

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

**BUKOBA DISTRICT REGISTRY**

**AT BUKOBA**

**ECONOMIC APPEAL NO. 02 OF 2021**

*(Originating from Economic Case No. 03 of 2020 of District Court of Biharamulo at Biharamulo)*

**SAID MUSSA @ CHUNDEBE-----APPELLANT**

**VERSUS**

**REPUBLIC----- RESPONDENT**

**JUDGEMENT**

**Date of Last Order: 12/05/2022**

**Date of Judgment: 24/06/2022**

**A. E. Mwipopo, J.**

Said Mussa @ Chundabe, the appellant herein, filed the present appeal against the decision of the District Court of Biharamulo at Biharamulo in Economic Case No. 03 of 2020. The appellant was arraigned in the trial District Court for the offence of unlawful possession of government trophy to wit the bushbuck skin contrary to section 86 (1) and (2) (c) (ii) of the Wildlife Conservation Act, Act No. 5 of 2009 as amended by section 59 of the Written Laws (Miscellaneous Amendment) Act, Act No 4 of 2016 read together with paragraph 14 of the First Schedule to and section 57 (1) of the Economic and

Organized Crimes Control Act, Cap. 200, R.E. 2002, as amended by section 16 of the Written Laws (miscellaneous amendment) Act, Act No. 03 of 2016.

The particulars of the offence reveals that the appellant on 04<sup>th</sup> January, 2020 at Nyabugombe Village within Biharamulo District in Kagera Region was found in unlawful possession of the government trophy to wit bushbuck skin valued at US dollars 600 equivalent to Tshs. 1,374,000/= . The trial District Court proceeded with the hearing of the case after receiving a consent and certificate conferring jurisdiction to the subordinate Court to try the offence. The prosecution called 5 witnesses and tendered 5 exhibits to prove its case, and similarly, the appellant was the only defense witness who testified after he was found with a case to answer. The trial Court convicted the appellant for the offence he was charged with and sentenced him to serve 20 years imprisonment. As it was stated earlier herein above, the appellant was aggrieved by the decision of the District Court and filed the present appeal.

In his petition of appeal, the appellant has raised a total of four grounds of appeal as provided hereunder:-

- 1. That the prosecution witnesses had fatal inconsistency in their testimonies to prove on the alleged crime.*
- 2. That the prosecution witnesses were not corroborative to each other to meet the credibility and sufficiently prove the allegation.*

*3. That the said judgment has contravened mandatory proviso of section 312 (1) of the Criminal Procedure Act, Cap. 20, R.E. 2019.*

*4. That the said charge was not proved to the required standards.*

On the hearing date, the appellant appeared in person, unrepresented, whereas the respondent was represented by Mr. Juma Mahona and Mr. Amani Kirua, State Attorneys.

When the appellant was afforded an opportunity to submit on his case, he prayed for his grounds of appeal found in the Petition of Appeal to be considered by the court and his appeal be allowed.

In response, Mr. Juma Mahona, State Attorney who submitted on behalf of the respondent, supported the appeal. The reason for supporting the appeal is that the appellant was charged for the offence of being in possession of the government trophy to wit the bushbuck skin which falls among economic offences. It was his submission that trial in economic offence commence at subordinate Court after the DPP has given his consent and certificate to confer the jurisdiction to the District Court. This is seen at page 8 of the typed proceedings. After the consent and certificate was filed, the said consent and certificate conferring Jurisdiction to the District Court was not read over to the accused. Thus, the accused person did not know that the District Court has jurisdiction to determine the matter. The court also did not record that the court

has jurisdiction to hear and determine the economic offence. The trial was a nullity. The counsel said that they are afraid to pray for retrial since it is not clear if the said government trophy is still present and if there is possibility of proving the offence. For that reason he prayed for the court to discharge the appellant.

In his rejoinder, the appellant insisted for the Court to allow the appeal and release him.

As the respondent has supported appeal on irregularities in the proceedings, I'm going to look at the said irregularity to see if it is incurably fatal and is capable of disposing of the case before I look at the grounds of appeal provided in the petition of appeal. The counsel for the respondent said that the trial against the appellant commenced and concluded without the appellant being informed that the trial District Court has been conferred jurisdiction by the Director of Public Prosecution (DPP) to try the economic case and the DPP has consented for the trial to Commence.

