

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

CRIMINAL APPEAL No. 168 OF 2019

**JACKSON BUKURU MUNYONI.....1ST APPELLANT
MWITA JOSEPH @ BURURYO 2ND APPELLANT
AMOS S/O LUHAZI@ NDWANO.....3RD APPELLANT**

VERSUS

THE REPUBLIC

JUDGMENT

16th & 30th March, 2020

Kahyoza, J.

Police officers got information from their informer that there was a person in search of bullets for buying. The police arrested that person, **Mwita Joseph@Bururyo**, searched him and found him with ammunitions. Police interrogated Mwita who told them that his friend **Amos s/o Ndwano** who was at Mwita's home place had a gun. Policemen took **Mwita** to his home place where they found **Amos s/o Ndwano**. Policemen alleged that **Mwita Joseph@Bururyo and Amos s/o Ndwano**, led them to the place where the gun was hidden. A gun was found 15 steps from Mwita's house, in the sweet potato farm. It was a submachine gun (SMG) with two magazines one covered in black nylon and one fitted to the gun. **Amos s/o Ndwano** told the police that he got the gun from **Jackson Bukuru Munyoni**. **Jackson Bukuru Munyoni** is resident of Kakonko. Policemen went for **Jackson Bukuru Munyoni** and

arrested him.

The police charged **Jackson Bukuru Munyoni, Mwita Joseph@Bururyo and Amos s/o Ndwano** with the offence of unlawful possession of firearm in the first count and the offence of unlawful possession of ammunitions. They were convicted for both offences and sentenced. **Jackson Bukuru Munyoni, Mwita Joseph@Bururyo and Amos s/o Ndwano** contend that the court, which convicted them had no jurisdiction, that the chain of custody of the exhibits was broken, that no independent witness during the search and recovery of the gun and ammunitions testified and that the conviction was based on involuntary confession, Exh.P.3.

Jackson Bukuru Munyoni, Mwita Joseph@Bururyo and Amos s/o Ndwano further, argue that trial court relied on the weakness of **Mwita Joseph@Bururyo's** defence to convict them and finally that the prosecution did not prove them guilty beyond all reasonable doubt.

The issues for determination are: -

- 1) Did the trial court have jurisdiction?
- 2) Were the exhibits properly admitted?
- 3) Was the appellants' conviction based on the co-accused's involuntary confession and the weakness of the second accused's defence? If the answer is affirmative what are the consequences?
- 4) Was there enough evidence to convict the appellants?

The appellants were charged and convicted in the first count of the offence of unlawful possession of fire arm contrary to section 20(1) and (2) of the Firearms and Ammunitions Control Act No. 2 of 2015; and in the second count of the offence of unlawful possession of ammunition contrary to section 21 (a)

and (b) of the Firearms and Ammunitions Control Act No. 2 of 2015. The particulars of the charges were briefly that the appellants were on the 2nd May, 2017 at Koreli village found in possess of one fire arm made submachine gun with registration No. 1976787304 and two magazines without licence.

It was also alleged the appellants on the same date and venue, were found with seven ammunitions used in SMG/SAR.

Did the trial court have jurisdiction?

I now, consider the first issue whether the trial court had jurisdiction to try, convict and sentence the appellants. The appellants contended in their third ground of appeal that the trial court conducted the case without certificate of transfer and consent from Director of Public Prosecutions. For that reason, it had no jurisdiction to try and convict them.

The Republic replied through the learned state attorney, Mr. Temba that certificate of transfer and consent from Director of Public Prosecutions were not required as the appellants were charged with a normal criminal case.

It is true that the appellants were charged with normal criminal offences and not economic offences. The law requires the D.P.P to issue **consent under section 26** and **certificate conferring jurisdiction under section 12** of the Economic and Organised Crimes Control Act, Cap. 200 (the EOCCA), to subordinate courts to try economic offences. Section 26 provides-

26.-(1) Subject to the provisions of this section, no trial in respect of an economic offence may be commenced under this Act save with the consent of the Director of Public Prosecutions.

Section 12 (3) provides as follows-

*(3) 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.***

From the above, it is not disputed that an economic offence cannot be tried by a subordinate court without a certificate conferring jurisdiction and consent from the D.P.P. The question for determination is whether the offences the appellant stood charged were economic offences. It is evident that the appellants were charged with normal criminal offences. What makes an offence economic one? Economic offences are created under section 57 the EOCCA. Section 57 provides that-

“57.-(1) With effect from the 25th day of September, 1984, the offences prescribed in the First Schedule to this Act shall be known as economic offences and triable by the Court in accordance with the provisions of this Act.”

It is therefore section 57 of the EOCCA, which provides if a given offence is economic one or otherwise. To determine if a given offence is an economic, one has to look at **the First Schedule to the EOCCA**. Thus, It is not upon a person drafting charges to determine either to charge the accused person with an economic offence or non-economic offences. Economic offences are creatures of the law and do not depend on the whims of the person charging. Paragraph 31 of the First Schedule **to the EOCCA** provides that-

31. A person commits an offence under this paragraph who

*commits an offence under section 20, 21 or 45 of the **Fire Arms and Ammunition Control Act Cap. 223.***

The appellants in this case were charged with the offences under sections 20 and 21 *of the **Fire Arms and Ammunition Control Act, Cap. 223.*** Those offences are economic offences. For that reason, the person who instituted charges against the appellant had no option but to charge them with the economic offences.

