

IN THE HIGH COURT OF TANZANIA
CRIMINAL REVISION NO. 2 OF 2015
(Original Economic Criminal Case No. 2 of 2011
Nanyumbu District Court)

THE REPUBLIC ----- APPELLANT

VERSUS

1. MOHAMED BUSHIRI @COMPUTER ----- 1ST RESPONDENT

2. HASSAN HASSANI ----- 2ND RESPONDENT

ORDER IN REVISION

24/6/2015 & 29/6/2015

M. G. MZUNA, J.

The accused persons/respondents Mohamed Bushiri @Computer and Hassan Hassan were charged before the District Court of Nanyumbu in Economic Criminal case No. 2 of 2011 with four counts among them being Unlawful Possession of Government trophies c/s 70 (1), 2 (b) and 3 of the Wildlife Conservation Act, Cap 283 R.E 2002 as read together with Section 57 (1) and paragraph 14 (d) of the first schedule both of the Economic and Organized Crime Control Act, Cap 200 R.E 2002.

They were alleged to have been found in unlawful possession of 31 pieces of elephant tusks weighing 240.08 kgs valued Tshs. 17,891,962/- the property of the Government of the United Republic of Tanzania. The

offence was committed on 31st January 2010 at Lukula Village in Nanyumbu District, Mtwara Region.

On 11/2/2011 the court purported to withdraw the charge under Section 225 of the Criminal Procedure Act, cap 20 R.E 2002. The case file came to my notice during the inspection. I invited parties to address court on the legality of the order. The Republic had chance to be represented by Mr. Kimweri, the learned Senior State Attorney while the respondents failed to enter appearance.

Submitting to court, Mr. Kimweri argued that there was no consent from the DPP under S. 26 (1) of The Economic and Organized Crime Control Act Cap 200 R.E 2002. Similarly there was no certificate giving power to the court to hear the case under S. 12 (3) of the said **Act** as it had not been filed in court.

Due to the above shortfalls, he was of the view that the trial court had no power to entertain it as it was still under the Preliminary investigations. The court power purportedly made under S. 225 of the CPA was illegal as it was not vested with such powers. He said that though S. 225 (4) of the CPA does not exclude such cases within the purview of the section however for lack of jurisdiction it could not have done so.

He therefore prayed for this court to set aside that order and proceed to order for a retrial under S. 388 of CPA Cap 20 R.E. 2002.

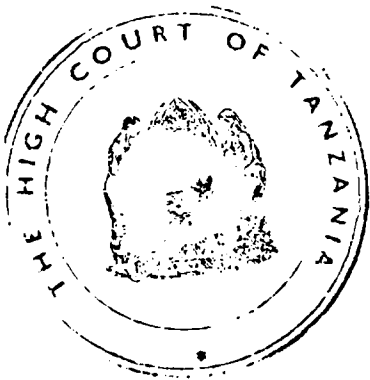
I have carefully read the entire record and the arguments advanced by the learned State Attorney. I am of the same view that the Magistrate

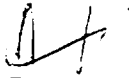
assumed powers he did not have. The matter was subject to other legal procedure like the consent from the DPP under S. 26 (1) and certificate giving power to the court to hear the case under S. 12 (3) of The Economic and Organized Crime Control Act Cap 200 R.E. 2002.

The Magistrate acted *ultra vires* and therefore the order was *void*. It cannot be allowed to stand. It is accordingly set aside. The case to start *denovo*.

M. G. Mzuna,
Judge
29/6/2015

Court: Revisional Order delivered this 29th day of June 2015 in the presence of Mr. Kimweri Senior State Attorney and absence of the respondent.




M. G. Mzuna,
Judge
29/6/2015