

IN THE HIGH COURT OF TANZANIA

DODOMA SUB-REGISTRY

AT DODOMA

CRIMINAL APPEAL NO. 06 OF 2022

(Originating from Economic Case No. 67 of 2018 in the District

Court of Manyoni before Hon. A. R. MWANKEJELA (RM))

MASUDI HUSSEIN @ JUMAAPPELLANT

VERSUS

REPUBLICRESPONDENT

JUDGMENT

Last order: 07.11.2022

Judgment: 07.12 .2022

HASSAN, J

The appellant herein appeared before the District Court of Manyoni at Manyoni where he was charged with seven counts derived under both Wildlife Conservation Act No. 5 of 2009 and Economic and Organized Crime



Control Act, CAP 200 [R.E 2002]. For clarity and better alignments of the same, the whole charge sheet is verbalized hereunder:

CHARGE SHEET

1ST COUNT

STATEMENT OF OFFENCE

UNLAWFUL POSSESSION OF GOVERNMENT TROPHY; contrary to section 86(1) (2) (c) and (3) (b), 111(1) (a) of the Wildlife Conservation Act No. 5 of 2009 as amended by section 59 (a) (b) of the Written Laws (Miscellaneous Amendments) Act No. 2 of 2016 read together with paragraph 14 of the First Schedule to and sections 57 (1) and 60 (2) both of the Economic and Organized Crime Control Act, CAP 200 [R.E 2002] as amended by sections 13(b) and 16 (a) of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016.

PARTICULARS OF OFFENCE

MASUDI HUSSEIN @ JUMA on 13th day of September, 2018 at Kaloleni Village, within Manyoni District in Singida Region was found in unlawful possession of Government Trophy wit: **Three (3) Horns of Dikdik obtained from two Dikdiks** both valued at **USD 500** which is

equivalent to Tanzania shillings one Million and one Hundred Forty Thousands [**1,140,000/=**] only, the property of the Government of the United Republic of Tanzania.

2ND COUNT

STATEMENT OF OFFENCE

UNLAWFUL POSSESSION OF GOVERNMENT TROPHY, contrary to sections 86(1)(2)(c) (ii) and (3) (b), 111(1) (a) of the Wildlife Conservation Act No. 5 of 2009 as amended by section 59 (a) and (b) of the Written Laws (Miscellaneous Amendments) Act No.2 of 2016 read together with paragraph 14 of the First Schedule to and sections 57 (1) and 60 (2) both of the Economic and Organized Crime Control Act, CAP 200 [R.E 2002] as amended by sections 13(b) and 16 (a) of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016.

PARTICULARS OF OFFENCE

MASUDI HUSSEIN @ JUMA on 13th day of September, 2018 at Kaloleni Village, within Manyoni District in Singida Region was found in unlawful possession of Government Trophy to wit. Four (4) pieces of Hare Intestines and Two (2) Heads of Hare from two Hares both valued at USD 150 which



is equivalent to Tanzania shillings Three Hundred and Forty-two Thousand **[342,000/=]** only, the property of the Government of the United Republic of Tanzania.

3RD COUNT

STATEMENT OF OFFENCE

UNLAWFUL HUNTING OF SCHEDULED ANIMAL, contrary to sections 40,47 (a) (c) and 113(1)(2) of the Wildlife Conservation Act No. 5 of 2009 as amended by section 59 (a) and (b) of the Written Laws (Miscellaneous Amendments) Act No.2 of 2016 read together with paragraph 14 of the First Schedule to and sections 57 (1) and 60 (2) both of the Economic and Organized Crime Control Act, CAP 200 [R.E 2002] as amended by sections 13(b) and 16 (a) of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016.

PARTICULARS OF OFFENCE

MASUDI HUSSEIN @ JUMA on 13th day of September, 2018 at Kaloleni Village, within Manyoni District in Singida Region did hunt and killed Two Dikdiks both valued at USD **500** which is equivalent to Tanzania shillings one



million and one Hundred Forty Thousand **[1,140,000/=]** only, the property of the Government of the United Republic of Tanzania.

