

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

AT MUSOMA

CRIMINAL APPEAL NO. 38 OF 2020

*(Arising from the decision of the District Court of Bunda at Bunda in
Economic Case No. 87 of 2014)*

EMANUEL S/O BATULE APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

4th and 9th November, 2020

KISANYA, J.:

The appellant, Emanuel s/o Batule was the second accused person in Economic Case No. 87 of 2014 of the District Court of Bunda at Bunda. The other accused persons in that case were, Nyashimo s/o Budetera (the first accused) and Juma s/o Mathis @Ngulimbi (the third accused). In terms of the charge sheet, the offences leveled against them were:

1. Entering into National Park without a permit, contrary to sections 21(1) and (2) of the National Parks Act [Cap. 282, R.E. 2002];
2. Unlawful Possession of Weapons within National Park, contrary to sections 24(1)(b) and (2) of the National Parks Act [Cap. 282, R.E. 2002];

3. Unlawful Hunting in the National Park, contrary to section 23(1) of the National Parks Act [Cap. 282, R.E. 2002] read together with paragraph 14(d) of the First Schedule to the Economic and Organized Crime Control Act [Cap. 200, R.E. 2002]; and
4. Unlawful possession of Government Trophies, contrary to section 86(1) and (2) (b) of the Wildlife Conservation Act, 2009 read together with paragraph 14(d) of the First Schedule to the Economic and Organized Crime Control Act [Cap. 200, R.E. 2002].

It is deduced from the particulars of offence and evidence on record that, the appellants and other accused persons were found by the park rangers (PW1 and PW2) at Mbarangeti area within Serengeti National Park on 10th September, 2014. Upon being searched, they were found in possession of two knives, two bush knife, one spear and four trapping wires which were being used for hunting. The appellant and other accused persons were also found in possession of one zebra valued at Tshs. 1, 920,000/= and one Kuro (water back) valued at Tshs. 1, 360,000/=. The identification and valuation of government trophies were conducted by PW3 on 11th September, 2014. Since the appellant and other accused persons had no relevant permit to enter and hunt in the national park and to possess weapons in the national park and government trophies, they were arraigned before Bunda District Court for the

above named offences. At the end of trial, the appellant and other accused persons were convicted as charged and sentenced to one year imprisonment (for the first and second count), three years imprisonment (for the third count) and twenty years imprisonment (for the fourth count). It was ordered that, the sentence was to run concurrently.

In order to protest his innocence, the appellant preferred the present appeal. One of the ground stated in his petition of appeal was that, the trial court had no jurisdiction to try the offence for want of certificate conferring jurisdiction to it to try the offence levelled against him.

Since that grounds goes to the root of the trial, when this appeal was called on for hearing on 4/11/2020, I directed the parties to address the Court on that ground.

The appellant who appeared in person had nothing to say. He asked for the Court to consider his grounds of appeal and discharge him. On her part, Ms. Monica Hokororo, learned State Attorney who appeared for the respondent supported the appeal. Her argument was based on the fact that, the certificate which conferred jurisdiction to Bunda District Court to try the matter was made under section 12(3) of the Economic and Organized Crime Control Act [Cap. 200, R.E. 2002], hereinafter referred to as "the EOCCA". The learned counsel argued that, since the appellant was charged with economic and non-

economic offence, the said certificate ought to have been issued under section 12(4) of the EOCCA. In that regard, Ms Hokororo was of the firm view that the trial court was not empowered to try non-economic offences which were preferred against the appellant. She therefore moved the Court to nullify the proceedings, quash and set aside the conviction and sentence on the reason that, the proceedings before the trial court were a nullity. The learned State Attorney went on to submit that, this is not a fit case for the Court to order retrial as the offences were alleged to have been committed in 2014 and that, the prosecution might face difficulties in obtaining witnesses and other exhibits.

In the light of the submissions by both parties, it is not disputed that the appellant was charged with economic offence and non-economic offence. In that regard, a subordinate assumes jurisdiction if certificate conferring jurisdiction to it has been made by the Director of Public Prosecutions or an officer authorized by him under section 12(4) of the EOCCA. The said section 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 certificate which conferred jurisdiction to Bunda District Court to try the case subject to this appeal was made under section 12(3) of the EOCCA which applies where an accused person is charged with an economic offence only.

The said section provides:

"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."

Therefore, it is apparent that Bunda District was not conferred to try non-economic offences namely, entering into National Park without a permit and unlawful possession of weapons within National Park. It is trite law that, a trial which is conducted without a valid certificate conferring jurisdiction to the subordinate to try economic offence and non-economic offence is a nullity. This position has been taken by the Court of Appeal in many cases. For

instance, in **Ali s/o Salim @ Nyuku vs R**, Criminal Appeal No. 87 of 2020 (unreported), the Court of Appeal held that:

"Similarly, the certificate in this appeal which was issued under section 12(3) of the EOCCA did not confer jurisdiction on the District Court of Lushoto at Lushoto to hear and determine as case involving both economic and non-economic offences against the appellant. In that regard, we are in agreement with the learned State Attorney that the entire proceedings of the trial court and first appellate court are a nullity."

In the light of the above position of law, the proceedings which led the present appeal were vitiated by the fact that, the certificate conferring jurisdiction to Bunda District Court to try the matter was made under section 12(3) of EOCCA while the appellant was charged with economic and non-economic offence. In the result, the conviction and sentence made therein were also vitiated because the trial court was not seized with jurisdiction to try the economic and non-economic offences preferred against the appellant and other accused person.

For the foresaid reason, this Court invokes its revisional powers under section 373 (1) of the Criminal Procedure Act, Cap. 20, R.E. 2009 to nullify the proceedings of Bunda District Court in Economic Case No. 87 of 2014, quash

the conviction and set aside the sentence and orders made therein. Having considered the reasons advanced by the learned State Attorney that, the offence was committed in 2014 and the challenges that may face the prosecution in procuring witnesses and exhibits, the Court makes no order for retrial. Therefore, it is hereby ordered that, the appellant, Emanuel s/o Batule, be released forthwith from the custody unless otherwise held for other lawful reason. Order accordingly.

DATED this 9th day November, 2020.




E. S. Kisanya
JUDGE