

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

(CORAM: NDIKA, J.A., RUMANYIKA, J.A., And MURUKE, J.A.)

CRIMINAL APPEAL NO. 632 OF 2020

**JOSEPH NGADUPA AKILIMBAYA
SUPARINO GEORGE SHILUNGA APPELLANTS**

VERSUS

THE REPUBLIC RESPONDENT

(From the decision of the High Court of Tanzania at Mbeya)

(Mongella, J.)

dated the 01st day of September, 2020

in

Criminal Appeal No. 75 of 2019

.....

JUDGMENT OF THE COURT

12th & 14th February, 2024

MURUKE, J.A.:

This is a second appeal. It originates from the District Court of Mbarali at Rujewa (the trial court) where the appellants were arraigned with two counts. The first count related to the offence of unlawful possession of government trophy contrary to section 86(1) and (2) (c) (iii) of the Wildlife Conservation Act No. 5 of 2009 (WCA) as amended by section 59 of the Written Laws (Miscellaneous Amendments) Act No. 2 of

2016 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 (EOCCA) as amended by section 125 of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016. The second count was dealing in Government trophies contrary to section 80(1) and 84(1) of the WCA read together with paragraph 14 of the First Schedule to and section 57(1) of the EOCCA Cap 200 R.E. 2002 as amended by section 16 of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016

The two appellants were convicted of the two counts, and therefore sentenced by the trial court to serve 20 years imprisonment each for the first count and 5 years for the second count. The sentences were ordered to run concurrently. They were also ordered to pay a fine of TZS. 33,600,000 in addition to the sentences.

Aggrieved, the two appellants lodged their first appeal before the High Court of Tanzania at Mbeya (Mongella, J.), which was dismissed in its entirety, hence the present appeal.

When the appeal was called on for hearing, the appellants appeared in person, unrepresented whereas the respondent Republic was represented by Ms. Hannarose Kasambala assisted by Mr. Rajabu Msemu

both learned State Attorneys. When the appellants were given the floor to argue their case, they opted to hear first the respondent's submissions on their appeal and later on make a rejoinder, should need arise.

However, the hearing of the appeal did not proceed on the appellants preferred grounds as the learned State Attorney raised an issues on the jurisdiction of the trial court, namely **one**, that the trial court commenced the hearing of the case without the consent of the Director of Public Prosecutions (D.P.P). **two**, that the trial District Court sat as an Economic Crimes Court without a certificate of transfer by the DPP issued under section 12(3) of the EOCCA.

Ms. Kasambala argued that the trial court lacked jurisdiction to hear and determine the appellants' case because the consent to prosecute and the certificate conferring jurisdiction were not formally filed by the DPP and admitted by the trial court. It was further submitted that it is only at page 3 of the record of appeal where the prosecuting State Attorney is recorded saying, we have filed consent, that's all. The respondent counsel insisted that it is not enough, the same ought to have formed part of trial Court records. In the circumstances Ms. Kasambala concluded by insisting that, the trial court lacked jurisdiction to determine an economic case against the appellants.

On being prompted by the Court on the way forward, she replied that the remedy would be to order a retrial after nullifying the trial proceedings, in terms of section 4(2) of the Appellate Jurisdiction Act, Cap 141 R. E. 2019 (AJA).

On the part of the appellants after being explained by the Court on the point of law raised including prayer by respondent counsel of re-trial they replied that:

"We were told by prosecutor at the trial Court that consent has been procured, and filed. Cases proceeded, in which we were convicted and sentenced to 20 years imprisonment. We have served 7 years imprisonment. Re-trial will be improper as already we have served an illegal sentence. We request the Court to release us".

According to the record of appeal and submissions made by the learned State Attorney, there is no dispute that what the appellant were facing at the trial court were economic offences. Thus, the issue before us is whether the trial court was clothed with the requisite jurisdiction to try and determine the case.

According to section 3 (1) (3) (a) and (b) of the EOCCA, the court with jurisdiction to try economic offences is the High Court. However,

section 12(3) of the EOCCA, authorizes the DPP or an officer authorized by him to direct such cases to be tried by a subordinate court. It provides that:

"12(3) The Director of Public Prosecutions or any other 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 High Court under this Act, be tried by such court subordinate to the High Court as he may specify in the Certificate."

On the other hand, the law under section 26(1) and (2) of the EOCCA respectively, provides for a requirement of the consent to prosecute from the DPP or an officer authorized by him before such an offence is tried by the subordinate court. The section provides:

"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.

(2) The Director of Public Prosecutions, shall establish and maintain a system whereby the process of seeking and obtaining of his consent for

prosecutions may be expedited and may, for that purpose, by notice published in the Gazette, specify economic offences the prosecutions of which shall require the consent of the Director of Public Prosecutions in person and those the power consenting to the prosecution of officers subordinate to him as he may specify acting in accordance with his general or special instructions."

For the purpose of section 26(2), the direction of the DPP was provided through GN. No. 284 of 2014 which was later revoked and replaced by GN. No. 496H of 2021.

According to the record of appeal, it is apparent as correctly submitted by the learned State Attorney that, the Certificate and Consent did not form part of the trial court's record of proceedings because, the record of appeal does not indicate that both the Certificate and Consent were formally filed and admitted, and endorsed by the trial court before the preliminary hearing.

