

IN THE COURT OF APPEAL OF TANZANIA

AT SHINYANGA

(CORAM: MWARIJA, J.A., KITUSI, J.A., And MGEYEKWA, J.A.)

CRIMINAL APPEAL NO. 152 OF 2020

MALEGI SHENYE @ LUSINGA APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

**(Appeal from the decision of Resident Magistrate's Court of Shinyanga
(Extended Jurisdiction) At Shinyanga)**

(Hon. Mbuya, PRM - Ext. Jur.)

Dated the 27th day of February, 2020

in

Criminal Appeal No. 42 of 2019

JUDGMENT OF THE COURT

4 & 11th July, 2023

MGEYEKWA, J.A.

Before the District Court of Bariadi at Bariadi, the appellant was arraigned for both economic and non-economic offences in six counts that is, unlawful entry into a National Park contrary to section 21 (1) and (2) of the National Parks Act, Cap. 282 [R.E 2002] as amended by Act, No. 11 of 2003 (the NPA) read together with GN No. 235 of 1968; unlawful possession of weapons in a National Park contrary to section 24 (1) (b) and (2) of the

NPA read together with GN 235 of 1968; unlawful hunting in a National Park contrary to section 23 (1) of the NPA and GN No. 235 of 1968 read together with Paragraph 14 (a) of the First Schedule to and sections 57 (1) and 60(2) and (3) of the Economic and Organized Crime Control Act, Cap. 200 [R.E 2002] as amended by section 13 and 16 of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016 (the EOCCA).

He was charged further with unlawful hunting in a National Park contrary to section 16 (1) and 2 (b) of the NPA and GN No. 235 of 1968 read together with paragraph 14 of the First Schedule to and sections 57 (1) and 60 (2) and (3) of the EOCCA; unlawful possession of Government Trophy contrary to section 86 (1) (2) (c) (iii) of the Wildlife Conservation Act No.5 of 2009 as amended by section 59 of the Written Laws (Miscellaneous Amendment) Act No. 2 of 2016 (the WCA) read together with Paragraph 14 of the First Schedule to and sections 57 (1) and 60 (2) and (3) of the EOCCA, and unlawful Possession of Government Trophies contrary to section 86 (1) (2) (c) (iii) of the WCA read together with Paragraph 14 of the first schedule to and sections 57 (1) and 60 (2) and (3) of the EOCCA.

The particulars of the first count are that on the 20th day of May, 2017 at about 13 HRS at Mto Mbalageti area in Serengeti National Park, within

Bariadi District in Simiyu Region, the appellant entered into the National Park without the permission of the Director of the National Park. In the second count, it was alleged that on the same date and place the appellant was found in possession of weapons to wit; one knife, one spear, one bush knife, and four animal trapping wires without the permission of the Director of the National Park. In the third count, it was alleged that on the same date and place he was found hunting animals to wit; One Eland valued at USD 1,700 equivalent to TZS. 3, 803, 461/= without the permission of the Director of the National Park. In the fourth count, it was alleged that on the same date and place he was found hunting animals to wit; one Giraffe valued at USD 15,000 equivalent to TZS. 33,559.950/= without the permission of the Director of the National Park.

In the fifth count, it was alleged that on the same date and place the appellant was found in unlawful possession of Government Trophies to wit; two pieces of skin of Eland, one tail of Eland, and one hind leg of Eland valued at USD 1,700 equivalent to TZS. 3,803,461/= without the permission of the Director of the National Park. In the sixth count, it was alleged that on the same date and place he was found in unlawful possession of Government Trophies to wit; one piece of Giraffe valued at USD 15,000

equivalent to TZS. 33,803,461/= without the permission of the Director of the National Park.

The prosecution presented to the District Court of Bariadi the consent of the Director of Public Prosecutions (henceforth "the DPP") and certificate conferring jurisdiction to the subordinate court to try the matter. Subsequently, the appellant was arraigned before that Court to answer the charges. When put to his defence, the appellant stoutly denied the offence.

