

(Makani, J.)

dated the 12th day of April, 2019
in
Criminal Appeal No. 95 of 2017

JUDGMENT OF THE COURT

2nd & 11th November, 2022

KENTE, J.A.:

The appellant Shusha Sita along with one Masunga Mabula who is not a party to this appeal, appeared before the District Court of Bariadi where they were charged with four counts comprising both economic and non-economic offences. In the first count, they were alleged to have unlawfully entered into the Serengeti National Park supposedly contrary to sections 21(1) (2) and 29 of the National Parks Act (hereinafter the "NPA"). In the second count, they were charged with

unlawful possession of weapons in the National Park an offence predicated under section 24(1)(b) and (2) of the NPA. The third count charged them with unlawful hunting in a National Park contrary to section 23(1) and (2)(a) of the NPA. In the fourth and last count, the appellant and his co-accused were charged with an economic offence of being in unlawful possession of Government trophies contrary to section 86(1), (2) and (3) (b) of the Wildlife Conservation Act read together with paragraph 14(d) of the First Schedule to, and section 57(1) of the Economic and Organized Crimes control Act, Chapter 200 of the Laws of Tanzania (the EOCCA).

The particulars in support of the above-cited counts were respectively as follows. In the first count, it was particularized that, on the 18th day of July, 2016 at about 12:00 noon, the appellant and his crony entered into the Serengeti National Park particularly at a place called "Balageti River" which is within the District of Bariadi and Simiyu Region without the permit of the Director of National Parks. With regard to the second count, the particulars alleged that, on the same day, at the same time and place, the appellant and his co-accused were

found in possession of one machete, two bush-knives and five animal traping wires without the permission previously sought and obtained from the Director of National Parks. In the third count, they were alleged to have hunted one Zebra valued at USD 1200 equivalent to TZS. 2,625,588.00 the property of the URT without the permit from the National Parks Director. In the last count, the duo were alleged to have been found in unlawful possession of sixteen pieces of Zebra-meat valued at USD 1,200 equal to TZS. 2,625,588.00 the property of the Government of Tanzania without the permit of the Director of National Parks.

The facts of the case which emerge from the evidence led in support of the prosecution case were briefly as follows. That, on 18th July at about 12:00 noon, one Nurdin Bawazir (PW1) and his fellow park ranger one Abdul Athuman Sasya (PW2) were on routine patrol in the Serengeti National Park. They then saw some human footprints whose trail they followed deep into the bushes where they spotted what they called a "small camp" then allegedly occupied by the appellant and his co-accused. With the assistant of other park rangers, they besieged the

said camp and managed to arrest and found them in possession of the aforementioned items. Having bundled them into their (park rangers) car, they took them to Duma Post and later on to the police station at Bariadi where, after preliminary investigation, they charged them with the offences alluded to earlier. However, it appears from the record that, the trial was conducted in the absence of the said Masunga Mabula when he failed to appear for trial after being released on bail.

The appellant's defence version before the trial court is remarkable for its unusual brevity. On being addressed in terms of the law regarding his rights and subsequently put on his defence, he is recorded to have opted to testify under oath with no witnesses to call. After stepping into the witnesses' box he is on record as having simply told the trial court thus:

> *"I have no defence as my right. I pray for the court to enter judgment."*

The appellant having elected not to give evidence on his own behalf with the view to controverting the allegations levelled against him, it was all down hill from there for the learned trial magistrate. He

chose to believe the prosecution evidence to the effect that, indeed the appellant was found within the boundaries of the Serengeti National Park while in unlawful possession of the items specified in the charge. Accordingly, he went on to convict him as charged and sentence him in the following terms.

> 1st count – To pay a fine of TZS.300,000.00 or upon default, to imprisonment for one year.
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> 2nd count – To five years imprisonment.
>
> 3rd count – To five years imprisonment.
>
> 4th count – To pay a fine of TZS.26,255,880 or upon default, to imprisonment for twenty years.

We take note that, an order was made for the abovementioned imprisonment sentences to be served concurrently.

Dissatisfied with the decision of the District Court, the appellant appealed to the High Court (sitting at Shinyanga) which however, dismissed the appeal against both the conviction and sentence. Still dissatisfied, he has appealed to this Court citing four grounds of complaint. In a nutshell, the appellant has challenged the decision of the first trial court for:

i) *Sustaining his conviction and sentence by the trial District Court while the case against him was not proved beyond reasonable doubt.*

ii) *Upholding the decision of the trial court imposing sentences on him without formerly convicting him of the offences with which he stood charged.*

iii) *Relying on the weak evidence adduced by the prosecution witnesses to convict him; and*

iv) *Wrongly admitting into evidence the trophies valuation report and inventory form.*

When the appeal was called for hearing on 2nd November, 2022 we discovered one procedural anomaly which we found disquieting. The marrow of the said anomaly which we drew to the attention of Mr. Shaban Mwigole and Ms. Verediana Mlenza learned Senior State Attorneys who appeared to represent the respondent Republic is that, since the charges against the appellant as presented before the trial District Court comprised of economic and non-economic offences, the

certificate issued by the Director of Public Prosecutions (the DPP) transferring the case to the trial subordinate court should have been issued under section 12 (4) and not section 12 (3) of the EOCCA.

