

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**AT KIGOMA**

**(Kigoma District Registry)**

**CRIMINAL REVISION NO. 15 OF 2019**

*(Criminal Case No. 229 of 2019 of the District Court of Kibondo at Kibondo*

*before F.Y. MBELWA - RM)*

**KAYANDA S/O KASHINJE .....1ST APPLICANT**

**JUMA S/O JOHN .....2ND APPLICANT**

**VERSUS**

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

**J U D G M E N T**

17/10/2019 & 17/10/2019

**I.C. MUGETA, J.**

This is a revision "*suo moto*" following a complaint by the accused persons that being first offenders they were wrongly sentenced to imprisonment. The complaint followed a visit in prison by inspecting judge as Justice of Peace. Following this complaint, it was ordered that these proceedings be opened to consider the correctness, legality and propriety of the proceedings, findings and sentence of the lower court. The complainants are two, namely, Kayanda Kashinje and Juma John. They

were convicted for three offences on their own plea of guilty which is also source of their complaint. That being first offenders and having pleaded guilty, imprisonment as an alternative to fine is undeserved. The first offence was unlawful entry in a game reserve c/s 15 (1) and (2) of the Wildlife Conservation Act, 2009 (the Act). The second count is unlawful possession of Weapons in a game reserve c/s 103 of the Act and the third count is unlawful fishing in a game reserve c/s 21 (a) and (4) of the Act.

In the first count they were sentenced to a fine of Tsh 200,000/= or imprisonment for twelve months. In the second count, a fine of Tshs 200,000/= or imprisonment for twelve months. No sentence was entered in terms of the third count. As rightly stated by the learned trial magistrate the charged offence is not created under the stated section of the law therefore it is a none existent offence.

For convenience I shall refer to the complainants as accused persons and the Republic as the prosecutor per their original titles at the trial court.

On the hearing, Antia Julius, learned State Attorney, supported the complaint on legal grounds. She submitted that the charge sheet was defect in material particulars in that the particulars of the offence in each count did not describe or mention the accused persons. She further submitted that the offence in the second count is triable by the High Court as an economic offence, therefore, the lower court had no jurisdiction. She stated that section 103 of the Act was amended in 2016 vide the Written Laws (Miscellaneous Amendment) Act No. 3/2016 by declaring the offence under section 103 of the Act as an economic offence. On the, foregoing, she prayed the conviction to be quashed and the sentence be set aside.

I agree with the learned State Attorney. According to the second schedule to the Criminal Procedure Act [Cap. 20 R.E. 2002] (the CPA) names of the accused persons ought to be named in the particulars of the offence. The second schedule is made under section 135 particularly section 135 (a) (iv) which reads:-

***"135 (a) (IV) – The forms set out in the second schedule to this Act, or forms conforming to them as nearly as may be, shall be used in cases to which they are applicable and in other cases forms to the like effect, or conforming to them as nearly as may be, shall be used, the statement of the offence and the particulars of the offence being varied according to the circumstances of each case"***

Naming of the accused person(s) in the particulars of the offences is, therefore, mandatory. Is failure to do so, fatal to the proceedings? The answer depends on whether the accused person has been prejudiced by the omission or commission.

In the circumstances of this case, I do not think that the omission of the names in the particulars of the offence prejudiced any of the accused person. I believe the accused persons were able to understand the nature of the offence which they faced and to which they entered a plea of guilty. I understand the word "***shall***" is used in the above provision. Besides the use of the word "***shall***" in the above quoted provision, the obligatory nature of the word is subject to section 388 of the CPA. In the case of **Bahati Mkejo v. R.** Criminal Appeal No. 118/2006, Court of Appeal, Dar es Salaam (unreported) it was held that the word "***shall***" whenever used

in the CPA does not impose a mandatory obligation because it is subject to the provision of section 388 of the same Act. The omission, therefore, was not fatal.

Did the trial court have jurisdiction to try the second count? As rightly submitted by the learned State Attorney, the offence in the second count is an economic offence following the amendment brought by Act No. 3/2016. In terms of section 3 (1) of the Economic and Organized Crime Control Act [Cap. 200 R.E. 2002] the jurisdiction to hear and determined cases involving economic offences is vested in the High Court. A subordinate court can be conferred with jurisdiction by a certificate issued under hand of the Director of Public Prosecution or a State Attorney duly authorized by him to do so in terms of section 12 (3) of Cap. 200. In this case no such certificate was issued. As submitted by the learned State Attorney, offences under section 103 of the Wildlife Conservation Act was added to the first schedule of Cap. 200 by the amendment effected vide Act No. 3/2016. Section 16 of this Act amended the first schedule of Cap. 200 by deleting paragraph 14 and substituted for it offences under section 17,19,24,26,28,47,53,103,105, part X or part XI of the Wildlife Conservation Act or section 16 of the National Parks Act.

In view of the fact that the subordinate court had no jurisdiction to try the second count, then the whole charge was defective. I hereby declare the trial of the accused persons as a nullity. As enjoined by section 388 of the CPA, and having considered the nature of the offence charged and the propriety of putting the accused person to a trial denovo, I find it inappropriate to order a retrial. The conviction is quashed and the sentence

is set aside. I order immediate release of the accused persons unless otherwise lawfully held for another cause.

**I.C. MUGETA,  
JUDGE,  
17/10/2019**

**Court:** Delivered in chambers before Antia Julius, State Attorney and 1st complainant in person and in absence of the second complainant.



**Sgd: I.C. MUGETA,  
JUDGE,  
17/10/2019**