Upon a fully-fledged trial, the accused person was convicted as charged and sentenced to: first count, a fine of TZS. 400,000/= or one year imprisonment in default; second count, a fine of TZS. 100,000/= or two years imprisonment in default; third count; three years imprisonment; fourth count, three years imprisonment; fifth count, 20 years imprisonment; and sixth count, 20 years imprisonment.

The appellant was aggrieved by the convictions and sentences meted out to him. His appeal to the High Court was transferred to the Resident Magistrate's Court of Shinyanga to be heard by Mbuya, PRM with extended jurisdiction (PRM -Ext. Jur). The appeal was not successful hence this second appeal before this Court. The appellant filed five grounds which may be paraphrased as follows; **one** that the defence case was not considered,

two that the conviction was wrongly based on mere words which were predicated on contrived evidence, **three** that the first appellate court misdirected itself in upholding conviction and excessive sentence awarded by the lower court, **four** that the trial and first appellate courts erred in law to convict and uphold the sentence based on implicated allegations and **five** that the independent witness did not corroborate the said evidence.

On the date of hearing the appeal, the appellant appeared in person, unrepresented whereas Mr. Shaban Mwegole, learned Senior State Attorney appeared for the respondent/Republic. When given the chance to argue his grounds of appeal, the appellant adopted his Memorandum of Appeal and opted to hear the learned Senior State Attorney's response and would rejoin if the need would arise.

Responding, Mr. Mwegole, supported the appeal. He anchored his support on a legal point which he found to be pertinent. The learned Senior State Attorney submitted that, the trial court entertained the matter without jurisdiction since the consent and certificate of DPP did not disclose the offences for which the consent to prosecute the appellant was given. Elaborating, Mr. Mwegole pointed out that, pages 5 and 6 of the record of appeal, clearly shows that the consent was issued by the State Attorney In –

Charge of Bariadi. However, the same did not specify the economic offences which the appellant was to be charged with. For that reason, he was certain that, the DPP's consent was fatally defective. The learned Senior State Attorney referred us to our previous decision in the case of **Chacha Marungu v Republic**, Criminal Appeal No.364 of 2020 (unreported). In view of the foregoing, the learned Senior State Attorney submitted that the District Court proceeded to hear the economic and non-economic crimes cases without jurisdiction.

Having so done, the learned Senior State Attorney did not opt for a fresh trial. His reason was founded on the ground that there were some evidential shortcomings. He referred this Court to pages 14-16 of the trial court's proceedings. He said that from the evidence, the chain of custody of the exhibits was not established. In the circumstances, he implored the Court to use its revisional powers bestowed upon it by the provisions of section 4 (2) of the Appellate Jurisdiction Act, Cap. 141 [R.E 2019] to revise the proceedings of the trial court, quash the conviction and set aside the sentences.

On his part, the appellant offered no rejoinder, except that he conceded to the submission made by Mr. Mwegole.

We have scrutinized and considered the submissions of the learned Senior State Attorney. The issue for our determination is whether the trial court was properly clothed with jurisdiction to hear and determine the economic offences which the appellant stood charged with and convicted.

At the outset, we think that in light of the submissions of the learned Senior State Attorney, this appeal can be disposed of by our determination of the legal point raised by him. The standing point for consideration of this legal point is section 3 (1) of the EOCCA which confers jurisdiction to the Corruption and Economic Crimes Division of the High Court to hear and determine economic crime cases. The offences are stipulated under Paragraph 14 of the First Schedule to the EOCCA. Yet, any court other than the Corruption and Economic Crimes court would be clothed with jurisdiction to try an economic crimes case if there is a consent and a certificate to confer jurisdiction upon that court by the DPP or State Attorney duly authorized by him and states the contravened offences. That is a requirement of section 12 (3) of EOCCA which reads:-

"The Director of Public Prosecution 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 subordinate to the High Court as he may specify in the certificate."