4TH COUNT

STATEMENT OF OFFENCE

UNLAWFUL HUNTING OF SCHEDULED ANIMAL, contrary to sections 40, 47 (a) (cc) and 113 (1) (2) of the Wildlife Conservation Act No. 5 of 2009 as amended by section 59 (a) and (b) of the Written Laws (Miscellaneous Amendments) Act No. 2 of 2016 read together with paragraph 14 of the First Schedule to and sections 57 (1) and 60 (2) both of the Economic and Organized Crime Control Act, CAP 200 [R.E 2002] as amended by sections 13 (b) and 16 (a) of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016.

PARTICULARS OF OFFENCE

MASUDI HUSSEIN @ JUMA on 13th day of September, 2018 at Kaloleni Village, within Manyoni District in Singida Region did hunt and killed Two Hares both valued at USD 150 which is equivalent to Tanzania shillings Three Hundred and Forty-Two Thousand **[342,000/=]** only, the property of the Government of the United Republic of Tanzania.

5TH COUNT

STATEMENT OF OFFENCE

UNLAWFUL POSSESSION OF FIREARM; contrary to sections 20 (1) (a) and (2) of the Firearm and Ammunitions Control Act No. 2 of 2015 read together with paragraph 31 of the First Schedule to and sections 57 (1) and 60 (21) both of the Economic and Organized Crime Control Act, CAP 200 [R.E 2002] as amended by sections 13 (b) and 16 (a) of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016.

PARTICULARS OF OFFENCE

MASUDI HUSSEIN @ JUMA on 13th day of September, 2018 at Kaloleni Village, within Manyoni District in Singida Region was found in possession of weapon to wit: **ONE MUZZLE LOADER** without a license

6TH COUNT

STATEMENT OF OFFENCE

UNLAWFUL POSSESSION OF FIREARM; contrary to sections 20 (1) (a) and (2) of the Firearm and Ammunitions Control Act No. 2 of 2015 read together with paragraph 31 of the First Schedule to and sections 57 (1) and 60 (2) both of the Economic and Organized Crime Control Act, CAP 200 [R.E



2002] as amended by sections 13 (b) and 16 (a) of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016.

PARTICULARS OF OFFENCE

MASUDI HUSSEIN @ JUMA on 13th day of September, 2018 at Kaloleni Village, within Manyoni District in Singida Region was found in possession of weapon to wit: **ONE MUZZLE LOADER STOCK** without a license

7TH COUNT

STATEMENT OF OFFENCE

UNLAWFUL POSSESSION OF FAMMUNITION; contrary to sections 17 (1) and (2) and section 111 (1) (d) of the Wildlife Conservation Act No. 5 of 2009 as amended by section 59 (a) and (b) of the Written Laws (Miscellaneous Amendments) Act No. 2 of 2016. Read together with paragraph 14 of the First Schedule to and sections 57 (1) and 60 (2) both of the Economic and Organized Crime Control Act, CAP 200 [R.E 2002] as amended by sections 13 (b) and 16 (a) of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016.

PARTICULARS OF OFFENCE

MASUDI HUSSEIN @ JUMA on 13th day of September, 2018 at Kaloleni Village, within Manyoni District in Singida Region was found in possession of weapon to wit: **250 GRAMS OF GUNPOWDER** without a license.

After full trial, out of seven counts the appellant stands charged, he was convicted of five (5) counts, including 1st, 2nd, 5th, 6th and 7th respectively. Hence, in all five counts, he was sentenced to serve 20 years imprisonment for each, and the same were ordered to run concurrently. Thus, the accused was accountable to serve 20 years in jail.

Being dissatisfied by the decision of the trial District Court of Manyoni, the appellant preferred this appeal to the High Court for determination of his grievances.

