

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF ARUSHA  
AT ARUSHA**

**CRIMINAL APPEAL NO. 116 OF 2016**

*(c/f Resident Magistrate's Court of Manyara at Babati in Criminal Case No.  
4 of 2015)*

**THE ~~DIRECTOR~~ DIRECTOR OF PUBLIC PROSECUTIONS.....APPELLANT  
VERSUS**

- 1. RODGERS MOSSES SHAYO.....1<sup>ST</sup> RESPONDENT  
2. GIDION S/O TANAGARE MAFURU.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT ON APPEAL**

**S. M. MAGHIMBI, J**

The respondents named above were charged before the Resident Magistrates' Court of Manyara at Babati with twenty two (22) counts; ten counts of forgery c/s 333, 335 (a) and 337 of the Penal Code Cap. 16 R.E 2002, ten counts of use of documents intended to mislead the principal c/s 22 of the Prevention and Combating of Corruption Act. No. 11 of 2007, one count of occasioning loss to a specified authority contrary to paragraph 10 (1) of first schedule to, and sections 57 (1) and 60 (2) of the Economic and Organized Control Act, Cap. 200 R.E 2002 and one count of embezzlement and misappropriation c/s 28 (2) of the Prevention and Combating of Corruption Act, No. 11 of 2007.

The trial Magistrate acquitted the respondents based on her finding that the prosecution side was unable to prove charges against them. Dissatisfied with that decision, the appellant appealed before this court basing on one ground that;

1. That, the learned trial Magistrate erred in law for proceeding with the matter which contained economic and non-economic offences without requisite certificates conferring jurisdiction.

Before this court, the appellant was represented by Medikanya learned State Attorney while the respondents were represented by Kinabo learned Advocate. This court ordered the hearing of the appeal to be disposed of by way of written submission and both parties filed their submission in compliance to the scheduled order.

Arguing the appeal, learned State Attorney submitted that the offences which the respondents were charged with fall in three main categories. The 1<sup>st</sup> category is forgery which are not economic offences, the 2<sup>nd</sup> category are offences falling under the Prevention and Combating of Corruption Act, which also are not economic offences and the 3<sup>rd</sup> category is occasioning loss to the specified authority which is an economic offence. The charges contained both economic and non economic offences. It was further submitted that, it is the requirement of the law under section 12 (4) of the Economic and Organized Crimes Control Act that where the accused are charged before a subordinate court for economic and non economic offences and the Director of Public Prosecution issues a Certificate to confer jurisdiction to the subordinate court, the same should be issued

under section 12 (4). But the Certificate from the DPP which was issued to confer jurisdiction to the subordinate court in this case was issued under section 12 (3) which provision is used where the accused are charged for committing economic offences only. She said, since the respondents in this case were charged for contravening both economic and non economic offences, the Certificate ought to have been issued under section 12 (4).

From the foregoing reason, she stated that the trial Magistrate had no jurisdiction to hear and entertain the case which had a combination of economic and non economic offences for a certificate which was issued under section 12 (3) instead of section 12 (4). She contended that, the trial Magistrate stated clear in the 2<sup>nd</sup> line of page 11 of the judgment that the respondents were improperly arraigned before the court as the DPP Certificate was issued under a wrong provision of the law; as such she erred in law to preside over and make determination of a case which she knew that she had no jurisdiction. She asserted that, since the Certificate was issued under improper provision of the law, and the trial Magistrate knew the same, she could not have proceeded with determining the case on merits while she had no jurisdiction to do the same. She was of the view that, in such circumstances the trial Magistrate ought to have referred the matter to the High Court as provided under section 242 of the Criminal Procedure Act, Cap. 20 R.E 2002, that;

*"If in the course of a trial it appears to the magistrate at any stage of the proceedings that the case is one which ought to be tried by the High Court, he shall stop further proceedings and commit the*

*accused person for trial upon information before the High Court, and in that case he shall apply the procedure provided in this Act in relation to committal of accused persons for trial to the High Court.”*

Therefore, prayed for nullification of the whole proceedings and setting aside the judgment. She further prayed for an order for retrial after the DPP filing a Certificate of trial under the proper provision of the law.

Opposing the appeal, the respondents' counsel submitted that in this appeal, the appellant after the DPP having failed to file a Certificate conferring jurisdiction on the trial Court to try a case involving both economic and non economic offences in terms of section 12 (4) of the Economic and Organized Crime Control Act (supra) is trying to shift the burden to the court. He said, the Certificate under section 12 (4) of the said Act could be filed even after the case was instituted. He asserted that, the charge as presented before the trial court was not defective, consequently the court could not reject it in terms of section 129 of the Criminal Procedure Act, Cap. 20 R.E 2002. Further, the case was instituted in the trial court as an Economic Crimes case to be tried and determined by the same court; and not by way of committal proceedings under PART IV of the Economic and Organized Crimes Control Act (supra). Consequently, the procedure for arraignment and for the hearing and determination of the case was in accordance with the provisions of the Criminal Procedure Act (supra) as directed under section 28 of the Economic and Organized Crime Control Act (supra). He stated that, the trial court conducted a preliminary hearing, trial and delivered a judgment in accordance with the

