

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

DC CRIMINAL APPEAL NO. 23 OF 2020

(Originating from Katavi Resident Magistrates' Court in Economic Case
No. 52 of 2016)

VICENT S/O SAMWELAPPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

Date of last Order : 24/03/2021

Date of Ruling : 25/05/2021

RULING

C.P. MKEHA, J.

On 23/03/2021 the parties herein appeared before me in view of arguing the present appeal. Way back on 22/09/2021, the appellant had been convicted at the Resident Magistrate's Court of Katavi for an offence of being found in possession of Government trophy contrary to section 86(1) and 2(c) (ii) of the Wildlife Conservation Act read together with paragraph 14(d) of the First Schedule to and section 57(1) and 60(2) of the Economic and Organized Crime Control Act. He was sentenced to be jailed for 20 years.

Aggrieved, the appellant filed a Petition of Appeal before this court consisting of the following grounds:

1. That, the prosecution side failed to prove the charge beyond all reasonable doubts at high standard as required by law.

2. That, the evidence adduced at the trial came from people with accomplish (sic).
3. That, the appellant was not given an ample time to call his witnesses.
4. That, the appellant's ten cell leader was not summoned to testify and come to the standing truth.

When the appellant was invited to argue his appeal, he merely adopted his grounds of appeal without more.

Mr. Mwashubila learned Senior State Attorney was of the view that, the appeal ought to be determined, not on merits. The learned Senior State Attorney submitted that, documents conferring consent and jurisdiction to the subordinate court were defective for omitting citing section 60(2) of the EOCCA. In view of the learned Senior State Attorney, the documents were invalid. Given that anomaly, it was the learned Senior State Attorney's submission that, the proceedings and resultant decision were both a nullity. The learned Senior State Attorney submitted further that, since there was ample evidence that the appellant did commit the offence charged a retrial order was inevitable.

As correctly submitted by the learned Senior State Attorney consent document and certificate conferring jurisdiction omitted citing section 60(2) of the EOCCA. That is not all. The two documents were also not properly endorsed by the responsible judicial officer when he admitted them to form part of the court's record. In view of the settled law, the trial magistrate proceeded hearing the

case without having the requisite jurisdiction. The learned Senior State Attorney has advised that a retrial order be issued.

Upon carefully perusing the evidence on record, I am in agreement with the learned Senior State Attorney that, this is a kind of cases in which retrial orders would be appropriate. I however take into account the fact that the appellant has been serving illegal sentence for almost five (5) years now. It is for that reason I find that, issuance of a retrial order in the circumstances of this case, will not only be inappropriate, but also unjust.

For the foregoing reasons, I hereby quash conviction in respect of the appellant. The sentence earlier imposed is set aside. I proceed to order immediate release of the appellant from custody unless he is held therein for another lawful cause.

Dated at **SUMBAWANGA** this 25th day of May, 2021.




C.P. MKEHA

JUDGE

25/05/2021

Court: Ruling is delivered in the presence of the parties.




C.P. MKEHA

JUDGE

25/05/2021