The material background fact leading to the appellant's arrest as it was told by prosecution's witnesses is not difficult to comprehend. In brief, PW2 (Peter Parkap Kandua) the game warden testified on 13th September, 2018 that he was on patrol at Kaloleni area with his co-workers including PW1 (Athumani Bahati). He received information from informer that the accused person Masudi Hussein Juma is unlawfully possessing firearm. Instantly they



arranged on how to arrest him. From that note, they approached the ten cells leader one Christina Raphael and together with her they went to the accused person's house at around 06:30 hours. They conducted a search and found in the accused person's house one muzzle loader under the mattress, one muzzle loader stock, three horns of dik-dik, 250 grams of traditional powder, 23 ammunitions of muzzle loader, two heads of hares, four pieces of small intestine of African hare. He interviewed the accused person and it appears that the appellant had no license which allow him to possess those trophies. PW2 prepared the certificate of seizure which he signed together with the accused person. At the scene, he was joined by Abdallah Jumanne the village chairperson and Festo Augustino. He took the seized exhibits and handled them to the exhibit keeper one Athuman Bahati. The accused person was taken up to Manyoni Police Station and ultimately charged with these offences. When he testified to the court, PW2 tendered the said certificate of seizure and the same was admitted as exhibit P3.

When appeal was called on for hearing, the appellant appeared in person unrepresented by advocate. While on the other side, the respondent Republic was represented by Mr. Geofray Mlagala, learned State Attorney.

The appellant canvassed four (4) grounds of appeal in his first petition of appeal lodged on 25th day of May, 2022. He also filed other thirteen (13) additional grounds of appeal on 7th day of November, 2022, the day appeal was called on for hearing to make the total of 17 grounds of appeal.

However, for reasons which will be apparent as I go along, I find it harmless to reserve my energy for not listing all combined seventeen (17) grounds of appeal. Thus, hearing of the appeal commenced orally on the 7th day of November, 2022.

Being an unrepresented layman, the appellant has nothing to submit apart from the said 17 grounds of appeal which he prayed to be adopted to form part of his submission and opted to leave to the court for determination.

As for the respondent, he vehemently disputed what was raised by the appellant in the petition of appeal. Again, to save the time, resources and for the reason which will be palpable hereunder, I will not write the full extract of submission averred by the learned State Attorney. However, it worth noting here that, neither the grounds of appeal nor submission made by the parties have touched anything pertaining to the correctness of the

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charge sheet. To put it clearer, the charge sheet was not disputed in the grounds of appeal, and so was not argued.

After hearing the parties, matter was adjourned for judgement to be delivered on the 7th day of December, 2022. However, in the course of writing the judgment, the court *suo mottu* observed the irregularities on the proceedings. That is, the charge sheet which form base of conviction was defective to the extent that: **One**, by omitting provision of section 113 (2) of the Wildlife Conservation Act No. 5 of 2009 in the statement of offence for the 1st, 2nd and 7th counts hence deprived the trial court the jurisdiction to entertain the matter. **Two**, whether the court had jurisdiction to try the 5th and 6th counts.

To that end, I vacated the earlier order to deliver the judgment on 7th day of December, 2022 and instead, re-open the hearing by inviting both parties to address the court on the issue raised by the court.

Taking the matter on board, as usually for the lay appellant, he has nothing to submit. Acknowledging his being unrepresented layman, and upon consideration that the issue raised by the court is typically a legal issue, he decided to leave the matter to the court for evaluation and determination.

In a bid to address the court on the matter, the respondent readily conceded that the charge sheet which form base of the appellant's conviction comprises of fatal errors which led the whole trial nullity. The learned State Attorney Mr. Mlagala submitted that after observing the charge sheet he realised some errors with respect to the 1st and 2nd count. He averred that in these two counts, the trial court has no jurisdiction to entertain the offence charged. He submitted that, the same were defective because the provision of section 113 (2) of the Wildlife Conservation Act, No. 5 of 2009 were not cited in the statement of offence. Under the circumstances, he submitted, that the District Court of Manyoni lacks jurisdiction to try those counts. He emphasized that failure to cite the provision of section 113 (2) of the Wildlife Conservation Act, No. 5 of 2009 ousted the trial District Court jurisdiction to adjudicate the said counts. Consequently, it renders the whole proceedings nullity with respect to these two counts. To cement what he averred, he referred the court to the case of the **Director of Public Prosecutions v. Pirbaksh Asharaf & 10 others, Criminal Appeal No. 345 Of 2017 (CAT) unreported**. Where in page 11 of the judgment the court held that:



"Proceedings which is resulted from the court which does not have jurisdiction will be null and void and should not be considered".