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provisions of the Criminal Procedure Act (supra) and the trial Magistrate rightly observed that the prosecution was conducted without a certificate by the DPP or a State Attorney conferring jurisdiction to the court to try the case in terms of section 12 (4) of the Economic and Organized Crime Control Act (supra); thus he said that the accused were rightly acquitted. In regard to the appellant's argument that the trial Magistrate should have committed the accused persons for trial by the High Court in terms of section 242 of the Criminal Procedure Act (supra); he stated that this section does not apply to cases instituted under the Economic and Organized Crimes Control Act. He referred to section 28 of the Act which reads;

*"Except as provided in this Part to the contrary, the procedure for arraignment and for the hearing and determination of cases under this Act shall be in accordance with the provisions of the Criminal Procedure Act."*

He further stated that, PART IV of the same Act sets the procedure for committal proceedings instituted under the Act and the procedure set out therein is contrary to the one provided under Criminal Procedure Act; accordingly, the trial Magistrate could not act in accordance with the provisions of section 242 of the Criminal Procedure Act. He therefore stated that the trial Magistrate rightly observed and adopted the *ratio decidendi* of the decision by the Court of Appeal in Criminal Appeal No. 357 of 2014 **Emmanuel Ruta vs. The Republic** and arrived at the right decision that the prosecution had failed to comply with the law in its attempt to prove

the case against the respondents. Thus, he prayed this appeal be dismissed.

In rejoinder, learned State Attorney maintained that since it is not disputed that the Certificate issued to the trial court did not confer jurisdiction and the trial Magistrate was aware that she had no jurisdiction; she ought to have invoked section 242 of the Criminal Procedure Act which mandatorily requires a trial Magistrate after discovering that she had no jurisdiction, she ought not to proceed with the case instead could have committed the respondents to the High Court.

I have considered the submission of both parties and gone through the records of the trial court. The respondents were charged before the trial court with 22 counts all contained in one charge sheet. The 22 counts involved both economic and non economic offences. The law is very clear under section 12 (4) of the Economic and Organized Crime Control Act (supra) that;

*"The Director of Public Prosecutions 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 instituted or to be instituted before a court subordinate to the High Court and which involves a non economic offence or both an economic offence and a non economic offence, be instituted in the Court.**" (emphasis is mine)*

But as admitted by both parties, the Director of Public Prosecutions instead of filing the Certificate under the above provision (as the case involved economic and non economic offences) intending to authorize the trial court to try the case at hand; wrongly filed the Certificate under section 12 (3) of the Economic and Organised Crime Control Act (supra) which was inapplicable in the matter at hand, hence the filed Certificate was defective which is as good as no Certificate was filed before the court. On that basis, as have already been observed by the trial court and undisputed by parties to this case; the trial court had no jurisdiction to try the case at hand for lack of Certificate. In the case of **Emmanuel Rutta vs. The Republic** (supra) Court of Appeal stated that, when the case involves economic and non economic offences the Principal Attorney is required to issue a Certificate under section 12 (4) of the same Act authorizing the District Court to try the case. The Court stressed that;

*"The decisions of the court in the cases of Niko Mhando & Two others V R Criminal Appeal No. 332 of 2008, Magesa Chacha & another V R Criminal Appeal No. 222 of 2011 and Jovinary Senga & three others V R Criminal Appeal No. 157 of 2013 (all unreported) expound on the procedure for trial of a combination of economic cases and ordinary cases in the subordinate courts. Any omission in complying with any of the section as mentioned above, any subordinate courts will not have jurisdiction to try any economic offences or a combination of economic offences and ordinary offences. Since in this appeal the learned Principal State Attorney in charge at Mwanza failed to comply with section 12 (4) of the*



*Economic and Organized Crimes Control Act the District Court of Bukoba lacked jurisdiction to try the appellant.”*

Since the trial court lacked jurisdiction to try this case, the proper procedure was for the court not to proceed to merits of the case and acquit the respondents; although the acquittal by the trial court could not operate to preclude the arrest of the respondents on the same offences. The trial court erred to proceed to the merits of case by framing issues and analyzing the issues even after she had observed that she had no jurisdiction to try the case for failure of the DPP to file the proper Certificate. That was a fatal irregularity which rendered the proceedings a nullity.

In regard to the appellant's argument that after the trial Magistrate being aware that she had no jurisdiction to try the case, she ought to have invoked the provision of section 242 of the Criminal Procedure Act (supra) and commit the respondents for trial at the High Court; I find that is an improper procedure for the present case because a case which involves economic and non economic offences the procedure for conducting such a case is provided in The Economic and Organized Crime Control Act (supra) and not the Criminal Procedure Act. Apart from that, this case was not instituted before the trial court for committal proceedings; rather the same was instituted to be tried by the trial court. As such it could be inappropriate for the trial court to proceed with committal proceedings. Based on the reasons stated, I therefore quash the proceedings of the trial court, set aside the judgment. I further order that the case is remitted back

to the Manyara Resident Magistrate's court and be placed before another magistrate to proceed with the trial based on proper charge and strict compliance with Section 12(4) and Section 26 of the Economic and Organized Crimes Control Act, Cap. 200 R.E 2002.

Dated at Arusha this 06<sup>th</sup> day of August, 2018



**S.M MAGHIMBI**

**JUDGE**

