

IN THE COURT OF APPEAL OF TANZANIA

AT MOROGORO

(CORAM: MWARIJA, J.A., MASHAKA, J.A. And MAKUNGU, J.A.)

CRIMINAL APPEAL NO. 581 OF 2022

DEODATUS LINGWANDA MAUMBA.....APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

**(Appeal from the Judgment of the High Court of Tanzania
at Morogoro)**

(Ngwembe, J.)

dated the 26th day of September, 2022

in

Criminal Appeal No. 20 of 2022

.....

JUDGMENT OF THE COURT

9th May & 5th July, 2023

MWARIJA, J.A.:

The appellant, Deodatus Lingwanda Maumba was charged in the District Court of Kilombero at Ifakara with the offence of unlawful possession of ammunition contrary to ss. 21 and 60 (1) of the Firearms and Ammunitions Control Act, No. 2 of 2015 read together with paragraph 31 of the First Schedule to and ss. 57 (1) and 60 (2) of the Economic and Organized Crime Control Act, Chapter 200 of the Revised Laws (the EOCCA).

It was alleged that, on 24/02/2022 at Sagamaganga area, Mang'ula Division within Kilombero District in Morogoro Region, the appellant was found in possession of eight (8) rounds of short gun ammunition without authorization. When he was arraigned, the appellant is recorded to have admitted the offence. As a result, he was convicted and sentenced to serve an imprisonment term of twenty (20) years. The eight rounds of ammunition which were admitted in evidence as exhibit P1, were forfeited to the Government.

As it turned out however, after having been admitted in prison to serve his sentence, the appellant decided to appeal against his conviction, raising as one of his grounds, the complaint that his plea was not unequivocal. His appeal was dismissed by the High Court (Ngwembe, J.) hence this second appeal. In his memorandum of appeal, the appellant has raised three grounds which, for the reason to be apparent herein, we do not find it necessary to state them.

At the hearing of the appeal, the appellant appeared in person, unrepresented while the respondent Republic was

represented by Mr. Laiton Mhesa, learned Principal State Attorney assisted by Ms. Chivanenda Luwongo, learned Senior State Attorney and Ms. Theodora Mlelwa, learned State Attorney.

At the outset, Ms. Mlelwa informed the Court that the respondent was supporting the appeal, though however, on a ground other than those which were raised by the appellant in his memorandum of appeal. She submitted that, the trial court lacked the requisite jurisdiction to entertain the case because the appellant was charged with an economic offence which, in terms of s. 3 (1) and (3) (a) and (b) of the EOCCA, is triable by the Corruption and Economic Crimes Division of the High Court. The learned State Attorney submitted further that, the trial should not have been commenced without the consent of the Director of Public Prosecutions (the DPP) in terms of s. 26 of the EOCCA.

For those discrepancies, Ms. Mlelwa implored upon the Court to find that, since the trial court had acted without jurisdiction, the trial was a nullity. She thus prayed that, the proceedings of both the trial court and the High Court be nullified and the conviction which was upheld by the High Court be quashed and the sentence

be set aside. As for the way forward, she prayed for an order of retrial.

The appellant did not have anything in reply to the submissions made by the learned State Attorney.

Having perused the record of appeal, we agree with the learned State Attorney that, the trial court acted without jurisdiction. Section 3 (1) and (3) (b) of the EOCCA which she cited states as follows:

"3-(1) There is established the Corruption and Economic Crimes Division of the High Court with the Registry and Sub-registries as may be determined by the Chief Justice, in which proceedings concerning corruption and economic cases may be instituted.

(2) ...N/A.

(3) The Court shall have jurisdiction to hear and determine cases involving-

a) ...N/A.

b) Economic offences specified under paragraphs 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37 and 39 of the schedule regardless of their value; and

c)...N/A".

It is obvious that the economic offence, which the appellant was charged with, is specified under paragraph 31 of the First Schedule to the EOCCA, and is thus triable by the Corruption and Economic Crimes Division of the High Court. The trial court would have derived jurisdiction had the DPP issued a certificate under s. 12 (3) of the EOCCA transferring the case to that court for trial. The provision states as follows:

"12-(1)...N/A.

(2) ...N/A.

(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 he may specify in the certificate".

It was also a requirement, as submitted by Ms. Mlelwa, that there should have been a consent of the DPP for trial of the

appellant for the economic offence as provided for under s. 26 (1) of the EOCCA. That section states as follows:

"26-(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".

The record does not show that there was such consent of the DPP and therefore, the trial was conducted in breach of the above stated provision of the EOCCA.

The cumulative effect of the discrepancies is to render the trial a nullity. As a result, in the exercise of the powers of revision vested in the Court by s. 4 (2) of the Appellate Jurisdiction Act, Chapter 141 of the Revised Laws, we nullify the proceedings of the two courts below, quash the judgments as well as the conviction of the appellant and set aside the sentence.

Next for our determination is whether or not we should order a retrial as prayed by the learned State Attorney. Given the seriousness of the offence with which the appellant was charged and the stage at which the case ended, we are settled in our mind

that, for the interest of Justice, an order of retrial is appropriate. We direct however that, in case the appellant is convicted after retrial, the period of imprisonment he has so far served should be put into consideration when sentencing him.

DATED at DAR ES SALAAM this 27th day of June, 2023.

A. G. MWARIJA
JUSTICE OF APPEAL

L. L. MASHAKA
JUSTICE OF APPEAL

O. O. MAKUNGU
JUSTICE OF APPEAL

The Judgment delivered this 5th day of July, 2023 in the presence of the appellant appeared in person remotely through video facilities linked from Morogoro Prison and Ms. Jacqueline Werema, learned State Attorney for the respondent/Republic, is hereby certified as a true copy of the original.



D. R. LYIMO
DEPUTY REGISTRAR
COURT OF APPEAL