IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(BUKOBA DISTRICT REGISTRY)

AT BUKOBA

CRIMINAL APPEAL NO. 94 OF 2021

(Originating from Criminal Case No. 514 of 2016 of District Court of Karagwe at Kayanga)

PHELIX NITEJEKA---------- APPELLANT

VERSUS

REPUBLIC---------- RESPONDENT

JUDGEMENT

Date of Last Order: 23/02/2022

Date of Judgment: 04/03/2022

Hon. A. E. Mwipopo, J.

Phelix Nitejeka, the appellant herein, filed the present appeal against the decision of the District Court of Karagwe at Kayanga in Criminal Case No. 514 of 2016. The appellant was arraigned in the trial District Court for two counts. In the first count, the appellant and another person namely Jumulu Rwezo were charged for the offence of unlawful entry into a game reserve contrary to section 15 (1) and (2) of the Wildlife Conservation Act, Act No. 5 of 2009. In the second count, the appellant was charged alone for the offence of being in unlawful possession of government trophy contrary to section 86 (1) and (2) (c) of the Wildlife Conservation Act, Act No. 5 of 2009. The appellant and that other person pleaded

guilty to the offence they were facing and were convicted accordingly. The trial Court sentenced the appellant and Jumulu Rwezo to serve one year imprisonment for the first count and in the second count the appellant was sentenced to serve 20 years imprisonment. Both sentences were to run concurrently. As it was stated earlier, the appellant was aggrieved by the decision of the District Court and filed the present appeal.

In his petition of appeal, the Appellant has raised a total of seven grounds of appeal as provided hereunder:-

1. *That, the Hon. trial Court erred in law and facts to state and lay a charge sheet which does not contain any substance being contrary to section 135 (a) (i) (ii) of the Criminal Procedure Act, Cap. 20, R.E. 2002.*
2. *That, the Hon. trial Court erred in law and facts to sentence the appellant without any charge read and explained to him in language understood by him fluently and practically.*
3. *That, the Hon. trial Court erred in law and facts to convict and sentence the appellant relying on his plea of guilty which the charged offence and its particulars were in the language not properly understood by him.*
4. *That, the Hon. trial Court erred in law and facts to convict and sentence the appellant in a bias situation where the appellant was deprived a right of fair trial for not being afforded an interpreter of Swahili language as he was fluent in his native language.*
5. *That, the Hon. trial Court erred in law and facts to sentence the appellant without any exhibit found in possession by him.*
6. *That, the Hon. trial Court erred in law and facts to substitute a charge without any mandatory provision and the said substituted charge was*

entered as a plea of guilty to other accused persons in their absence contrary to the law.

7. *That, the Hon. trial Court erred in law and facts to sentence the appellant who was found grazing cattle with no exhibit and acquit co accused who were found in possession of exhibits claimed.*

On the hearing date, the appellant appeared in person. When the appellant was afforded an opportunity to submit on his case, he prayed for his grounds of appeal which are found in the Petition of Appeal to be considered by the court and his appeal to be allowed.

In response, Ms. Happiness Makungu, State Attorney appearing for the respondent, supported the appeal. The reason for supporting the appeal is that the charge sheet which the appellant was facing in the District Court was defective. The appellant who was charged for two counts in the trial Court, was facing the offence of being found in possession of government trophies contrary to section 86 of the Wildlife Conservation Act in the second count. The said offence is economic offence as is provided under section 57 (1) of Economic and Organized Crime Control Act, Cap. 200, read together with paragraph 14 to the first scheduled thereto. The offence in the second count is economic offences which is triable by the Economic Court. There is no transfer or consent of the DPP for the offence to be charged at Karagwe District Court. For that reason the trial court entertain the offence in the second count without jurisdiction. Thus, the whole proceeding before the trial court in respect of the second count was a nullity as it was held by

Court of Appeal in **Ramadhani Omary Mtiula v. Republic**, Criminal Appeal No. 62 of 2019, CAT at Iringa (unreported).

The counsel went on to say that the remaining offence was properly before the trial court which has jurisdiction and the appellant pleaded guilty to the offence. The prosecution did read the facts in support of the offence which provided the ingredients of the offence and the appellant admitted the facts to be true. Then, the trial court convicted the appellant and sentenced him to serve one year imprisonment which he has already served. The State Attorney left it to the Court to make a proper order in respect of the 1st count and to quash conviction in the 2nd count.