It is not the first occasion that the Court has encountered such a situation where the consent and certificate are not formally filed by the DPP and admitted by the trial court. In the case of **Aloyce Joseph v.**

Republic (Criminal Appeal 35 of 2020) [2022] TZCA 771 (5 December 2022, TANZLII) it was held that:

" Since in the case at hand, the consent and the certificate were not formally received by the trial court, the trial cannot be said to have been lawfully conducted. The trial court's proceedings were therefore a nullity. As a result, we hereby nullify them and quash the resultant judgment."

In the same vein, in the case of **Salumu s/o Andrew Kamande v. Republic** (Criminal Appeal No. 513 of 2020) [2023] TZCA 133 (22 March 2023, TANZLII), the Court observed that:

"..... We note that at page 15 of the record of appeal, the PP informed the trial court that he had received the consent from the DPP but the record is still silent as to whether the same was received to form part of the trial record. Since there is no clear indication discerned from the record of appeal as to how the consent and certificate found their way into the trial court record, we are in agreement with the counsel for the parties that the appellant was tried without a prior consent of his prosecution and there was no certificate issued to confer jurisdiction on the District Court of

Mufindi at Mafinga. Given that there was no consent and certificate, the trial court lacked jurisdiction to try the appellant with an economic offence. Accordingly, we find that the trial court proceedings and that of the first appellate court were a nullity”.

Section 26 (1) of the EOCCA, requires the Consent of the DPP to prosecute an accused to be issued before commencement of any trial involving an economic offence. Where an accused person is arraigned before a subordinate court for an offence falling under EOCCA without there being a Consent to try them and no Certificate to confer jurisdiction to try the economic offence case, then that particular subordinate court lacks jurisdiction. Thus, we hold that since the consent and the certificate were not formally filed and admitted, the trial court tried the case without jurisdiction. It is settled law in our jurisdiction that any decision reached by any court without jurisdiction is a nullity. In the case of **CRDB Bank PLC v. Lusekelo Mwakapala**, (Civil Appeal No. 143 of 2021) [2023] TZCA 17637 (22 September 2023, TANZLII), it was held that:

"It is worth noting that, the question of jurisdiction is crucial and must be determined by the court/tribunal at the earliest opportunity. Jurisdiction is everything without which a court

has no power to determine the dispute before it. Where a Court has no jurisdiction there would be no basis for a continuation of proceedings. Generally, a court is barred to entertain a matter in which it has no jurisdiction."

See also the cases of **Aloyce James Kasawa v. William Mufungo Mwangwa & Another** (Civil Reference 5 of 2018) [2021] TZCA 610 (22 October 2021, TANZLII), **Aloisi Hamsini Mchuwau & Another v. Ahamadi Hassani Liyamata** (Criminal Appeal 583 of 2019) [2020] TZCA 1855 (19 November 2020, TANZLII). Equally so, the Court in the case of **Fanuel Mantiri Ng'unda v. Herman Mantiri Ng'unda & 2 Others** [1995] T.L.R. 155 held thus:

"The question of jurisdiction for any court is basic, it goes to the very root of the authority of the court to adjudicate upon cases of different nature ...
The question of jurisdiction is so fundamental that courts must as a matter of practice on the face of it be aware of it."
[Emphasis added]

For not having such jurisdiction, we are of the opinion that the appellant was improperly tried, convicted and sentenced. Thus, the trial

at the District Court and the proceedings before the High Court were a nullity.

On the way forward, Ms. Kasambala pressed for re-trial order, whereas appellants complained that they have served sentence of seven years imprisonment illegally, re-trial will occasion miscarriage of justice on their part.

There is no dispute that, the two appellants served seven years sentence out of 20 years, ordered by the trial court and upheld by High Court. Seven years' sentence served by the appellants was illegally ordered. Although it is the duty of prosecution to investigate and prosecute properly their case before the court of law, however, the offence that appellants committed is a serious one involving government trophies that has the effect of interfering with wildlife ecosystems and this country's economy at large.

For that reason, we accordingly nullify the trial proceedings, quash the conviction and set aside sentences against the appellants. We also quash all the proceedings and judgment of the High Court having steamed from a nullity. Taking into consideration that, the appellants have already served seven years of the illegal imprisonment sentence, and the fact that,

the offence involving government trophies is serious offence, we leave it to the discretion of the DPP to decide whether to file a fresh charge or not.

In the event, we order the immediate release of the appellants from prison unless they are lawfully held. It is so ordered.

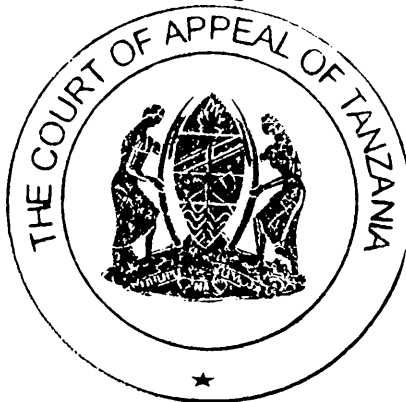
DATED at MBEYA this 14th day of February, 2024.

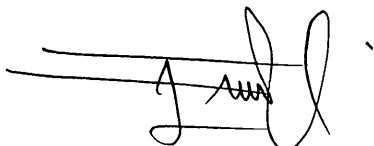
G. A. M. NDIKA
JUSTICE OF APPEAL

S. M. RUMANYIKA
JUSTICE OF APPEAL

Z. G. MURUKE.
JUSTICE OF APPEAL

Judgment delivered this 14th day of February, 2024 in the presence of the Appellants in person and Ms. Veneranda Masai, learned State Attorney for the Respondent/Republic is hereby certified as a true copy of the original.




E. G. MRANGU
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL