

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

DC. CRIMINAL APPEAL NO. 53 OF 2022

(Originating from Mlele District Court in Economic Case No. 21 of 2020)

SISTO KATABI @ MACHO.....APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

JUDGMENT

30/01/2023 & 27/04/2023

MWENEMPAZI, J.:

The appellant herein was arraigned before the District Court of Mlele at Inyonga (trial court) for four (4) counts namely; **1. Unlawful Possession of Firearm** contrary to Section 20 (1)(b) and (2) of the Firearms and Ammunition Control Act, No. 02 of 2015 read together with paragraph 31 of the First Schedule to, and Sections 57 (1) and 60 (2) of the Economic and Organized Crime Control Act, Cap 200 R.E. 2019. **2. Unlawful Possession of Ammunitions** contrary to Section 21 (b) of the Firearms and Ammunition Control Act, No. 02 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. 2019. **3. Unlawful possession of Government Trophy** contrary to Section 86 (1) and (2) (b) of the Wildlife

Conservation Act, No. 5 of 2009 as amended by Section 59 (a) and (b) of the Written Laws (Miscellaneous Amendments) (No. 2) Act, No. 4 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. 2019]. **4. Unlawful possession of Government Trophy** contrary to Section 86 (1) and (2) (b) of the Wildlife Conservation Act, No. 5 of 2009 as amended by Section 59 (a) and (b) of the Written Laws (Miscellaneous Amendments) (No. 2) Act, No. 4 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. 2019].

It was the prosecution side case that on the 27th day of October, 2020 at Ilalangulu village within Mlele District in Katavi Region, the appellant was found in possession of two (2) Muzzle loading guns commonly known as 'gobore' without any permit from an Authorised Officer. That, on the 26th day of October, 2020 in the same village he was found in unlawful possession of ammunitions for muzzle loading gun commonly known as 'gobore' without any permit from an Authorised Officer. The charges also read that on the 26th day of October, 2020 the appellant was found in unlawful possession of government trophies to wit two pieces of Elephant tusks, one Elephant tail and one Elephant ear which were valued at USD 1500 equivalent to Tshs. 35,070,000/= and at the same time, he was found in unlawful possession of one piece of Buffalo nose valued at USD 190 which is equivalent to Tshs.

4,442,200/= and one piece of Ku springer skin valued at USD 1200 which is equivalent to Tshs. 2,805,600/= whereas both trophies were valued at Tshs. 7,247,800/= altogether, the property of the Government of the United Republic of Tanzania in which he was possessing without any permit from the Director of Wildlife.

During the trial, as the charges were read over to the appellant, he denied all charges against him. Despite protesting for his innocence, at the end of the trial, the appellant was found guilty only on the first count of being found unlawfully possession of firearm contrary to the law, and he was therefore convicted and sentenced to serve the term of twenty (20) years imprisonment. As for the remaining counts, the trial court was not convinced that the prosecution side had proved the charges against the appellant and thus he was acquitted for the three counts.

The appellant was however aggrieved by the decision of the trial court and thus filed his petition of appeal to this court whereas the petition consisted of five grounds, which entirely suggest that he was convicted and sentenced over the charges which were not proved beyond the required standards of the law.

On the 30th day of January, 2023, this matter commenced hearing, the appellant appeared in person as he had no any legal representation meanwhile the respondent enjoyed the legal services of Ms. Marietha Maguta, the learned State Attorney.

The appellant submitted first that; the trial court erred in convicting him on the case which was not proved beyond reasonable doubt. He added that, it was wrong for the trial court to believe that, he confessed to the unlawful possession of a gun 'gobore' whereas he insists it is not true. He then prayed for this court to consider all the grounds of appeal as filed and proceed to allow this appeal and that the court should not hesitate to release him.

Responding to the submission made by the appellant, Ms. Maguta submitted that, on their part they will not dwell on the grounds of appeal as filed. She added that, there is a legal issue which urges them to support this appeal. She proceeded that, for a trial to stand in the lower court, there must be a certificate of transfer of jurisdiction and consent to prosecute according to section 12(3) and 26(1) of the Economic and Organized Crimes Control Act, Cap 200 R. E. 2019. She added that, these documents must cite the charging Section under which the accused person is being charged.

Ms. Maguta proceeded that, the appellant was charged with four counts whereas the first count being unlawful possession of firearm contrary to the Firearms and Ammunitions Control Act, No. 02/2015. The second was unlawful possession of ammunitions contrary to Section 21(1) (b) of the Firearms and Ammunitions Control Act No. 02/2015, whereas the 3rd and 4th counts were being found in unlawful possession of Government Trophy.