Submitting in response to our query, at first Ms. Mlenza appeared to be resolute in her position that the said certificate was valid as, according to her, it was issued under the proper provisions of the law. After a careful reading of one of our previous decisions on the point, Ms. Mlenza readily conceded that indeed, the Bariadi District Court was not clothed with the requisite jurisdiction to entertain this matter. She also conceded that, in view of the current position under our case law, the certificate issued by the DPP to transfer the case to the said court was invalid, having been wrongly issued under section 12 (3) and not section 12 (4) of the EOCCA. She relied on the case of **Dilipkumar Maganbai Patel v. Republic,** Criminal Appeal No. 270 of 2019 (unreported) in support of her new position. In the circumstances, the learned Senior State Attorney urged us to invoke our powers under section 4 (2) of the Appellate Jurisdiction Act, Chapter 141 of the Laws (the AJA) and nullify the proceedings both in the two lower courts, quash and set aside the

appellant's conviction and sentence and, in leau thereof, make an order for a retrial. Ms. Mlenza made the above prayer arguing that, there was sufficient evidence to prove the charges levelled against the appellant.

For his part, the appellant had no qualms with the prayer made by the learned Senior State Attorney which he welcomed with enthusiasm. According to him, it was quite orderly for the matter to be heard anew.

Having heard both parties, we see no reason to differ with the learned Senior State Attorney on the procedural irregularity in the issuance of the impugned certificate but not on the way forward. For, it appears to us that, like in some of our previous decisions, the certificate issued by the DPP under section 12 (3) of the EOCCA transferring the case to the District Court of Bariadi could not vest in the said court the jurisdiction to try this case which involved economic and non-economic offences. For the avoidance of doubt, section 12 (3) under which the said certificate was purportedly issued provides thus;

"12 (1) N/A

(2) N/A

(3) The Director of Public Prosecutions or any State Attorney authorized by him, may, in each case in which he deems it necessary or appropriate in the public interest, by a certificate, under his hand, order that any case involving an offence triable by the court under the Act, be tried by such court subordinate to the High Court as may be specified in the certificate"

Notably, while at first Ms. Mlenza was sort of taken by surprise when we drew her attention to this procedural anomaly, this is not the first time we find ourselves in such a situation. (See the cases of **Mohamed Ramadhani Mazola and Another v. Republic,** Criminal Appeal No. 181 of 2019 and **William Kilunga v. Republic,** Criminal Appeal No. 447 of 2017 (both unreported). And also relevant to the point are the decisions of the Court in the cases of **Emmanuel Rutta v. Republic,** Criminal Appeal No. 357 of 2014 and **Gaitani Susuta v. Republic,** Criminal Appeal No. 403 of 2015 (both unreported) to mention but a few. Deducing from the decisions in the above cited cases and many others, it is now settled that, where a charge involves economic and non-economic offences like in the case now under

scrutiny, a certificate transferring the case for hearing by a subordinate court has to be issued under section 12 (4) of the EOCCA which provides thus:

> *"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 a certificate under his hand, order that any case instituted or to be instituted before a court subordinate to the High Court and which involved a non-economic offence or both an economic offence and non-economic offence, be instituted in the Court"*

As correctly submitted by Ms. Mlenza, a submission which we endorse, we need to reiterate that, failure by the DPP to issue a certificate authorizing a trial by a subordinate court, of a combination of economic and non-economic offences, renders the trial a nullity. That is perfectly in alignment with what we held in the above-cited cases. In **Mabula Mboje v. Republic,** Criminal Appeal No. 557 of 2016 (unreported) we made it clear that:

"In view of the fact that the certificate by the DPP was made under section 12 (3) of the Economic and Organised Crimes Control Act was invalid, the subordinate court concerned was, in the circumstances, not clothed with the requisite jurisdiction to try the combination of economic and non-economic offences facing the appellants. The proceedings therefore were a nullity right from the beginning. So were the proceedings in the first appellate court because they were rooted on nullity proceedings"

In light of the foregoing, we are certain that, had the learned judge of the first appellate court detected this procedural irregularity which had the effect of not vesting jurisdiction in the trial District Court to hear the matter, and addressed herself to the above-cited authorities and many others, she would have found that the proceedings before the Bariadi District Court were a nullity for want of jurisdiction and subsequently made the appropriate orders. It is for that reason that we proceed to uphold the first limb of the submission by Ms. Mlenza and, in terms of section 4 (2) of the AJA, we nullify the proceedings in the two lower courts and quash and set aside the sentences imposed on the

appellant. Like what we did in Emmanuel Rutta (supra), we leave the fate of the appellant to be dealt with by the Director of Public Prosecutions. However, in the meantime, we order for his immediate release from prison unless he is otherwise detained for some other lawful causes.

DATED at **SHINYANGA** this 11th day of November, 2022.

A. G. MWARIJA
JUSTICE OF APPEAL

R. J. KEREFU
JUSTICE OF APPEAL

P. M. KENTE
JUSTICE OF APPEAL

This Judgment delivered this 11th day of November, 2022 in the presence for the Appellant in person and Ms. Gloria Ndondi, learned State Attorney, for the Respondent/Republic, is hereby certified as a true copy of the original.

G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL