

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

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**CRIMINAL APPEAL NO. 19 OF 2021**

**(Originating from Economic Case No. 95 of 2019 in the Resident Magistrate's Court of Arusha)**

**HANASI BAKARI IROVYA.....1<sup>ST</sup> APPELLANT**

**AMIRYI RAMADHAN SELEMANI.....2<sup>ND</sup> APPELLANT**

**VERSUS**

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

**JUDGMENT**

**28/07/2021 & 11/08/2021**

**GWAE, J**

In the Resident Magistrate's Court of Arusha at Arusha, Hanasi Bakari Irovya and Amiryi Ramadhan Selemani hereinafter the 1<sup>st</sup> and 2<sup>nd</sup> appellants respectively, were arraigned and charged with an offence of Unlawful Possession of Government Trophy contrary to sections 86 (1) and (2) (b) of the Wildlife Conservation Act, No. 05 of 2009 read together with paragraph 14 of the first schedule to, and sections 57 (1) and 60 (2) both of the Economic and Organized Crimes Control Act Cap 200, Revised Edition, 2002 as amended by sections 16 (a) and 13 (b) respectively of the Written Laws

(Miscellaneous Amendment) Act No. 3 of 2016. When asked to plead, all appellants denied the charge.

After a full trial, the appellants were convicted by the trial court and were sentenced to mandatory minimum sentence of twenty (20) years imprisonment or to pay fine of Tshs. 1,006,551,000/=.

Aggrieved by both conviction and sentence imposed against them by the trial court, the appellants have filed this appeal with a total of four grounds of appeal namely;

1. That, the prosecution did not prove its case beyond reasonable doubt against the appellants herein.
2. That, the trial court proceedings are tainted with gross incurable procedural irregularities which render the whole decision thereof null and void.
3. That, the trial court erred in law and in fact to deal with the prosecution evidence on its own and arrived at the conclusion that it was true and credible without considering that the offender mentioned by the prosecution witness was not brought to the court and charged with the offence.

4. That the trial court erred both in law and in fact in convicting and sentencing the appellants herein above named without satisfy itself on the proper and correctness of the scene of event.

At the hearing of the appeal, the appellants were under the legal representation of **Mr. John Shirima** (advocate) while the Republic was represented by **Mr. Ahmed Hatibu** the learned State Attorney.

When probed to argue his appeal, Mr. Shirima challenged the judgment and proceedings, according to him, for being a nullity as there was no consent and certificate of transfer from the Director of Public Prosecution (DPP). Supporting his argument Mr. Shirima cited the decision of the Court of Appeal of Tanzania in the case of **Zacharia Marwa Chacha vs. The Republic**, Criminal Appeal no. 274 of 2011.

Mr. Hatibu on the other hand did not oppose Mr. Shirima's argument on the ground that, the trial court's proceedings reveal that the matter proceeded without consent and certificate of transfer from the DPP. Therefore, Mr. Hatibu urged this court to order for re-trial.

As conceded by Mr. Hatibu, learned State Attorney representing the respondent, a clear scrutiny of the trial court records by the court is to

the effect that, the charge sheet together with the consent and the certificate conferring jurisdiction were not admitted by the trial court, it is the surprise of this court that if such documents were not admitted by the trial court how did they get their way into the court file. To make the matter worse, the said consent and the certificate conferring jurisdiction appear to have been signed on 20/11/2019 which is the date when the appellants were arraigned before the trial court for the first time however the appellants were not required to plead to the charge for the reason that the trial court had no jurisdiction. One would wonder that if the consent and the certificate conferring jurisdiction were ready on the date the appellants were brought to trial court why were the appellants were not requested to enter their pleas on the reason that the court had no jurisdiction.

It follows therefore, the trial court did not have the requisite jurisdiction to try the economic offence charge against the appellant. A subordinate court cannot assume or bestow jurisdiction to try an economic offence where it has not been conferred jurisdiction under section 12(3) of the Economic and Organized Crime Control Act Cap 200 R.E 2019 and consent from the DPP (section 26 of the Act) otherwise such proceedings and judgment are rendered a nullity as it was decided in the case of **Nico**

**Mhando and Two Others vs Republic**, Criminal Appeal No. 332 of 2008 (unreported) where it was stated that:

"In the circumstances, the consent of the DPP to prosecute together with a certificate of transfer to the District Court were mandatorily required. Otherwise, in the absence of such consent and certificate, the District Court lacked jurisdiction and hence the entire proceedings were a nullity."

Being satisfied that the trial court had no jurisdiction to try the matter, the issue to be dealt by the court is on the way forward. Mr. Hatibu urged this court to order for retrial. I respectfully disagree with the learned State Attorney who asked this court to order a trial denovo of the case. The guiding principles on whether to order a retrial or acquittal were rightly and judicially set in the case of **Manji v Republic** (1966) EA 343 where it was held and I quite;

"In general, a retrial may be ordered only when the original trial was illegal or defective, it will not be ordered where the conviction is set aside because of insufficient of evidence or for the purpose of enabling the prosecution to fill in the gaps in its evidence at the first trial ...each case must depend on its own facts and

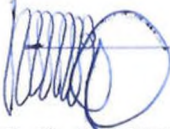
in order for the retrial should only be made where the interest of justice requires

In our present criminal matter, the appellant has been in remand since 20<sup>th</sup> November 2019 and taking into account that there was neither admission of the charge by the trial court nor was a clear DPP's consent and transfer of the matter to the trial court and being guided by the decision in the case of **Zacharia Marwa Chacha** (Supra), if find it just and prudent to allow the appeal by releasing the appellant from the prison custody.

Consequently, this appeal is allowed on the point of lack of jurisdiction the proceedings and decision emanating from such proceeding are hereby quashed and set aside. The appellants are to be released from prison forthwith. However, the DPP is at liberty to decide in his wisdom and prudence to decide on how best to proceed against the appellants in a manner he will deem fit.

It is so ordered.



  
**M. R. GWAE**  
**JUDGE**  
**11/08/2021**