Couched from the above authority, he prayed that the appellant be set free hence his conviction and sentence was arrived based on the null proceedings.

With regard to the 5th and 6th counts, the Learned State Attorney submitted that in these two counts there are two charges which is Unlawful Possession of Firearm and Economic Organised Crime. However, looking at the evidence in disposal, the appellant was arrested with firearm outside the area which is considered as economic area which will amount to economic offence. He further submitted that if we refer at page 3 of the judgment, it shown that the firearm was arrested in the appellant's house. That is, the firearm could have been charged with separate offence without connecting them with an economic crime.

Adding to that, the learned State Attorney also observed that section 20 (1) and (2) of the firearm Act, provide for an offence and its punishment is five (5) years and not twenty (20) years which the trial Magistrate has



adjudged. Thus, he submits, by charging the appellant in one law and inflicted the sentence from another law contrary to what is provided in the law which create the offence, to him, that is a fault which render the charge sheet being defective. In the consequence thereof, the proceedings become null and void.

Stepping to the 7th count, the appellant was charged with the offence of **UNLAWFUL POSSESSION OF AMMUNITION**; contrary to sections 17 (1) and (2) and section 111 (1) (d) of the Wildlife Conservation Act No. 5 of 2009 as amended by section 59 (a) and (b) of the Written Laws (Miscellaneous Amendments) Act No. 2 of 2016, read together with paragraph 14 of the First Schedule to and sections 57 (1) and 60 (2) both of the Economic and Organized Crime Control Act, CAP 200 [R.E 2002] as amended by sections 13 (b) and 16 (a) of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016.

However, looking at page 3 of the judgment, it shows that, the appellant was arrested with 23 ammunition and 250 grams of traditional gun powder in his house which is located outside of the game reserve. Therefore, to charge the appellant under these sections is an error which renders the charge being defective. He submitted further that even in these sections, the

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sentence which is imposed is imprisonment for the term not exceeding two years but the Magistrate has convicted and sentenced the appellant for 20 years. Thus, the whole proceedings are nullity. The learned State Attorney cemented his submission by referring the court at section 388 of the criminal procedure Act, Cap 20 R. E 2022, which requires justice to be well preserved.

The section provides:

S. 388 (1) Subject to the provisions of section 387, no finding sentence or order made or passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or in any inquiry or other proceedings under this Act; save that where on appeal or revision, the court is satisfied that such error, omission or irregularity has in fact occasioned a failure of justice, the court may order a retrial or make such other order as it may consider just and equitable.

To determine the matter, I shall begin with the issues which the court have raised on the propriety of charge sheet. That is, **One**, by omitting



provision of section 113 (2) of the Wildlife Conservation Act, No. 5 of 2009 in the statement of offence for the 1st, 2nd and 7th counts, the trial court lacks jurisdiction to entertain the matter. **Two**, whether the court had jurisdiction to try the 5th and 6th counts.

Having carefully considered the submissions made by the learned State Attorney and by perusing on the record, I unhesitatingly agree with him that the charge sheet is undoubtedly suffering from serious defects. For instance, defect found in the 1st and 2nd counts, together with the 7th count which I add it here, is that, in the statement of offence, the provision of section 113 (2) of the Wildlife Conservation Act, was not cited, and that omission renders the trial District Court lacks jurisdiction. For the clarity section 113 (2) (supra) provide as follow:

"Notwithstanding the provisions of other written law, a court established for a District or area of Mainland Tanzania may try, convict and punish or acquit a person charged with an offence committed in any other District or area of Mainland Tanzania".



More so, couched by the decision in the **Director of Public Prosecutions v. Pirbaksh Asharaf & 10 others, Criminal Appeal No. 345 Of 2017 CAT (unreported)**, as it was rightly pointed out by the learned State Attorney that failure to cite the provision of section 113 (2) of the Wildlife Conservation Act in the statement of offence for a charge triable in the District Court rendered the trial nullity for want of jurisdiction.

