

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

**(DODOMA REGISTRY)  
AT DODOMA**

**DC. CRIMINAL APPEAL 180 OF 2020**

*(Originating from the District Court of Manyoni in Economic case 73/2017)*

**RASHID MAHWELE .....1<sup>ST</sup> APPELLANT  
REHEMA ISAYA @ MGOHA ..... 2<sup>ND</sup> APPELLANT**

**VERSUS**

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

**JUDGMENT**

14/12/2021 & 23/03/2022

**KAGOMBA, J**

Rehema D/O Isaya Mgoha and Rashid Mahwele Gabriel were found guilty of unlawful dealing with government trophies C/S 80 of the Wildlife Conservation Act, No. 05 of 2009 by the District Court of Manyoni. Both filed separate appeals to this Court to challenge their conviction as well as sentences of five years imprisonment each was given in respect of the first and third counts under section 53(1) (a) (aa) of the Act and twenty (20) years imprisonment in respect of 2<sup>nd</sup> and 4<sup>th</sup> counts, for each, under section 86(1) (2) ( c) (ii) of the same Act.

While Rehema D/O Isaya @ Mgoha filed DC Criminal Appeal No. 180 of 2020 (this appeal), her co-accused had filed DC Criminal Appeal No. 163 of 2020, both appeals were filed, obviously, against the Republic.

The appeal before this Court, arises from the same transaction and obviously from the same evidence as DC Criminal Appeal No. 163 of 2020 between Rashid Mahwele @ Gabriel V. Republic, which was determined by this Court on 25/8/2021 before Hon. Masaju, J who nullified the proceedings, judgment conviction and sentences passed by the trial District Court of Kondoia and set the appellant free forthwith.

The main reason for the above decision is that the trial Court had no jurisdiction to try the accused person. There was no dispute that according to the charge sheet and evidence adduced before the trial Court, the offences the appellant was charged with, and consequently convicted of were allegedly committed at Maliti village within Kiteto District in Manyara region. The appellant was arrested there in Kiteto, Manyara. That being the case, it was the views of the Court on appeal that according to section 29(1) of the Economic and Organized Crime control Act, [Cap 200 R.E 2019], the appellant should have been tried in either the District Court or Resident Magistrate Court within whose local limits his arrest was made. That is to say, the Courts with proper jurisdiction were either Kiteto District Court or the Resident Magistrate Court of Manyara Region. It was the Court's view that the appellant was therefore illegally prosecuted and tried in the District Court of Manyoni District which lacked jurisdiction.

It was the Court's further view that the shifting of the case to Manyoni deprived the appellant of the legal opportunity for bail as he could not have been in a position to get sureties who could have met conditions for bail in terms of section 29 and 36 (5) (a) (b) of the Economic and Organized Crime Control Act, [Cap 200 R. E 2019].

As stated earlier, the appellant in this case, Rehema D/O Isaya @ Mgoha, was charged in the same Court, for the same offences and was convicted of those offences and sentenced in the same way as her co-accused Rashid Mahwele @ Gabriel was. It is trite law that like cases should be decided alike. While I am not bound by the decision made by my learned brother and comrade, Hon. Masaju J, I agree entirely with his reasoning. The trial Court had no jurisdiction.

Section 29 (1) of the Economic and organized Crime Control Act [Cap 200 R.E 2019] provides:

*"29(1) After a person is arrested, or upon the completion of investigations and the arrest of any person or persons, in respect of the commission of an economic offence, the person arrested shall as soon as practicable, and in any case within not more than forty eight hours after his arrest, **be taken before the District Court and the Resident Magistrate Court within whose local limits the arrest was made**, together with the charge upon which it is proposed to prosecute him, for him to be dealt with according to law, subject to this Act".*

[Emphasis added]

From the above excerpt, it is obvious that the appellant herein who was arrested at Maliti in Kiteto district was to be taken to the District Court or Resident Magistrate Court within the local limits of the place she was alleged to have committed the economic offences charged.

It is again a trite law that lack of jurisdiction renders the proceedings and decision made thereon a nullity.


I accordingly evoke revisionary powers of this Court under section 37 (1) of the Criminal Procedure Act, [Cap 20 R.E 2019] to nullify the appellant's trial proceedings, quash the conviction and set aside the sentences. I also find it fit to order no trial *de novo*.

Consequently, the appellant shall be released from prison custody forthwith unless she is otherwise lawfully held on a different cause.

Ordered accordingly.

**Dated at Dodoma this 23<sup>rd</sup> day of March, 2022.**



  
ABDI S. KAGOMBA  
**JUDGE**