In the case at hand, the DPP decided to transfer the case to the subordinate court under section 12 (4) of EOCCA and issued a certificate conferring jurisdiction to the District Court of Bariadi at Bariadi to try and determine such offences. As rightly submitted by Mr. Mwegole, in this case, the consent on page 5 was issued by Ms. Grace N. Mpatili, Prosecution Attorney In Charge under the powers conferred by section 26 (2) of the EOCCA. It is noteworthy that under section 26 (1) of the EOCCA, no trial of an economic offence can commence unless there is a consent of the DPP issued. Section 26 (1) of the EOCCA states as follows:-

" Subject to the provision 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."

In the case at hand, the offences and the contravened provisions which were preferred against the appellant were stated in the charge sheet and the charge contains both economic and non-economic offences. The appellant in the 1st count was charged with unlawful entry into the National Park the offence is within the ambit of a non-economic offence. The second,

third, fourth, fifth, and sixth counts with which the appellant was charged fell within the ambit of economic crimes offences and the same are stipulated under Paragraph 14 of the First Schedule to the EOCCA.

As alluded earlier, the DPP ought to have issued proper consent and certificate of transfer to the subordinate court to hear and determine economic offences. However, having gone through the consent and certificate of transfer, it is clear that the same does not specify the economic offences which were contravened. For ease of reference, we reproduce the contents as here under:-

*"I, **GRACE NICHOLAUS MPATILI**, Prosecution Attorney In-Charge in the Attorney General's Chambers Simiyu, **DO HEREBY** in terms of Section 26 (2) of the Economic and Organized Crimes Control Act. Cap. 200 [R.E. 2002] and by virtue of the Economic offences (Specification of Officers Exercising Consent) Notice No. 294 of 2014, give my CONSENT to the prosecution of **MALEGI S/O SHENYE @ LUSINGA @ KAKOLO** for having contravened the Provisions of the Economic and Organized Crime Control Act and the Schedule thereto, facts whereof are stated herein above.*

(Sgd)

PROSECUTION ATTORNEY IN- CHARGE

It is clear that all the economic offences with which the appellant was charged and convicted were not specified in the consent of the Prosecution Attorney In-Charge and therefore, we agree with the learned Senior State Attorney that the trial court did not have jurisdiction to try them. The proceedings were therefore, a nullity. See the case of **Chacha Chiwa Marungu** (supra) cited by Mr. Mwegole.

Since this aspect escaped the attention of the first appellate court, it is now our solemn duty to intervene pursuant to section 4 (2) of the Appellate Jurisdiction Act, Cap. 141. We therefore, nullify the proceedings of the trial court, quash the conviction, and set aside the sentence meted out against the appellant. Likewise, the proceedings before the first appellate court are hereby nullified, the judgment quashed and orders set aside.

On the way forward, the learned Senior State Attorney agreed that besides the fatal procedure in the conduct of the trial, the evidence for the prosecution was weak and the Court should not order a retrial. We agree that in the circumstance of this case, a retrial will not serve the interest of justice. The raised legal point by Mr. Mwegole is sufficient to dispose of the

appeal and for that reason we do not deem it appropriate to deal with the grounds of appeal in the memorandum of appeal placed before the Court.

We, therefore, order the appellant to be released from custody unless he is otherwise held for other lawful cause (s).

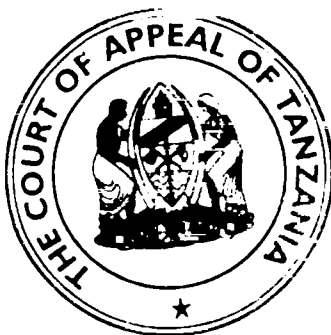
DATED at **SHINYANGA** this 11th day of July, 2023.


A. G. MWARIJA
JUSTICE OF APPEAL

I. P. KITUSI
JUSTICE OF APPEAL

A. Z. MGEYEKWA
JUSTICE OF APPEAL

The Judgment delivered this 11th day of July, 2023 in the presence of Appellant in person and Ms. Rehema Sakafu, Rosemary Kimaro, Francisca Ntemi both learned State Attorneys, for the Respondent/Republic is hereby certified as a true copy of the original.




R. W. CHAUNGU
DEPUTY REGISTRAR
COURT OF APPEAL