In the circumstance, looking on the charge sheet itself, and taking on board what was transpired by the learned counsel in his submission, it is crystal clear in my mind that the provision of section 113 (2) of the Wildlife Conservation Act, was not mentioned in the statement of offence. Consequently, the trial District Court lacks jurisdiction and wherefore renders the whole proceedings with respect to the 1st, 2nd and 7th counts nullity.

Moving to the 5th, and 6th counts, in order to observe the correctness of what was disclosed in charge sheet which was read over to the accused person. To take this task on board, I am guided by directives underpinned in the decision of **Mussa Mwaikunda vs. R (2006) TLR. 387**, where it was held that:



"It is now beyond controversy that, one of the principles of fair trial in our system of criminal justice is that an accused person must know the nature of the case facing him, and this can only be achieved if a charge discloses the essential elements of an offence".

From the above guidance, the basic question to be enquired is whether or not the charge sheet was properly framed with respect to the 5th and 6th count in order to allow the appellant to know the nature of a case facing him? To answer this question, I find it prudent to recall what was transpired by prosecution in the charge sheet in these counts as here-above dictated.

To start with, on the 5th and 6th counts, the Learned State Attorney submitted that in these two counts there are two charges which is Unlawful Possession of Firearm and Economic Organised Crime. However, looking at the evidence in disposal, the appellant was arrested with firearm outside the area which is considered as an economic area, of which an economic offence can arise. He further referred the court at page 3 of the judgment, where it is shown that the firearm was arrested in the appellant's house and that the firearm could have been charged with separate offence without connecting the same with an economic and organised crime offence.



Adding to that, the learned State Attorney has also contended that section 20 (1) and (2) of the firearm Act, provide for an offence and its punishment which is five (5) years and not twenty (20) years imprisonment of which the trial Magistrate has adjudged. Thus, he succumbs that, by charging the appellant in one law and inflicting the sentence from another law contrary to what is provided in the law which create the offence is a fault which render the charge sheet being defective. He maintained that in the consequence thereof, it renders the whole proceedings with respect to the 5th and 6th counts null and void.

In my part, going through the submission of the learned State Attorney I tend to differ with what he has averred. For instance, looking at the charge sheet in both counts, I observe that the statement of offence is correctly set. It is apparent that the offence created under section 20 (1) (a) and (2) of the Firearm and Ammunitions Control Act No. 2 of 2015 automatically fall under the blanket of the Economic and Organized Crime Control Act, CAP 200 [R.E 2002] regardless of where the offence was committed.

Looking at paragraph 31 of the first schedule and sections 57 (1) and 60 (2) both of the Economic and Organized Crime Control Act, CAP 200 [R.E 2002] as amended by sections 13 (b) and 16 (a) of the Written Laws

(Miscellaneous Amendments) Act No. 3 of 2016, it is clear that the offence created under section 20 (1) (a) and (2) of the Firearm and Ammunitions Control Act, retain the status of economic crime irrespective of where it was committed.

For clarity, paragraph 31 of the first schedule and sections 57 (1) and 60 (2) both of the Economic and Organized Crime Control Act, CAP 200 [R.E 2002] as amended by sections 13 (b) and 16 (a) of the Written Laws (Miscellaneous Amendments) Act, No. 3 of 2016 provides as follow:

"Para 31: A person commits an offence under this paragraph who commits an offence under section 20, 21 or 45 of the Firearm and Ammunitions Control Act".

Coming to the issue of punishment, section 57 (1) of the Economic and Organized Crime Control Act, CAP 200 [R.E 2002] as amended provide that:

"With effect from 25th day of September, 1984, the offence prescribed in the first schedule to this Act shall be known as economic offence and triable by the court in accordance with the provisions of this Act".

Similarly, section 60 (2) of the Economic and Organized Crime Control Act, CAP 200 [R.E 2002] as amended by sections 13 (b) and 16 (a) of the Written Laws (Miscellaneous Amendments) Act, No. 3 of 2016 provides as follow:

"60 (2) notwithstanding the provision of a different penalty under any other law and subject to subsection 7, a person convicted of corruption or economic offence shall be liable to imprisonment for a term of not less than twenty years but not exceeding thirty years, or to both such imprisonment and any other penal measures provided for under this Act".