The accused person was arraigned at Biharamulo District Court for the offence of unlawful possession of government trophy to wit the bushbuck skin valued at US dollars 600 equivalent to Tshs. 1,374,000/=. The said offence is contrary to section 86 (1) and (2) (c) (ii) of the Wildlife Conservation Act, Act No. 5 of 2009 as amended by section 59 of the Written Laws (Miscellaneous Amendment) Act, Act No 4 of 2016 read together with paragraph 14 of the First

Schedule to and section 57 (1) of the Economic and Organized Crimes Control Act, Cap. 200, R.E. 2019. Since the offence the appellant was facing is economic offence it was supposed to be tried by High Court Corruption and Economic Crimes Division according to section 3 (a) of Cap. 200, R.E. 2019. The subordinate Court may try the economic offence if the DPP has conferred to such a subordinate Court a jurisdiction to try the economic offence according to section 12 (3) of Cap. 200, R.E. 2019. The Court of Appeal was of similar position in the case of **Mhole Saguda Nyamagu vs. Republic**, Criminal Appeal No. 337 of 2016, Court of Appeal of Tanzania at Mwanza, (unreported).

The trial of the economic offence commence only when the DPP has granted his consent for the trial to commence according to section 26(1) of Cap. 200, R.E. 2019. The said section reads:-

*"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 same position was stated by the Court of Appeal in the case of **Paulo Matheo vs. Republic, [1995] T.L.R 144**, where it held that:-

*"The consent of the Director of Public Prosecution must be given before any trial involving an economic offence can commence."*

The record of the trial Court shows in page 8 of the typed proceedings that on 24.08.2020 the prosecutor informed the Court that the consent from

Prosecuting Attorney Incharge has already been filed. Then the Court proceeded to fix the date for preliminary hearing on 31.08.2020. On 31.08.2020 the trial Court recorded the plea of the accused person and conducted preliminary hearing. However, nowhere in the record the prosecutor said or trial Court recorded that Court has been conferred with jurisdiction to try the economic offence by the DPP. Also, the record does not show if the appellant was informed that the consent to commence hearing of the case has been granted by the DPP and the trial District Court has been conferred with jurisdiction to try the case by the DPP. I say so as the certificate of the DPP conferring jurisdiction to the trial Court was found in the record despite the fact that the prosecutor did not mention if the said certificate has been issued. The certificate found in trial District Court record has stamp of the trial District Court showing it was received on 20.08.2020. These omissions has prejudiced the appellant since his case was tried without him having information that the trial District Court was conferred with jurisdiction to try his case and the DPP has consented for the trial of the economic case to commence. This issue dispose of the matter.

The remedy where the proceedings of the trial Court is tainted with irregularity is quash the proceedings and to order for retrial. The counsel for the respondent said that he was not in position to make a prayer for retrial for the reason that he is not sure if the exhibit is still in prosecutions hands and if they

are capable of proving the case currently. Upon perusal of the record, I found that the only exhibit which its whereabouts is not very clear is the said government trophy, to wit, the skin of bushbuck with horns and hooves. The trial Court in the judgment forfeited to the Government the said bushbuck skin – Exhibit P3 (Government trophy). Other exhibits are in Court record.

Therefore, the proceedings of the trial District Court are quashed and its judgment is set aside. As the prosecution hesitated to pray for retrial, I order for immediate release of the appellant from prison otherwise lawful held. The prosecution is at liberty to institute the same case in Court if everything concerning the case (evidence) is ready for the immediate hearing of the case to commence. It is so ordered accordingly.

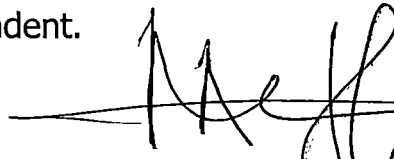


**A.E. Mwipopo**

**Judge**

**24/06/2022**

**Court:** The Judgment was delivered today in the presence of the appellant and the counsel for the respondent.



**A.E. Mwipope**

**Judge**

**24/06/2022**