From the submission, grounds in the petition of appeal and available record, the issue for determination is whether the appeal before this Court has merits.

As a general principle, a person convicted of an offence on his own plea of guilty is barred from appealing against conviction. The person can only appeal against the extent or legality of the sentence imposed. This is in accordance with section 360(1) of the Criminal Procedure Act, Cap. 20 R. E. 2019 (the CPA). The section provides that:-

> *"360.-(1) No appeal shall be allowed in the case of any accused person who has pleaded guilty and has been convicted on such plea by a subordinate court except as to the extent or legality of the sentence."*

However, there are circumstances which may render a plea to be equivocal hence a conviction on one's plea of guilty may successfully be challenged by way of an appeal. The Court of appeal in the case of **Karlos Punda vs Republic,** Criminal Appeal No. 153 of 2005 (unreported), did set four factors which will render the plea equivocal. The said factors includes that the plea was imperfect, ambiguous or unfinished; That the appellant pleaded guilty as a result of mistake or misapprehension; That the charge laid at the appellant's door disclosed no offence known to law; and That upon the admitted facts the appellant could not in law have been convicted of the offence charged.

The Court of appeal illustrated more on the unequivocal plea in the case of **Michael Adrian Chaki v. Republic,** Criminal Appeal No. 399 of 2019, Court of Appeal of Tanzania at Dar Es Salaam, (Unreported), where it emphasized on the conditions to be met for the plea to be considered as unequivocal. These conditions includes that the appellant must be arraigned on a proper charge; the accused must fully understands what he is actually faced with; the charge is stated and fully explained to the appellant before he is asked to plea or admit each and every particular ingredient of the offence; the facts adduced after recording a plea of guilty should disclose and establish all the elements of the offence charged; and the accused must be asked to plead to each and every ingredient of the offence charged and the same must be properly recorded. The court must satisfy itself

without any doubt that the facts adduced disclose or establish all the elements of the offence charged before a conviction on a plea of guilty is entered.

In the case at hand, the counsel for the respondent raised the issue of jurisdiction on the second count that it was economic offence hence the District Court had no jurisdiction to try it. As the issue of jurisdiction of the Court raised by the State Attorney is fundamental, I have to determine it first.

The appellant was charged for two counts in the trial District Court. In the first count, the appellant and another person namely Jumulu Rwezo were charged for the offence of unlawful entry into a game reserve contrary to section 15 (1) and (2) of the Wildlife Conservation Act, Act No. 5 of 2009; and in the second count the appellant was charged alone for the offence of being in unlawful possession of government trophy contrary to section 86 (1) and (2) (c) of the Wildlife Conservation Act, Act No. 5 of 2009. The second count which the appellant was charged with appears to be in the list of economic offence provided under section 57 (1) of Economic and Organized Crime Control Act, Cap. 200, 2002, read together with paragraph 14 to the first scheduled thereto. The said section of Cap. 200 reads as follows hereunder:-

> *57. (1) With effect from the 25th day of September, 1984, the offences prescribed in the First Schedule to this Act shall be known as economic offences and triable by the Court in accordance with the provisions of this Act.*

The first schedule to Cap. 200 provides in paragraph 14 that a person commits an offence under this paragraph who commits an offence under section 17, 19, 24, 26, 28, 47, 53, 103, 105, Part X or Part XI of the Wildlife Conservation Act or section 16 of the National Parks Act. The said offence of unlawful possession of government trophies is found under Part XI of the Wildlife Conservation Act which means that the offence is economic offence. Section 57 (1) of the Economic and Organized Crimes Control Act provides that economic offences are triable by the High Court, Economic and Corruption Division (Economic Court).

The subordinate Court may try offence triable by Economic Court where the consent to commence trial and certificate conferring jurisdiction to subordinate court to try the economic offence has been issued by the Director of Public Prosecutions. The consent of the DPP is issued under section 26 (1) of the Economic and Organized Crimes Control Act and his certificate conferring jurisdiction is issued under section 12 (3) of the same Act. Under section 12 (4) of the Act, the Director of Public Prosecutions may confer jurisdiction to a subordinate court to try any case involving a non-economic offence or both an economic offence and a non-economic offence.

In the case of **Emmanuel Rutta V. Republic**, Criminal Appeal No. 357 of 2014, Court of Appeal of Tanzania at Bukoba, (Unreported), stated that, when the case involves economic and non-economic offences the Principal Attorney is required to issue a Certificate under section 12 (4) of the same Act authorizing the

District Court to try the case. An omission in complying with any of the section mentioned above renders the subordinate court to have no jurisdiction to try any economic offences or a combination of economic offences and ordinary offences. In such circumstances, the whole proceeding before the trial court was a nullity as it was held by Court of Appeal in **Ramadhani Omary Mtiula v. Republic,** (Supra).

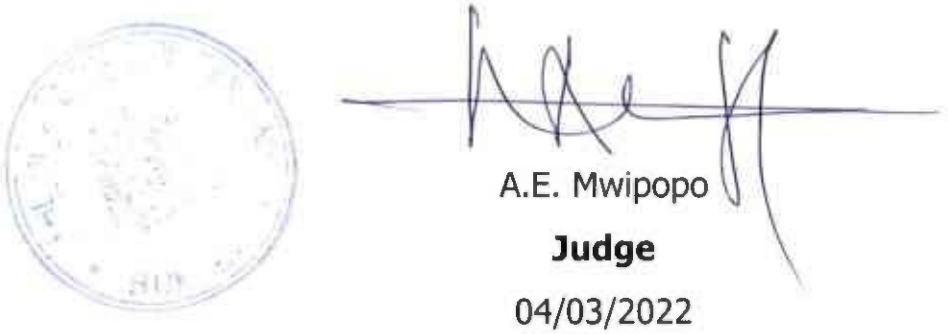
The Court of Appeal was of the same position in the case of **Mhole Saguda Nyamagu V. Republic,** Criminal Appeal No. 337 of 2016, Court of Appeal at Mwanza, (Unreported), where it held in page 14 of the judgment that:-

> *"From the foregoing brief discussion, we are satisfied that in the absence of the D.P.P's consent given under Section 26 (1) of the Act and the requisite certificates given under subsections (3) and (4) of section 12 of the Act, the trial District Court had no jurisdiction to hear and determine charges against the appellant, as it did. We further firmly hold that, the purported trial of the appellant was a nullity."*

In the present case, the District Court tried the second count which is economic offence together with first count which is not non – economic offence without consent and certificate of the D.P.P. conferring jurisdiction to the subordinate Court. The learned State Attorney argued that the trial court entertain the offence in the second count without jurisdiction, but as it was discussed herein, the District Court had no jurisdiction at all to try economic offence without consent

and certificate conferring jurisdiction issued by the D.P.P. It is my finding that the trial District Court had no jurisdiction to try the case instituted before it and as result the whole proceedings before District Court was a nullity.

Therefore, I quash the proceedings and conviction by the trial District Court and I set aside its sentence. Considering the fact that the appellant has served imprisonment for five years, I'm not going to order for a retrial. I order for the immediate release of the appellant from prison unless he is lawfully held.

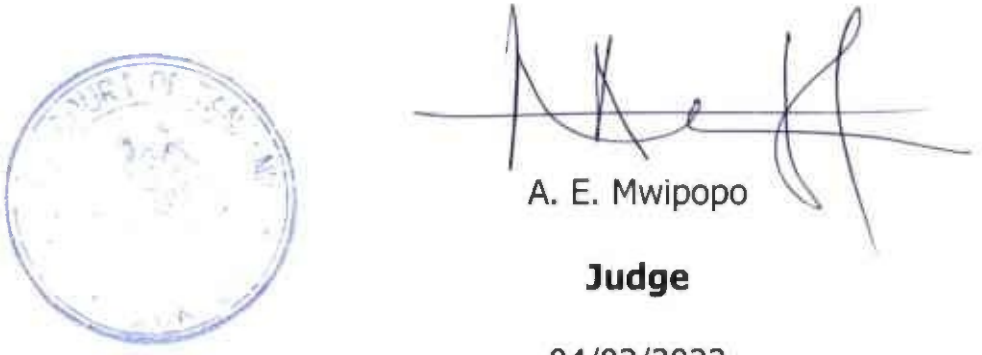


A.E. Mwipopo

Judge

04/03/2022

The Judgment was delivered today, this 04.03.2022 in chamber under the seal of this court in the presence of the Appellant and the counsel for the Respondent. Right of appeal explained.



A. E. Mwipopo

Judge

04/03/2022