That being the case, it is my view that the offences in these two counts were correctly composed as it appears in the statement of offence. For that note, it cannot be said that there was a duplicity of charge as argued by respondent's counsel.

However, going back to the charge sheet, more specific in the particulars of offence. It is my considered view that these counts (5th and



6th) were not properly framed to allow the appellant to understand the nature of the charge against him. Thus, the appellant was not fairly tried.

To start with the 5th count, the appellant was charge with the offence of **UNLAWFUL POSSESSION OF FIREARM**. He was allied with **ONE MUZZLE LOADER** seized in his house. At this juncture, the question to be asked is whether a term muzzle loader has the same and exclusive meaning with the term muzzle loading gun?

To answer this question, I glance a number of literatures. For instance, the **JP Morgan – Royal United Service Institution. Journal 1874 – Taylor & Francis**, where a muzzle loading gun is termed as a type of firearm mostly home-made. Also, in another literature, an **Iranian Journal of Medical Science (IJMS) 25 (34), 153 – 155, 200** it defines muzzle loader gun as an absolute substandard firearm which is occasionally manufactured by local gunsmith. This kind of gun is loaded by pouring gun powder into the muzzle and then a piece of cloth or felt (wad) is stuffed by ramrod in to the barrel.

Now, looking back to the charge sheet, what was seized from the appellant house is a **muzzle loader** and not a **muzzle loading gun** as

indicated in the statute. Now, whether the term **muzzle loader** replicates a **muzzle loading gun**? By definition, literally a **muzzle loader** is a firearm that loads at the muzzle (an online Oxford Dictionary). From that meaning, a **muzzle loader** is one among the type of firearm. Therefore, by taking inspiration from above definitions, I conclude that the 5th count was correctly framed as it appears in the charge sheet.

To that end, since this offence comes from corruption and economic offence, a charge should be filed within competent jurisdiction according to the law. At this juncture, I feel important to satisfy the requirements of law on the existence of jurisdiction.

Generally, according to section 3 (1) and (3) (a) and (b) of the EOCC conferred jurisdiction to hear and determine cases involving corruption and economic offences to the Corruption and Economic Division of the High Court. However, that jurisdiction can also be conferred to the subordinate courts upon consent and certificate of the Director of Public Prosecution (DPP). The prerequisite is that the consent and certificate conferring jurisdiction ought to be filed before the court and endorsed to be part of the court proceedings. See **John Julius Martin & Another v. The Republic, Criminal Appeal No. 42 of 2020 TZCA 789 [08. 12. 2022 Tanzlii]**.

That being the case, in order to confer jurisdiction to the District Court, two instruments must be executed and form part of the record. To wit: **One**, a certificate conferring jurisdiction on subordinate court to try case involving economic offence; **Two**, consent of the Director of Public Prosecutions to allow prosecution of such offence. In the case of **Maulid Ismail Ndonde v. The Republic, Criminal Appeal No. 319 of 2019 TZCA [29. 09. 2021 Tanzlii]** which provide:

"...the consent and certificate signed on 10th April, 2018 were not officially received by the trial court... consequently, in the absence of the consent and the certificate of the DPP, the trial court lacked jurisdiction to try this case rendering the entire proceeding a nullity."

Having carefully considered the circumstance of the present case, at page 6 of the trial proceedings, there is no consent to prosecute the appellant and no certificate conferring jurisdiction on the District Court of Manyoni. The record does not reflect how they got into the court record to form part of the proceedings. I note that in the same page 6 of the typed record of proceedings, the PP informed the trial court that he has received the DPP consent and a certificate to confer jurisdiction and he prayed to read

the charge sheet. However, the record is still silent as to whether the same was received to form part of the trial record. Worse enough, looking on the original hand-written record on 18th day of March, 2019, the prosecuting PP informed the court that he has received a certificate conferring jurisdiction only and there was no mention of consent at all. I have also noted that both documents of consent and certificate are attached in the file, but as it appears in the case of **Maulid Ismail Ndonde v. The Republic** (supra), they were not officially received by the trial court.

