

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

AT MUSOMA

[REVISIONAL JURISDICTION]

CRIMINAL REVISION NO. 4 OF 2020

THE REPUBLIC APPLICANT

VERSUS

MLEKWA DEDE @ MASWEYA RESPONDENT

**(Revision from the decision of the District Court of Bunda
at Bunda in Economic Case No. 4 of 2018)**

JUDGMENT

27th and 28th July, 2021

KISANYA, J.:

In September, 2020, this Court conducted inspection at the Bunda District Court and found it appropriate to call for and examine the records of Economic Case No. 4 of 2018 with a view to satisfy itself on the legality, propriety or correctness of the proceedings, judgment and sentence thereto. That recourse was taken after noticing that the certificate conferring jurisdiction on 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 (now R.E. 2019, hereinafter referred to as "**the EOCCA**") while the charge had both economic and non-economic offences.

In terms of the charge, the respondent, Mlekwa Dede @ Masweya stood charged with three counts of offences namely, **unlawful entry into the National Park**, contrary to section 21 (1), (2) (a) and section 2 of the **National Parks Act**, [Cap 282 R.E 2002] as amended by section 13A (c) of (Misc. Amendments) Act No. 11 of 2003 read together with GN No. 235 of 1968; **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 **unlawful possession of the government trophies**, contrary to section 86 (1) and (2) (b) of the **Wildlife Conservation Act**, No. 5 of 2009 as amended by the Written Laws (Miscellaneous Amendments) Act, No. 2 of 2009 read together with paragraph 14 of the first schedule to and sections 57 (1) and 60 (2) and (3) of the EOCCA as amended by sections 13 and 16 of the Written Laws (Miscellaneous amendments) Act No. 3 of 2016.

At the end of trial, the respondent was convicted in absentia after jumping bail. He was sentenced to pay fine of TZS. 100,000/= or to serve twelve (12) months in jail in default, for the first count. For the second count, he was sentenced to pay fine of TZS. 200,000/= or to serve three (3) years in jail in default of fine. As regards the third count, the respondent was sentenced to serve twenty (20) years imprisonment. The custodial sentences were ordered to run concurrently.

As hinted earlier, the trial court's records were called by this Court, *suo motu*, after noticing that, the certificate conferring jurisdiction on the subordinate court to try the offence was made under section 12(3) of the EOCCA while the respondent had been charged with economic and non-economic offence.

When this matter was called on for hearing, Mr. Nimrod Byamungu, learned advocate appeared for the applicant. The hearing proceeded in the absence of the respondent who failed to appear.

In his submission, Mr Byamungu readily conceded that, the certificate which conferred jurisdiction on Bunda District Court to try the matter was made under a wrong provision. He pointed out that, much as the respondent was charged with both economic and non-economic offences, the certificate in question ought to have been preferred under section 12(4) of the EOCCA. He went on to submit that the provision of section 12(3) referred to in the certificate subject to this matter applies when an accused person is charged with an economic offence only. Therefore, making reference to the case of **Said Lyangubi vs R**, Criminal Appeal No. 324 of 2017, CAT at DSM (unreported), Mr Byamungu argued that the trial court had no jurisdiction to try the matter. He urged me to nullify the trial court's proceeding, quash the conviction and set aside the sentence. Further to that, the learned State Attorney invited me to order for retrial. He was of the firm view that the prosecution had proved its case beyond all reasonable doubt.

I have considered the submissions by the learned State Attorney and the records of the trial court's records. In my view, the issue for determination is whether the trial court had jurisdiction to try the case at hand. Generally, the jurisdiction to try an economic case is vested in the High Court. A subordinate court cannot try any economic case unless the DPP or State Attorney duly assigned by him, has filed a certificate conferring jurisdiction on it to try that case. In the event the case involves economic and non-economic offences a certificate is issued under 12(4) of the EOCCA, which 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."

In this case, the first and second counts are non-economic offence while the third count is an economic offence. Therefore, the certificate conferring jurisdiction to Bunda District Court to try the matter ought to have preferred under section 12 (4) of the EOCCA. However, it is on record that, the said certificate was made under section 12 (3) of the EOCCA. As rightly submitted

by Mr. Byamungu, the provision cited in the certificate subject to this case applies where the accused is charged with an economic offence(s) only.

In view of the defect in the certificate conferring jurisdiction, the trial court lacked jurisdiction to try the matter. In the case of **Said Lyanguri vs R**, (supra) cited by Mr. Byamungu, the Court Appeal faced akin situation and 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 Mchemba 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".*

In the light of the above position, I am at one with Mr. Byamungu that the trial was a nullity for want of a certificate conferring jurisdiction on Bunda District Court to try the matter. Consequently, the findings which led to the conviction and sentence were null and void.

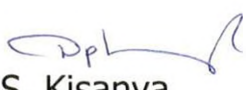
For the reason stated herein, the Courts orders as follows:

1. The proceedings of trial court are hereby nullified and the conviction and sentences arising thereto quashed and set aside.
2. In the event the respondent is serving the custodial sentences imposed by the trial, he should be released from prison.
3. The prosecution is at liberty to institute a fresh charge against the respondent, if still interested to pursue the matter.

It is so ordered.

DATED at MUSOMA this 28th day of July, 2021.




E.S. Kisanya
JUDGE