

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

CRIMINAL APPEAL CASE No. 152 OF 2022

(Arising from the District Court of Serengeti at

Mugumu in Economic Case No. 43 of 2021)

MACHEGE KIMINCHA @ MRIGO APPELLANT

Versus

THE REPUBLIC RESPONDENT

JUDGMENT

24.10.2022 & 24.10.2022

Mtulya, J.:

The Court of Appeal (the Court) on 25th July 2022, when determining an appeal in **Criminal Appeal No. 270 of 2019** (the appeal) between **Diliplumar Maganbai Patel** and the **Republic** (the parties), had found out that a certificate conferring jurisdiction to the **Resident Magistrate' Court of Dar Es Salaam at Kisutu** (the court) in **Economic Case No.58 of 2016** (the case), to hear and determine economic case was incurably defective for failure to comply with the law in section 12(3) of the **Economic and Organised Crimes Act [Cap. 200 R.E 2019]** (the Act). Following the situation the Court stated that:

Having held that the Consent and Certificate were incurably defective there could not have been any valid proceedings before the trial court resulting in the

conviction and sentence handed out sentence to the appellant.

With the available remedies in such circumstance, the Court stated that: *the trial magistrate could not cure the anomaly in the judgment as suggested by learned State Attorney for the respondent.* Finally the Court ordered retrial of the case and reasoned that it was for interest of justice.

Today, this appeal was scheduled for hearing in this court. However, before the full hearing of grounds of appeal could take its course, Mr. Nimrod Byamungu for the Republic raised up and stated that the record shows that a certificate from the **District Prosecution Officer** (the DPO) conferring jurisdiction to the **District Court of Serengeti at Mugumu** (the district court) in **Economic Case NO. 43 of 2021** (the case) is defective. According to Mr. Byamungu the appellant was charged with both economic and non-economic offences, but the citation on the certificate was based on section 12 (3) of the Act instead of section 12 (4) of the Act. In his opinion, the fault renders the proceedings, conviction and sentence a nullity as per precedent in **Diliplumar Maganbai Patel v. Republic** (supra). Finally, Mr. Byamungu prayed this court to nullify proceedings, conviction and sentence against the accused person and order retrial of the matter. The appellant on

his part prayed this court to decide the appeal in accordance to the law.

I have perused the record of the present appeal and found out that the appellant was charged with three (3) counts, *viz*: unlawful possession of weapons in certain circumstances contrary to section 103 of the **Wildlife Conservation Act, No. 5 of 2009** as amended by **Written Laws (Misc. Amendments) Act No. 2 of 2016** (the Wildlife Act); and two (2) counts on unlawful possession of Government trophies contrary to section 86 (1) and (2) (c) (ii) of the Wildlife Act and sections 57 (1), 60 (2) and paragraph 14 of the Act.

However, the certificate conferring jurisdiction to the district court duly signed by Mr. Mafuru Moses on 28th June 2021 cited section 12 (3) of the Act instead of section 12 (4) of the Act. According to the standard practice of this court the fault produces nullity proceedings, conviction and sentence (see: **Republic v. Mlekwa Dede @ Masweya**, Criminal Revision No. 4 of 2020). The practice has been confirmed by the Court of Appeal in the precedents of **Diliplumar Maganbai Patel v. Republic** (*supra*) and **Korwa Limbu @ Musha v. Republic**, Criminal Appeal No. 279 of 2018.

Having found the present appeal falls in the same category of the cited precedents of this court and the Court of Appeal, and

being aware this court is bound by the Court of Appeal decisions, I have decided to follow the course without any reservations, and hereby quash the proceedings, conviction and sentence meted against the appellant. For interest of justice and circumstances of this case, I order retrial of the case in accordance to the law. In the meantime, the appellant shall remain in custody pending retrial before a competent court.

It is so ordered.

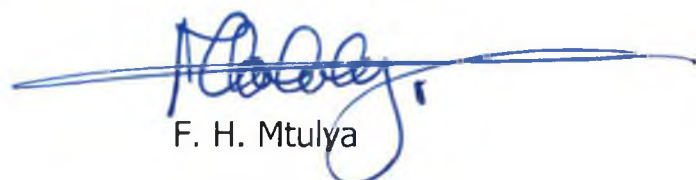



F. H. Mtulya

Judge

24.10.2022

This judgment was delivered in chambers under the seal of this court in the presence of Mr. Nimrod Byamungu, learned State Attorney for the Republic and the appellant, Mr. Machege Kimincha @ Mrigo


F. H. Mtulya

Judge

24.10.2022