

**IN THE HIGH COURT OF TANZANIA
(DODOMA DISTRICT REGISTRY)
AT DODOMA
(APPELLATE JURISDICTION)**

DC CRIMINAL APPEAL NO. 38 OF 2021

(Original from the District Court of Dodoma at Dodoma Economic Case No. 45 of 2018)

TEGEMEA MOSES MSAUGE APPELLANTS

VERSUS

THE REPUBLIC RESPONDENT

16/9/2021 & 17/9/2021

JUDGMENT

MASAJU, J

The Appellant, Tegemea Moses Msauge, was on the 15th day of October, 2017 at Iduo Masinyati village within Kongwa District, Dodoma Region allegedly found in Unlawful Possession of Firearm and Ammunition. He was accordingly charged with, and convicted of UNLAWFUL POSSESSION OF FIREARM and UNLAWFUL POSSESSION OF AMMUNITION in the District Court of Dodoma at Dodoma, and sentenced to serve twenty (20) years imprisonment on each count, the sentences running concurrently. Hence this Appeal to the Court.

The Appellant's Petition of Appeal is made up of nine (9) grounds of Appeal, including the 2nd ground, that the trial court had no jurisdiction to try the economic case against him.

When the Appeal was called upon for hearing on the 16th day of September, 2021, the layman Appellant appeared in person and adopted his grounds of appeal to form his submissions in support of the Appeal. He prayed the Court to intervene and allow the Appeal.

The Respondent, in the service of the learned Senior State Attorney, Mr. Harry Mbogoro, did support the Appeal on the reason that the Appellant was tried and convicted of the economic offence without there being Consent and Certificate of Transfer of jurisdiction so sanctioned by the Director of Public prosecution pursuant to Sections 26(1) (2) and 12 (3) of the Economic and Organised Crime Control Act, [Cap 200] read together with Government Notice No. 284 of 2014 thereof. That, the State Attorney Incharge who purportedly sanctioned the prosecution and transfer of jurisdiction by the 14th day of March 2019 when the instruments thereof were recorded in the proceedings of the trial court had no such legal authority in term of Government Notice No. 284 of 2014. That, the Appellant was therefore illegally tried by the trial Court. The Respondent reasoned that the trial, proceedings and judgment thereof were a nullity for want of the Director of Public prosecutions' personal Consent of prosecution and Certificate of jurisdiction to the trial Court.

The Court do agree with both the Respondent and Appellant that the trial Court lacked jurisdiction as so rightly reasoned by the Respondent, and the Appellant on his 2nd ground of appeal in terms of section 29(1) of the Economic and Organized Crime Control Act, [Cap 200 RE 2019]. Since the Appellant allegedly was arrested within Kongwa District, then according to the said section of law, the Appellant's trial, if any, for economic offence could be conducted either in the District Court of Kongwa or the Resident

Magistrates' Court of Dodoma, but not in the District Court of Dodoma as it was the case in the economic offence, the subject of this Appeal.

Though the charge was allegedly amended to read the Resident Magistrate's Court of Dodoma still retaining the same Economic Case Number 45 of 2018, the Consent of prosecution and Certificate of jurisdiction thereof were still lacking. Surprisingly despite of the purported amendment and substitution of the charges to read in the Resident Magistrates' Court of Dodoma, at Dodoma, the judgment of the trial Court is that of the District Court of Dodoma.

That said, the illegal Appellant's trial, conviction and sentence thereof cannot remain in place. By virtue of the Court's revisionary powers under section 372(1) of the Criminal Procedure Act, [Cap 20 RE 2019] the purported trial, record of proceedings, judgment, conviction and sentence thereof severally and jointly are hereby nullified, quashed and set aside accordingly.

The Appellant shall be released forthwith from prison except if there was a lawful cause.




GEORGE M. MASAJU

JUDGE

17/9/2021