

IN THE HIGH COURT OF TANZANIA

AT IRINGA

(DC) CRIMINAL APPEAL NO. 31 CF 32 OF 2009

(ORINATING FROM IRINGA D/COURT
C.C. NO. 12/2007

1. CHRISTOPHER KABWA
2. IDD KIYEYEU

}

.... APPELLANTS

VERSUS

THE REPUBLIC.....

RESPONDENT

JUDGEMENT

MKUYE, J

The appellants Christopher Kabwa and Iddi Kiyeyeu were arraigned before the District Court of Iringa for an offence of being in possession of arms and ammunition without licence contrary to section 4 (1) and 34 (1) of the Arms and Ammunition Act, Cap223 R.E. 2002. They were alleged that on 3rd of August 2007 at about 5.30 p.m at Changarawe area within Mafinga township in Mufindi District and the region of Iringa were found in possession of one pistol, chinese type with serial No. 5419220 661 958 and nine bullets without a valid licence or permit.

The duo were following a full trial convicted and sentenced to seven years imprisonment. Dissatisfied with both conviction and sentence they have each appealed to this court.

When the appeals were fixed for hearing and before hearing them on merits Mr. Matitu, learned State Attorney raised an issue which was a point of law in that the court which heard the case had no jurisdiction to try it since it was an economic offence which was triable by the economic crimes court. To bolster his argument, Mr. Matitu cited the case of Rhobi Marwa Mungare and 2 Others V R Crim. Appeal No. 192 of 2005 (Mz) (Unreported) in which the Court of Appeal ruled that such offences were economic offences triable by the Economic Crimes Court. Elaborating further Mr. Matitu averred, under section 3 of the Economic and Organised Crimes Act, Cap 200, R.E. 2002 the High Court sitting as an Economic Crimes Court is the court vested with jurisdiction to try such cases. However, a subordinate court, he said, under section 12(3) of the same Act can try such a case if there is a certificate of transfer from the Director of Public Prosecution or a State Attorney duly authorized and there is a consent of the Director of Public Prosecutions issued under section 26 (1) of the same Act. Mr. Matitu concluded by arguing that since there was neither a certificate of transfer nor a consent of the Director of Public Prosecutions, then the trial court had no jurisdiction. Moreover, Mr. Matitu, while basing on the case of Rhobi Marwa Mungare (Supra) argued that, the trial was a nullity and also conviction and sentence were nullities. He therefore prayed for the trial to be nullified and the order for trial be issued.

Both appellants, perplexed with such submission had nothing to say but they left it to the court to decide.

Admittedly, the learned State Attorney has raised the question of jurisdiction of the court which tried this case which can be raised at any stage even on appeal.

The issue is whether the trial court had no jurisdiction.

The appellants, according to the charge laid at their doors and filed in the District Court of Iringa at Iringa on 15th August 2007, were charged with an offence of possession of arms and ammunition without licence contrary to section 4 (1) and 34 (1) of the Arms and Ammunition Act, Cap 223 R.E. 2002. Nothing in the charge indicated that the offence was an economic one say by inclusion of the provisions of the Economic and Organized Crimes Act, and in particular paragraph 19 of the First Schedule to the Act.

Paragraph 19 reads:

"A person is guilty of an offence under this paragraph who is found in unauthorized possession of arms or ammunition contrary to the provisions of the Arms and Ammunition."

This means that, this paragraph makes any person who is found in unlawful possession of arms or ammunition under the Arms and Ammunition Act to have committed an economic offence. This paragraph is still operative as it has not yet been deleted by the Parliament. The purpose of including these offences under the Economic and Organised Crimes Control Act is to enable them to be dealt with or tried differently from the normal offences. To concretise this position in Rhobi Marwa Mungara's case (supra) it was held:

"The purpose of the law is to provide a special procedure of dealing with some offences notorious for adverse effect on the economy of the country."

From the foregoing, it means that charging the appellants with the offence without including the element of an economic offence made it to be tried under the procedure not envisaged by the Economic and Organised Crimes Act. Consequently, this was an error on the part of the prosecution.

Since the offence was an economic offence, under section 3 (1) of the Act, the High Court was the court vested with jurisdiction to try it only when it sits as an economic crimes court. However, as correctly argued by Mr. Matitu, such cases can be tried by subordinate courts where the Director of Public Prosecution or a state attorney duly authorized has issued a certificate of transfer and has given a consent under section 26(1) of the same Act.

Section 26 (1) provides as hereunder:

"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 Prosecution"

This means, there cannot be a trial in an economic offence if no consent of the Director of Public Prosecutions is obtained. If such an

offence is tried in contravention of the above provisions, the trial becomes a nullity. This position is reiterated in Rhobhi Mungeras Case (supra) where it was stated:

"... in the absence of the Director of Public Prosecution consent and certificate of transfer of the economic offence to be tried by Tarime District Court, in terms of Section 26(1) of the Act the subordinate court had no jurisdiction to try the case. The trial was there a nullity ad the ensuing conviction and sentence nothing but nullities."

In the instant case, my perusal in the court record has revealed that no certificate of transfer of the case was issued. Neither was the charge accompanied with the consent of the Director of Public Prosecution as required by section 26 (1) of the Act, signifying consent for the offence to be tried by the respective court.

It simply means that the case was tried by the court without the DPP's consent and that since there was no certificate of transfer of the case, the court tried it without having been given a mandate under section 3(2) and 12(3) of the Act. Again, guided by Rhobi Mungare's case (supra), I find that the trial court had no jurisdiction. As such, the trial, convictions and sentences thereof were nothing but nullities. In the upshot, I am in agreement with Mr. Matitu, learned State Attorney.

With the foregoing I have no other option but to allow the appeal, quash the proceedings and judgment of the District Court of

Iringa, and set aside the sentences imposed against the appellants. Finally, I order that, since this was a 2007 case, the appellants be tried denovo if the Director of Public Prosecution so wishes. But at the meantime I order that the appellants be released with immediate effect unless otherwise held for other lawful cause/causes.

Ordered accordingly.

R.K.MKUYE

JUDGE

9/6/2010

Coram: Hon R.K.Mkuye

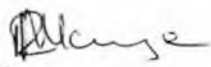
1st appellant }
2nd appellant } present

For Respondent: Mr. Mgavilenzi State Attorney.

C/C: Mr. Charles.

Delivered on this 9th day of June 2010 in the presence of Christopher Kabwa and Iddi Kiyeyeu the appellants, and Mr. Mgavilenzi for the respondent Republic.




R.K.MKUYE

JUDGE

9/6/2010