Having found that the appellants were alleged to have committed economic offence. The trial court like many other subordinate courts had no jurisdiction trial economic offences. Section 3(3) of EOCCA bestows jurisdiction to try economic offences to the Corruption and Economic Crimes Division of the High Court. It states-

“3(3) The Court shall have jurisdiction to hear and determine cases involving-

- (a) corruption and economic offences specified in paragraphs 3 to 21 and paragraphs 27, 29 and 38 of the First Schedule whose value is not less than one billion shillings, save for paragraph 14;*
- (b) **economic offences specified under paragraphs 22, 23, 24, 25, 26, 27, 28, 30, 31 * 32, 33,34, 35, 36, 37 and 39 of the Schedule regardless of their value; and***
- (c) such other offences as may be referred to, or instituted in the Court in terms of the provisions of this Act”.*

The law requires all economic offences to be tried by the High Court unless the Director of Public Prosecutions or State Attorney duly authorized by the D.P.P confers jurisdictions to other courts. The D.P.P confers jurisdiction to courts other than the Corruption and Economic Crimes Division of the High

Court to try economic offences under section 12 of EOCCA. Section 12 (3) and (5) provide as follows-

(3) 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.

(4).....

*(5) Where a certificate is issued under subsection (3), it shall be lodged in the court concerned, and shall **constitute full authority for, and confer jurisdiction upon, the court** in which it is lodged to try the case in question. (emphasis added.)*

The offences under sections 20 and 21 of the ***Fire Arms and Ammunition Control Act, Cap. 223*** being economic offences are triable by the Corruption and Economic Crimes Division of the High Court or by a subordinate court with certificate conferring jurisdiction from the D.P.P. It was therefore wrong for the prosecution to charge the appellants with criminal offences when the offences alleged committed were economic offences by virtue of the law. The trial court had no jurisdiction to try offences under section 20, and 21 of the ***Fire Arms and Ammunition Control Act, Cap. 223***. It usurped jurisdiction.

In the upshot, I find the trial and conviction a nullity. Consequently, I quash the proceedings, judgment and conviction and set aside the sentence. In considering whether I should order a retrial, I decided to revisit the celebrated

principle in *Fatehali Manji v Republic* [1966J 1 EA 343. In that case, the erstwhile **East African Court of Appeal** stated, at page 344, the principles for determining such an issue:

"in general a retrial will be ordered only when the original trial was illegal or defective/ it will not be ordered where the conviction is set aside because of insufficiency of evidence or for the purpose of enabling the prosecution to fill up the gaps in its evidence at the first trial: even where a conviction is vitiated by a mistake of the trial court for which the prosecution is not to blame/ it does not necessarily follow that retrial should be ordered/ each case must depend on its particular facts and circumstances and an order for retrial should only be made where interests of justice require it and should not be ordered where it is likely to cause an injustice to the accused person."

I scrutinized the prosecution's evidence and found that there was no tangible evidence against the first accused person. The first appellant who was the first accused person was only mentioned by the third accused person. As a matter of practice the evidence of a co-accused person has to be corroborated. See *Bushiri Amiri v. Republic* [1992] TLR 65. It is well accepted that

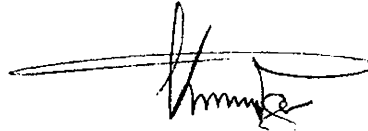
"the evidence of a co-accused is on the same footing as that of an accomplice, that it is admissible but must be treated with caution and, as a matter of prudence, would require corroboration."

There is no evidence to corroborate the evidence of third accused person given in his confession statement. For that reason, there is no evidence against **Jackson Bukuru Munyoni**, the first appellant, I order his immediate release from custody and unless held for some other reasonable course.

I considered the evidence regarding the second and third appellants, which is to the extent that the two led to the discovery of the gun and ammunitions. I am of the view that there is ample evidence to order the two appellants to be retried. Thus, I order **Mwita Joseph@Bururyo and Amos s/o Ndwano** the second and third appellants respectively, to be tried *de novo* by a court competent to try economic offences. Should they be found guilty and subsequently convicted, account should be taken of the time they have already spent in custody.

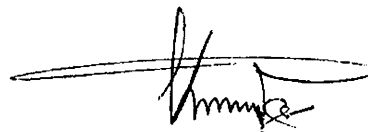
I having determined the first issue positively that the trial court had no jurisdiction to try the appellants, I find no reason determine the rest of the issues.

It is ordered accordingly.



J. R. Kahyoza
JUDGE
30/3/2020

Court: Judgment delivered in the presence of Mr. N. Byamungu, State Attorney for Republic and right of appeal explained. Mr. Charles B/C Present



J. R. Kahyoza
JUDGE
30/3/2020