

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
SUMBAWANGA DISTRICT REGISTRY
AT SUMBAWANGA
DC. CRIMINAL APPEAL NO. 53 OF 2021

(Originating from Mpanda District Court at Mpanda in Economic Case No. 3 of 2019)

BIZMANA ^S/o STEPHANO.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

Date of Last Order: 17th August, 2022

Date of Judgment: 18th August, 2022

NDUNGURU, J

This is an appeal whereas the appellant one Bizmana s/o Stephano was arraigned before the District Court of Mpanda at Mpanda (trial court) for unlawful possession of Government Trophies contrary to Section 86 (1) and (2) (b) of the Wildlife Conservation Act No. 5 of 2009 read together with paragraph 14 of the First Schedule to, and Section 57 (1) and 60 (2) of the Economic and Organized Crime Control Act, [CAP. 200 R. E 2002] as amended by Section 16 (a) and 13 (b) of the Written Laws (Miscellaneous Amendments) Act, No. 03 of 2016.

It was the prosecution side's case that on the 29th day of January, 2019 at Mtambo village within Mpanda District in Katavi Region, the appellant was found in unlawful possession of Government trophies to wit; Buffalo meat valued at two thousands two hundred and ninety US dollars (2,290) which was equivalent to Tshs. 4,351,000/= only, the property of the Government of Tanzania, without any written permit from the Director of Wildlife.

Despite of his protest of being innocent, at the end of a full trial, the appellant was convicted after being found guilty, and he was sentenced to serve 20 years in prison.

Aggrieved by both conviction and the sentence, the appellant herein flew to the base of this court holding the Petition of Appeal which consists of two grounds which I find best to reproduce as herein under;

1. That the trial court erred both in law and fact by admitting the cautioned statement which was procured in contravention of the law
2. That, the trial court erred in law and fact convicting the appellant basing on conflicting and feeble evidence by prosecution which

had no value in proving the case beyond reasonable doubt as required by law.

As the date for hearing this appeal was scheduled, the appellant appeared unrepresented, meaning he had no legal representation meanwhile the respondent/Republic was represented by Ms. Marietha Maguta, learned State Attorney.

As he was invited to submit in support of his grounds of appeal, the appellant prayed for this court to adopt the grounds. Further, he prayed for this court to allow the appeal.

In responding to the submission, Ms. Maguta supported the appeal but not on the grounds of appeal, instead it is because of the irregularity therein. She added that, on 8/2/2019, the consent and certificate of DPP were not yet issued thus the trial court had jurisdiction to hear the case. She exclaimed, the record shows that the prosecutor tendered the exhibits which were the trophies the appellant was charged with. She submitted that, the said exhibits were tendered and admitted as exhibit P1, and that further the trial court ordered them to be destroyed.

The learned State Attorney continued that, at that time the trial court had no jurisdiction to admit and order for them to be destroyed. She said,

the irregularity vitiates the whole proceedings thus this appeal should be allowed. In conclusion, Ms. Maguta hesitated to pray for a retrial because by so doing the prosecution will be filling in the gaps initially had in prosecuting the appellant and that she prayed the appellant's appeal be allowed, conviction be quashed and sentence be set aside.

The submission by the learned State Attorney made me keenly peruse the proceedings of the trial court, and in doing so, I should remark that the issue for consideration here is the jurisdiction of the trial court in entertaining this matter before it.

It is needless to restate that jurisdiction is the threshold, and it touches the courts' competence to seize the matter presented before them. In other words, courts in Tanzania cannot try cases if they do not have jurisdiction. Section 57(1) of the Economic and Organized Crime Control Act, (Cap 200 R.E. 2002) (EOCCA) is a jurisdictional provision. Under Section 12 (3) of the EOCCA empowers the Director of Public Prosecutions (DPP) or any State Attorney he duly authorizes, to confer jurisdiction to subordinate courts over economic offences he specifies under certificates. The relevant jurisdiction-conferring subsection (3) states:

*(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.***

[Emphasis added].

The economic offences cannot be validly tried by the court without obtaining the consent of the DPP as required under section 26(1) of the EOCCA which states as follows:

"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."

In this appeal at hand, at the 2nd page of the trial court's proceedings, the exhibits which were charged to the appellant were tendered and admitted by the trial court which meant that the trial against the appellant has commenced without the certificate and consent being issued by the DPP to confer jurisdiction to the trial court to entertain the matter.

To that effect, the District Court of Mpanda was not vested with jurisdiction to try the case which is a subject of this appeal and as such, the trial proceedings were a nullity as well as the conviction and sentences. There are plenty of authorities with similar situation, to mention a few, See the cases of **Ebon Stephen Chandika vs Republic, Criminal Appeal No.236 of 2011** and **Abdulswamadu Azizi vs Republic, Criminal Appeal No.180 of 2011**(unreported).

In such circumstance, a retrial seems to be inevitable. But I did warn myself over this as I have been guided by the decision in the case of **Dogo Marwa @ Sigana & Another vs Republic, Criminal Appeal No. 512 of 2019** (unreported), which quoted with approval the former Eastern African Court of Appeal in **Fatehali Manji vs Republic [1966] 1 EA 343**, in which it has provided a helpful guide to courts in Tanzania when considering whether to order a retrial. It was held that;

"...In general a retrial will be ordered only when the original trial was "illegal or defective; it will not be ordered when the conviction is set aside because of insufficiency of evidence or for the purpose of enabling the prosecution to fill up gaps in its evidence at the first trial; even where a conviction is vitiated by a mistake of the trial court for which the prosecution is not to

blame, it does not necessarily follow that a retrial should be ordered; each case must depend on its own facts and circumstances and an order for a retrial should only be made where the interests of justice require it."

At this juncture, a new trial will not serve the best interest of justice for the appellant, and therefore I proceed to allow the appeal, quash the conviction and set aside the sentence. The appellant shall be freed immediately, unless he is otherwise lawfully held.

Order accordingly.




D. B. NDUNGURU

JUDGE

18/08/2022