

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF BUKOBA)

AT BUKOBA

ECONOMIC APPEAL No. 3 OF 2020

*(Arising from Biharamulo District Court at Biharamulo in Economic Case No. 08 of 2017)*

LEONARD LAURENT----- APPELLANT

Versus

THE REPUBLIC----- RESPONDENT

JUDGMENT

*Date of Judgment: 13.05.2022*

**Mwenda, J.:**

The appellant one Leonard Laurent was arraigned for the offence of unlawful possession of government trophies contrary to **section 86 (1) and (2) (c) (iii) of the Wildlife Conservation Act No. 5 of 2009 as amended by section 59 of the written laws (miscellaneous amendment) Act No. 4 of 2016 read together with paragraph 14 of the first schedule and section 57 (1) of the Economic Organized Crimes Control Act [CAP 200 R.E 2002].**

The accusations against the appellant were that on 16<sup>th</sup> day of June 2017 at Nyakahura village within Biharamulo District in Kagera Region he was found unlawful possession of government trophies, to wit, seven pieces of giraffe's

meat valued at Tshs 33,570.000/=, the property of the Government of United Republic of Tanzania.

At the end of the judicial day, he was convicted and sentenced to serve twenty years (20) jail imprisonment. Aggrieved by the trial court's findings, the appellant preferred this appeal with three (3) grounds.

During the hearing of this appeal the appellant appeared in person without legal representation while the republic marshalled Mr. Emmanuel Kahigi, learned State Attorney.

When invited to argue in support of his appeal the appellant prayed before this court to adopt his grounds of appeal to form part of his submission. Otherwise, he prayed his appeal to be allowed.

On his part, Mr. Kahigi, the learned State Attorney for the republic did not protest this appeal. He said, he is supporting this appeal on two points, one failure of the trial magistrate to put on record the filed consent and certificate by the Director of Public Prosecution and two, failure to read and explain the contents of exhibits before admission.

With regard to the first point on the consent and certificate by the Director of Public Prosecutions, the learned State Attorney submitted that, since this is an economic case, it required the consent and certificate of the Director of Public Prosecutions to be filed before the hearing of the case commenced. He submitted that, the records are silent as to whether the said papers were filed.

He said at page 12 of the typed proceedings the Public Prosecutor stated that the matter was coming for mention and that they had already filed the consent by the Director of Public Prosecution. He went on to submitting that, thereafter the charge was read over to the appellant and the trial court proceeded with the hearing of the case. He said the record is however silent as to whether the said certificate was admitted by the trial court and to him this is contrary to section 12 (3) of the Economic and Organized Crime Control Act [CAP 200 RE 2002]. He said the trial court ought to have recorded that it has received the said certificate and that it has jurisdiction to hear and determine the matter.

Another issue raised and submitted by the learned State Attorney is the failure to read and explain the exhibits before admission in court. The learned State Attorney submitted that at page 22 of the typed proceedings the certificate of valuation of trophies was admitted as exhibit P1 without reading its contents before the court. Again, he said, at page 24 of the typed proceedings certificate of seizure was admitted as exhibit P2 without reading its contents in court. Also, he said at page 26 of the typed proceedings inventory form was admitted as exhibit P3 without reading its contents in the court. In that regards he said, that was procedural irregularity whose remedy is to expunge the said documents from the records. He further submitted that after expunging the said exhibits from records there is no other evidence that connects the appellant with the offence he was charged with. To support his argument, he cited the case of *ROBISON MWENJISI & 3 OTHERS V R. (2003) TLR* at page 218.

He then concluded by submitting that the said two issues are capable of finalizing this matter and in that regard, he prayed this appeal be allowed.

Having gone through the submission by the learned counsels and a perusal to the trial court's records the issue for determination in this appeal is whether this appeal is meritorious.

In arguing this appeal, the learned State Attorney raised the issue of irregularities in the proceedings which are the tendering and admissions of the exhibits without their contents being read to the appellant and failure of the trial court to record that it was vested with jurisdiction to proceed with the matter following the filing of the consent and certificate of and by the Director of Public Prosecutions.