Therefore, since there was no record of endorsement of both consent and certificate, the omission is fatal. In the circumstance, it cannot be guaranteed that the trial District Court was properly conferred with jurisdiction to try the case. Also, it cannot be said that the DPP has consented prosecution of the case. Same situation was tackled in the case of **Maganzo Zalamoshi @ Nyanzomola v. The Republic, criminal Appeal No. 355 of 2016 (unreported); Matheo Ngua & 3 Others v. The DPP, Criminal Appeal No. 452 of 2017 (2020) TZCA 153 [03. 04. 2020 Tanzlii]** and that of **Salumu s/o Andrew Kamande v. The Republic, Criminal Appeal No. 513 of 2020 ACT (unreported)** where it was held that:



"We note in page 15 of the record of appeal, the PP informed the trial court that he has received the consent from the DPP, but the record is still silent as to whether the same was received to form part of the trial record. Since there is no clear indication discerning from the record of appeal as to how the consent and certificate find their way into the trial court record, we are in agreement with the counsel for the parties that the appellant was tried without a prior consent of his prosecution and there was no certificate issued to confer jurisdiction on the district court...given that there was no consent and certificate, trial court lacked jurisdiction to try the appellant with an economic offence."

Guided by the decision above, I find that the whole trial court proceedings were a nullity. That is, the whole charge sheet yielding 7 economic offences was laid before the District Court which lacks jurisdiction.

Again, looking on the 6th count, the appellant was also charged with the offence of **UNLAWFUL POSSESSION OF FIREARM** for his being found in possession of **ONE MUZZLE LOADER STOCK**.



Once again, reflecting on the validity or otherwise of the charge sheet, I am guided by provision of section 20 (1) (a) and (2) of the Firearm and Ammunitions Control Act which has created the offence. The section provides as follow:

"A person should not possess any firearm or firearm part unless he:

a) Holds a dealers', manufacturer or a gunsmith's licence or an import, export, on transit or transporters' permit issued under this Act".

Going through the definition, what is prohibited for a person to be in possession is any **firearm** or **part of firearm** unless that person is qualified under condition stipulated in subsection (a) of section 20 (1) (supra).

Now, the question will arise as to what is firearm? A definition of firearm has been given under section 3 of the Firearm and Ammunitions Control Act, which provide:

"Firearm includes small arms, light weapons, muzzle loading guns and antique firearms except armaments".



Viewing on the definition of firearm, the type of firearm which is related to what was seized from the appellant, is a muzzle loading. However, in the 6th count, what is contested is a **MUZZLE LOADER STOCK**. Now, what is a Muzzle Loader Stock or a gunstock or simply a Stock?

"A muzzle loader stock is a back portion of which is also known as a shoulder stock, a buttstock or simply a butt, is a part of a long gun that provide structure support, to which the barrel, action and firing mechanism are attached. (<https://en.wikipedia.org/w/index.php?> (last edited on 17 February, 2023))."

Looking on the definition, a stock is not a gun or firearm but it is simply a part of firearm. thus, a muzzle loader stock is a stock which is used in a muzzle loader gun.

That said, for being a part of long gun or portion (as normally referred) of a muzzle loader gun, it was incorrect for the appellant to be charged with offence of possession of firearm without license. Therefore, since it is a part of a muzzle loader gun, the proper charge should have been to be found in possession of a **firearm part** without licence as it has been made an offence

in terms of section 20 (1) (a) and (2) of the Firearm and Ammunitions Control Act.

With this defect, as it appears in the particular of offences, it cannot be said that the appellant has been given the opportunity to understand the nature of his accusation. In the same footing, it cannot be said that he was unable to defend his case. Therefore, the appellant has been unfairly tried and for that reason conviction cannot stand.

In this regard, I agree with the learned State Attorney in totality that, the flaw is fatal and it cannot be cured by the provisions of section 388 (1) of the CPA. In the circumstances, the appellant was not afforded a fair trial.

In the end, I allow the appeal, quash conviction and set aside the sentence meted out in the trial court. Additionally, I order for immediate release of the appellant from prison unless he is legally held.

Ordered accordingly.

DATED at DODODMA this 6th day of April, 2023.




S. H. Hassan

JUDGE