

**IN THE HIGH COURT OF TANZANIA**  
**AT SUMBAWANGA**

**DC CRIMINAL APPEAL NO. 3 OF 2012**  
**(Appeal from the decision of the District Court of Mpanda in**  
**Original Criminal Case No. 163 of 2009)**

**ALFRED BOMANI ..... APPELLANT**

**Versus**

**THE REPUBLIC ..... RESPONDENT**

7<sup>th</sup> August & 11<sup>th</sup> September, 2013

**JUDGMENT**

**MWAMBEGELE, J.:**

The Appellant, Alfred Bomani was charged with and convicted, allegedly on his own plea of guilty, of two counts of unlawful possession of a firearm and unlawful possession of rounds of ammunition contrary to the provisions of sections 4 (1) & (2) and 34 (1) & (2) the Arms and Ammunition Act, Cap. 223 of the Revised Laws, 2002. He was sentenced to eight years imprisonment or fine at a tune of shillings three million in each count. The sentences were ordered to run concurrently.

He has appealed against sentence and in principle complains against conviction. The appeal was argued before me on 07.08.2013 during which the appellant appeared in person and unrepresented while the Republic had the services of Mr Mwandoloma, learned State Attorney.

The appellant, lay as he is, opted to rely on what he submitted in his Memorandum of Appeal. On his part, Mr. Mwandoloma, thinks that the appellant's appeal is meritorious and supports it. He submits that the appellant was convicted on his own plea of guilty by admitting the facts of the case after he initially pleaded not guilty to the charges. It is his contention that after the appellant admitted the facts of the case, he ought to have been given an opportunity to plead. He is of the view that in view of the fact that this was not done, the provisions of section 360 of the Criminal Procedure Act, Cap 20 of the Revised Edition, 2002 are overruled. Mr. Mwandoloma also thinks that there are procedural irregularities in the proceedings of the trial court which warrants this court apply its powers of revision under the provisions of section 372 and 373 of the CPA. He submits that the offences with which the appellant was charged and convicted of are economic offences and in view of the fact that no consent and transfer of the case from the high court to the subordinate court was not sought and obtained, the District Court had no jurisdiction to entertain and determine the case. To augment this argument, ***Cretus Sambi @ Kimbwenga Vs Republic***,

Criminal Appeal No. 270 of 2010 (Mbeya unreported) was cited and supplied to the court.

I propose to start with the issue whether or not the trial court had jurisdiction to try and determine the case. As rightly pointed out by Mr. Mwandoloma, the offences with which the appellant was charged and convicted of are essentially economic offences. Under section 57 (1) of the Economic and Organised Crimes Control Act, Cap. 200 of the Revised Laws, 2002 it is provided as follows:

“(1) With effect from the 25<sup>th</sup> day of September, 1984, the offences prescribed in the First Schedule to this Act shall be known as economic offences and triable by the Court in accordance with the provisions of this Act.  
(2) ...”

The court has been defined by section 2 of the Act to mean the High Court sitting as an Economic Crimes Court pursuant to the provisions of section 3 of the Act which provides:

“(1) The jurisdiction to hear and determine cases involving economic offences under this Act is hereby vested in the High Court.

(2) The High Court when hearing charges against any person for the purposes of this Act shall be an Economic Crimes Court."

And Clause 19 of the first schedule thereof provides follows:

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

In the light of the foregoing paragraphs, it is crystal clear therefore that the law vests the High Court, sitting as an economic court, with original jurisdiction to entertain and determine economic offences. The law, however, under the provisions of subsection (3) of section 12 of the Act, allows a subordinate court to entertain and determine economic offences if the Director of Public Prosecutions or any state attorney acting under his authority so certifies. Let the provision speak for itself:

"The Director of Public Prosecutions or any State Attorney duly authorised 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."

In the light of the foregoing, it is apparent that the offences with which the appellant was charged and convicted of fall within the ambit of economic offences as provided for in the first schedule to Cap. 200. It is evident therefore that in order to be clothed with jurisdiction, the Director of Public Prosecutions or any state attorney acting under his authority ought to have issued a certificate to pave way to have the offence tried by a court other than the court. In the absence of the requisite certificate from the Director of Public Prosecutions or state attorney acting under his authority, the District Court of Mpanda had no jurisdiction to entertain the offence with which the appellant was charged.

There is yet another anomaly that is glaring in the proceedings of this case - the provisions of section 26 of the Act have been left crying. No economic offence the prosecution of which can be commenced without the consent of the Director of Public Prosecutions in person or of such officer or officers subordinate to him as he may specify acting in accordance with his general or special instructions. Section 26 reads:

"(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 of consenting to the prosecution of which may be exercised by such officer or officers subordinate to him as he may specify acting in accordance with his general or special instructions.

(3) The Director of Public Prosecutions shall have and may exercise in relation to prosecutions under this Act the same power which is conferred on him in respect of public and private prosecutions by the Criminal Procedure Act”.

In the instant case, the trial of this case proceeded without the consent of the Director of Public Prosecutions in person or of such officer or officers subordinate to him. This was, to say the least, illegal.