

IN THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

SUMBAWANGA DISTRICT REGISTRY

AT SUMBAWANGA

DC CRIMINAL APPEAL NO. 51 OF 2020

(Originating from Economic Case No. 32 of 2019 from Mlele District Court)

BEATA JOHNAPPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGEMENT

Date of Last Order: 21/ 10/ 2021

Date of Judgement: 15/ 11/ 2021

NDUNGURU, J

The appellant, **Beata John** was arraigned and charged in the District Court of Mlele (henceforth the trial court) in Economic Case No. 32 of 2019 for one count. Being in unlawful possession of government trophies contrary to **section 86 (1) (2) (ii) of the Wildlife Conservation Act No. 5 of 2009 read together with paragraph 14 of the first schedule of the Economic and Organised Crime Control Act Cap**

**200 RE 200 as amended by section 16 (a) of written Laws
(Miscellaneous amendments) Act no. 3 of 2016.**

The appellant herein pleaded guilty to the charge, the trial court found him guilty, convicted and proceeded to sentence the appellant custodial sentence of 20 years term in jail or to pay fine of Tshs. 10,350,000/= (ten million three hundred and fifty thousand shillings only).

Now, being aggrieved by the decision of the trial court, the appellant lodged to this court two grounds petition of appeal, however, they can be condensed into one ground; that the case against him was not proved on the standard required by the law.

During the hearing of this appeal, the appellant appeared in person, unrepresented; while Mr. Kabengula, the Learned State Attorney appeared for the republic *cum* respondent to argue the appeal. In supporting the appeal, the appellant being dissatisfied with the sentence he prayed to this court to adopt his two grounds of appeal he lodged to be part of hearing. He had nothing more to add.

In reply thereto, Mr. Kabengula, Learned State Attorney submitted that he has gone through the charge sheet, consent and certificate of

Director of Public Prosecution and he noticed the same to be illegal. The consent issued by the office of DPP is not dated.

Further, Mr Kabengula submitted that certificate conferring jurisdiction is defective for the reasons that first it is referred to one Emmanuel Charles and not Beata John who is before this court. Secondly, the court referred is MELE and not MLELE, thus the District Court of Mlele had no jurisdiction to try the case and the certificate is not dated.

Mr Kabengula submitted further that the defects revealed are fatal and they go to the root of the case. Therefore, he prayed the proceedings be nullified and the case be referred to the District Court of Mlele where he was charged for retrial.

In rejoinder the appellant had nothing to say.

I have keenly followed the arguments of the appellant and that of Mr. Kabengula for the respondent *cum* republic during the hearing of this appeal. I have as well read the entire proceedings of the trial court.

Let me, first start with the anomaly raised and addressed by Mr Kabengula during the hearing of the appeal as regards to the jurisdiction of the trial court to hear and determine the present matter once brought

before it. In determining that anomaly alone will suffice to dispose of this appeal because the same affects the competence of the appeal before me.

As correctly submitted by Mr Kabengula, the consent and certificate conferring jurisdiction to the trial court was not proper. Thus, the trial court had no jurisdiction to try the present appellant for want of proper consent and certificate conferring jurisdiction to the subordinate court to try economic cases as required by the law.

As stated earlier on, the appellant was charged with and convicted on one count of unlawful possession of government trophies. It was alleged that he was found in unlawful possession of government trophies, which is economic offence under **paragraph 14 of the First Schedule to the Economic and Organized Crime Control Act, No. 3 of 2016. Section 8 of the Written Laws (Miscellaneous Amendments) Act, No. 3 of 2016**, confers jurisdiction to the High Court to try economic cases. The section reads thus;

"3 (1) the jurisdiction to hear and determine cases involving economic offences under this Act is hereby vested in the High Court.

(2) The High Court when hearing charges against any person for the purposes of this Act shall be an Economic Crimes Court".

However, economic crimes cases can be tried in the subordinate courts where the Director of Public Prosecutions fulfills certain conditions. Consent to have the case tried by a subordinate court under **section 26(1)** of **EOCCA** must be issued. The section reads:

"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".

The Director of Public Prosecutions is also required to issue a certificate under **section 12 (3)** transferring the case for trial in the subordinate court. The section provides:

"12 (3) The Director of Public Prosecutions or any state attorney duly authorized 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”.

My strict perusal of the two documents, consent and certificate collectively I find them to have defects. Both certificate which confers jurisdiction to the subordinate court to try economic cases and the consent of the State Attorney lacks the date upon which they were signed. The certificate lacks the proper name of the appellant instead of referring Beata John it referred Emmanuel Charles. Also, the certificate lacks the proper name of the court as it referred District Court of Mele instead of Mlele. To that effect the two documents becomes defective, hence as if there are no documents at all.

In the result, I find the trial Court lacked the jurisdiction to try the appellant of the offence of unlawful possession of government trophies under the Economic and Organized Crime Control Act, Cap 200. The trial court initiated the prosecution case without proper consent and certificate; thus, it tried, convicted and sentenced the appellant without jurisdiction.

For the above reason, the trial conducted by the District Court of Mlele was a nullity for lacking requisite consent and certificate of the Director of Public Prosecution. **See the case of Ebon Stephen Chandika versus The Republic, Criminal Appeal No. 236 of 2011, Abdulswamadu Azizi versus The Republic, Criminal Appeal No. 180 of 2011, Emmanuel Rutta versus the Republic, Criminal Appeal No. 357 of 2014, Wagana Mwita and Another versus the Republic, Criminal Appeal No. 148 of 2009**, all unreported.

In this regards, I do invoke this court revisional powers revision provided for under **section 373 (1) (a) of the Criminal Procedure Act, Cap 20 read together with section 366 (1) (a) (i)** of the same Act I quash all the proceedings and judgement of the subordinate court and the fact that the trial court had no jurisdiction to try the appellant, therefore the order of retrial is not preferable in the circumstance of this case, I left the fate of the appellant to the DPP to decide whether or not still has an interest to prosecute the present appellant. In the meantime, I order the appellant Beata John to be released forthwith from prison unless is lawful held.

It is so ordered.




D. B. NDUNGURU

JUDGE

15. 11. 2021