

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF MUSOMA**

**AT MUSOMA**

**CRIMINAL APPEAL NO. 23 OF 2020**

*(Arising from the Judgment of the District Court of Tarime at Tarime in  
Economic Case 71 of 2017)*

**JOSEPH MARWA MWITA ..... APPELLANT**

**VERSUS**

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

**JUDGMENT**

*Date of Hearing: 7<sup>th</sup> October, 2020*

*Date of Judgment: 7<sup>th</sup> October, 2020*

**KISANYA, J.:**

The appellant (Joseph Marwa Mwita) was arraigned before the District Court of Tarime at Tarime for three counts. From the very outset and for appreciating the discussion at hand, I find it pertinent to display what was stated in the statement of offence of the charge levelled against the appellant.

1. The first count was "Unlawful Entry into the National Park, contrary to sections 21 (1) (a), 2 and 29(1) the National Parks Act[Cap 282, R.E.

2002], as amended by the Written Laws (Miscellaneous Amendment) Act No 11 of 2003”;

2. The second count read “Unlawful Possession of Weapons in the National Park, contrary to section 24(1)(b) and (2) of the National Parks Act[Cap 282, R.E. 2002]; and
3. The third count recited “Unlawful Possession of Government Trophy, contrary to section 86 (1) and (2) (c)(ii) of the Wildlife Conservation Act, No. 5 of 2009 as amended by section 59 of the Written Laws Miscellaneous Amendment Act No. 2 of 2016 read together with paragraph 14 of the Economic the first Schedule to and section 57(1) and 60(2) of the Economic and Organized Crime Control Act [Cap. 200, R.E 2002] as amended by section 13 and 16 of the Written Laws (Miscellaneous Amendment) Act No. 3 of 2016.”

The appellant pleaded not guilty to all counts of offence. The prosecution was then inclined to prove its case. In so doing, it called four witnesses who tendered three exhibits. On his part, the appellant defended on oath. Upon considering evidence adduced by both parties, the trial court was satisfied that the prosecution had proved its case beyond all reasonable doubts. Accordingly, the appellant was convicted and sentenced to: fine of 20,000

or imprisonment for years (for the first count), fine of Tshs. 50,000 or one year imprisonment (for the second count) and 20 years' imprisonment (for the third sixth counts).

Dissatisfied, the appellant has knocked at the door of this Court by way of appeal. He has advanced the following grounds of appeal.

1. That he was not found in the National Park.
2. The case against him was fabricated by the park rangers.
3. The prosecution did not produce an independent witnesses to prove its case.
4. The trial court failed to evaluate the entire evidence
5. That the prosecution case was not proved beyond all reasonable doubts.

As I was going through the original record for purposes of hearing, I noted that, the Certificate conferred jurisdiction on the Tarime District Court to try an economic offence and was made under section 12(3) of Economic and Organised Crimes Control Act, Cap. 2002, R.E. 2002 (the EOCCA). Having noted further that, the first and second counts were not economic offences, I doubted whether the District Court had jurisdiction to try the matter. In that regard, when the matter was called on for hearing today, I asked the

parties to address the Court on that issue, in the course of arguing the appeal.

The appellant who appeared in person had nothing to say other than requesting the Court to allow his appeal and discharge him.

On his part, Mr. Nimrod Byamungu, learned State Attorney who appeared for the respondent decided to tackle the issue raised *suo motu* by the Court. The learned State Attorney submitted that, the trial court had no jurisdiction to try the case before it. His submission was based on the fact that, the Certificate filed on behalf of the Director of Public Prosecutions to confer jurisdiction on the trial court to try the case was made under section 12(3) of the EOCCA while the appellant was charged with economic and non-economic offences. He cited the case of **Waryoba Yuda vs R**, Criminal Appeal No. 29 of 2016, CAT at Mwanza (unreported) to support his submission.

For that reason, Mr. Byamungu urged the Court to nullify the proceedings of the trial, quash the conviction and set aside the sentence thereto. He was of the view that, this was not a fit case for the Court to order retrial on the reason that, the appellant had already served the sentence of one year

imposed in respect of the first and second offence. Regarding the third count, the learned counsel contended that it was not proved beyond all reasonable doubt as evidence on whether the appellant was present at the time of disposing the government trophy is wanting.

Having heard the submissions made by the parties, the issue for consideration is whether the trial court had jurisdiction to try the matter.

It is not disputed that the charges levelled against the appellant were economic and non-economic offences. The law is clear that, a subordinate court has no jurisdiction to try a case involving economic and non-economic offences unless the Director Public Prosecutions confers jurisdiction to it. In such a case, the Certificate is made under section 12(4) of the EOCCA and not otherwise. Section 12(4) of the EOCCA reads:

*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 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.*

The first and second counts in the instant appeal were non-economic offences while the third count was economic offence. Therefore, the Certificate conferring jurisdiction on the Tarime District Court try the case against the appellant ought to have been made under section 12 (4) of the EOCCA. It is on record that, the said Certificate was made under section 12(4) of the EOCCA. This implies that, the trial court was not mandated to try non-economic offences preferred against the appellant. Due to the said defect in the Certificate, the District Court of Tarime lacked jurisdiction to try the case before it. This position was also stated in am in **Said Lyanguri vs R**, Criminal Appeal No. 324 of 2017 (unreported) where the Court of Appeal held as follows:

*"It goes without saying, therefore that the trial Court lacked jurisdiction to adjudicate the case. That irregularity vitiated the entire trial and the only remedy available is to nullify the trial....this is not the first time section 12(3) and 12(4) of the Act is coming under proper scrutiny in this Court. It was as subject of discussion in the cited case of **Kaungua Machemba vs The Republic** (supra). In that case the appellant was*

*arraigned in Court to answer a charge comprising both economic and non-economic offence and that the certificate conferring jurisdiction to try the case to the Shinyanga Resident Magistrates Court was issued under section 12(3) of the Act. That trial was declared a nullity by the Court.*

It follows that, the proceedings before the Tarime District Court were vitiated as the Certificate conferring jurisdiction on it was not made under section 12 (4) of EOCCA. In the end result, the findings, conviction and sentence arising there were also a nullity.

In the exercise of powers vested in this Court by section 373 of the Criminal Procedure Act, Cap. 20, R.E 2019, I hereby nullify the proceedings of the trial court, quash the conviction and set aside the sentence passed by the trial court.

Ordinarily, when the proceedings are nullified, the Court has to make an order for retrial. But that is not always. It depends on the circumstances of each case. It is trite law that, an order for retrial cannot be issued in the circumstances where the prosecution will fill gaps in its case. In the present case, the third count of unlawful possession of government trophies was not

proved. This is because evidence showing that he was present at the time of disposing of the government trophy was not adduced. On the other hand, the appellant has served eight months of one year imposed for the first and second counts.

For the above reasons, I do not find it appropriate to order a re-trial. I accordingly order the appellant to be released from prison forthwith unless he is otherwise lawfully held.

DATED at MUSOMA this 7<sup>th</sup> day October, 2020.



  
E. S. Kisanya  
JUDGE