As far as the outlined counts above are concerned, the learned State Attorney submitted that, the charging sections were not cited in the certificate

of transfer of jurisdiction and consent to prosecute. In these circumstances, she added that the case against the appellant was heard by the trial court whilst it had no jurisdiction. She insisted that the said documents are defective and the fact is incurable. She then referred this court to the case of **Dilip Kumar Manganbai Patel vs Republic, Criminal Appeal No. 270/2019**, Court of Appeal of Tanzania at Dar es Salaam at page 11-13.

The learned State Attorney then concluded that, due to this deficiency, they support the appeal, and they pray that this case against the appellant be tried *de novo* as the trial court had no power to hear and determine the case.

The appellant had no any rejoinder to submit as against the submissions made by the learned State Attorney.

After I had gone through the records of the trial court and the entire submissions made by both parties in this appeal, I firstly do agree that, for a sub-ordinate court to the High Court to entertain an economic case, jurisdiction is indeed an essential factor to be considered before the trial court commences the hearing of a particular economic case before it. In this, there are a plethora of authorities. See the cases of **Abdulswamadu Azizi vs Republic, Criminal Appeal No.180 of 2011**; **Elias Vitus Ndimbo & Another vs Republic, Criminal Appeal No. 272 of 2007**; **Kaganda John & Anor vs Republic, Criminal Appeal No. 356 of 2009**; **Dotto Salum @ Butwa vs Republic, Criminal Appeal No. 5/2007**; **Nicco Mhando & 2 Others vs Republic, Criminal Appeal No. 332 of 2008** (all unreported) to name a few.

However, in my strict perusal of the two documents as suggested by the learned State Attorney, I did not find any defectiveness in them as alleged by the learned State Attorney, Ms. Maguta. The two documents did cite the charging sections under which the appellant was charged against. The consent did state that the appellant was to be prosecuted for contravening Paragraphs 14 and 31 of the First Schedule to, and Sections 57 (1) and 60 (2) both of the Economic and Organized Crimes Control Act, Cap 200 R. E. 2019. Whereas the certificate conferring jurisdiction stated that the Director of Public Prosecutions do hereby in terms of Sections 12(3) of the Economic and Organized Crimes Control Act, Cap 200 R. E. 200, order that the appellant who is charged for contravening Paragraphs 14 and 31 of the first schedule to, and Sections 57(1) and 60(2) both of the Economic and Organised Crimes Control Act, Cap 200 R. E. 2019, be tried in the District Court of Mlele District at Mlele. I therefore believe the learned State Attorney misled herself in submitting that the two documents did not cite the sections that the appellant is charged with. And therefore, I do part with her prayers of ordering this matter to be tried *de novo* since what she has submitted in court is not what I found in the two documents.

Nevertheless, during my perusal of the trial court's records as it is the responsibilities of the first appellate court, it came into my knowledge that, the charge against the appellant as far as the first count is concerned was not proved beyond reasonable doubt. And by saying so, the determinative factor

in this case would be, **did the prosecution side prove their case to the required standards of the law?**

In the trial court's record, particularly the substituted charge sheet, the first count charged against the appellant is, being found in unlawful possession of a firearm locally known as 'gobore', and the particulars to this offence reads as extracted hereunder;

"SISTO S/O KATABI @ MACHO, on the 27th day of October, 2020 at Ilalangulu village within Mlele District in Katavi Region, was found in possession of two (2) muzzle loading guns commonly known as 'gobore' without any permit from Authorized officer."

The date of the offence has not been proved by either the prosecution witnesses summoned to testify or the documents tendered before the trial court in proving the case against the appellant. All the testimonies given by the prosecution witnesses and the documents tendered were for the offence committed on the 26th of October, 2020 and not on the 27th. For that fact, on the 27th of October, 2020 the appellant was not found in unlawful possession of the said firearm 'gobore' neither was he at the place and the time where the arresting team arrested the suspect. It is the principle of the law that in proving criminal liability, the prosecution side has to actually deliver the evidence showing exactly that, indeed the appellant was responsible for the offence he is charged with. See the case of **Ryoba Mariba @ Mungare vs Republic, Criminal Appeal No.74 of 2003** (unreported).

In this regard, I declare that the prosecution side failed to prove their case to the required standards of the law, and as it was the first claim of the appellant in his grounds of appeal as filed in this court, I do invoke this court's revisional powers as provided for under **Section 373 (1) (a)** of the Criminal Procedure Act, Cap 20 read together with **Section 366 (1) (a) (i)** of the same Act and, in that I proceed to quash all the proceedings and judgement of the trial court. Ordering a retrial would not suffice justice since the appellant has already served a term which he was convicted under void proceedings.

I therefore allow this appeal and proceed to order, the immediate release of the appellant from custody, unless he is held therein for other lawful cause. Ordered accordingly.

Dated at Sumbawanga this 27th day of April, 2023.




T. M. MWENEMPAZI
JUDGE