Starting with the issue of certificate and consent from the Director of Public Prosecution, Section 26 (1) of the Economic and Organised Crime Control Act No. 2 of 2011 restricts trials of Economic offences without the consent of the Director of Public Prosecutions. This section reads as follows:-

*"(1) subject to the provision 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.**"*

Apart from that also section 12 (3) of the Economic and Organised Crime Control Act No. 2 of 2011 vests powers to the Director of Public Prosecutions

or State Attorney duly authorized by him to issues certificate conferring jurisdiction to the subordinate courts to the High Court. This section reads:-

*"(3) The director of Public Prosecutions or any State Attorney duly authorised by him, may, in each case on 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."*

In a nutshell, in terms of section 26(1) and (2) of the Economic and Organised Crime Control Act No. 2 of 2011 the consent of the Director of Public Prosecution is mandatory before commencement of trial involving economic offences.

In the present appeal the records shows that on 2<sup>nd</sup> January 2019 the public prosecutor informed the court that they have already filed a consent and certificate of the Director of Public Prosecution and as a result on the same day the trial magistrate proceeded with the hearing of the case. It was the learned state attorney's submission that the Hon. trial magistrate ought to have put it on record that he has received the said papers and to state that he was officially vested with jurisdiction to try the case. Going by the records it is clear that the consent from the Director of Public Prosecution was filed before the trial court and it was acknowledged by both the trial magistrate and the Public

Prosecutor. For that matter failure by the trial magistrate to record on the court's proceedings is not fatal and did not cause any miscarriage of justice.

With regard to an anomaly of tendering and admission of exhibits without reading their contents, the records are silent as to whether content of exhibit P1, P2 and P3 were read out to the appellant before its admission. The importance of reading the contents of exhibits before tendering has been emphasized by the Court of Appeal of Tanzania in a number of its decisions. In the case of *JUMANNE MOHAMED & 2 OTHERS VS THE REPUBLIC CRIMINAL APPEAL NO 534 OF 2015 (CAT) AT TANGA* (unreported) the Court held inter alia that;

***"...The interest of justice and fair trial demands that done.... In all fairness an accused person is entitled to know the content of any document tendered as exhibit to enable him marshal a proper defence whenever they contain any information adversely affecting him."***

With regard to consequence for failure to read the contents of exhibits after its admission before the court, it has been put clear that the said omission is fatal. This position is stated in the case of *SOLOMON MAKURU MTENYA @ KAHUMBE & 3 OTHERS VS REPUBLIC CRIMINAL APPEAL NO. 40 OF 2020* while citing the case of *ANANIA CLAVERY BETELA VS REPUBLIC CRIMINAL APPEAL NO. 355 OF 2017 (CAT)* where the Court held inter alia that,

*"Indeed, the record of proceedings bears out that none of the said exhibit was read out at the trial after admission. **It is settled that such an omission is fatal as it violates the fair trial right of an accused person to know the content of the evidence tendered and admitted against him.** See Robson Mwanjisi & Three Others Vs. R [2003] TLR 218 at 226, Issa Hassan Uki Vs. R, Criminal Appeal No. 129 of 2017 and Rashid Amir Jabar & Another Vs. R, Criminal Appeal No. 204 of 2008 (CAT-unreported)." (Emphasis added).*

Guided by the above authority, since exhibits P1, P2, and P3 were admitted without reading their contents in court they are thus expunged from records. With expunging of exhibits P1, P2 and P3 the remaining evidence is insufficient to support the charge against accused person. For that matter this court finds merits in this appeal and it is hereby allowed, conviction quashed and the sentence meted by Biharamulo District Court in Economic Case No.08 of 2017 is set aside. The appellant should immediately be set free unless otherwise he is lawfully held.

It is so ordered.



A.Y. Mwenda

**Judge**

13.05.2022

Judgment delivered in chamber under the seal of this court in the presence of Mr. Leonard Laurent the appellant and in the presence of Mr. Kahigi the learned State Attorney.

