

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

CRIMINAL APPEAL NO. 23 OF 2022

(Originating from Mlele District Court in Economic Case No. 20/2020)

JOSEPH S/O SIMWANZA 1ST APPELLANT
EMMANUEL S/O AMOSI 2ND APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

4/5/2023 & 31/5/2023

MWENEMPAZI, J.

The appellants herein named were 1st and 2nd accused in that order in the trial court and they were charged with the offence of unlawful possession of Government trophy 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. 2019. It was alleged that on the 5th day of October, 2020 at Majimoto Village within Mlele District in Katavi Region, both

accused persons were found in possession of one (1) piece of elephant tusk valued at USD 15,000/- (United States Dollar Fifteen Thousand only) equivalent to Tshs. 35,085,000/= the property of the Government of the United Republic of Tanzania without having any permit from the Director Wildlife.

Upon hearing of the case, at the conclusion the court found that the prosecution has proved their case on the required standard, and convicted the accused person with the offence of being found with government trophy according to section 86(1) and (2)(b) of the Wildlife Conservation Act, No. 05 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.2019. The appellants (then accused) were thus sentenced each to serve a term of thirty years(30yrs) in jail.

The appellants are aggrieved by the decision, judgement, conviction and sentence meted on them. They filed a joint petition of appeal listing three grounds of appeal as follows:

1. That the Trial Court erred at law by convicting the Appellants on the case which was not proved beyond reasonable doubt.

2. That the trial court erred at law by convicting the Appellants on the weakness of the evidence of the defence instead of the strength of the prosecution evidence.
3. That the trial court erred both at law and fact by admitting the caution statement which was procured in contravention of the law.

At the hearing the appellants were unrepresented. They appeared in person and the Respondent was being served by Ms. Marietha Maguta, learned State Attorney. The appellant had a brief submission on the appeal. Basically they asked this court to consider their grounds of appeal which has been raised in the petition of appeal.

On their part, the respondent through Ms. Marietha Maguta, learned State Attorney submitted that they are supporting the appeal on other grounds. That is some legal deficiencies in proceedings.

The High Court has jurisdiction in all Economic Cases as per section 3(3) of Economic and Organized Crime Control Act, Cap 200 R.E. 2019. The said cases may be filed in the lower Court (subordinate Courts) subject to compliance to section 12 and 26 of the Economic and Organized Crime Control Act, Cap 200 R.E 2019. Under the provisions, the DPP has been

empowered to transfer economic cases to the District and Resident Magistrates Courts and consent to the prosecutions of the suspects. The DPP issues a certificate to transfer and confer jurisdiction to the subordinate courts under section 12(3) and Certificate to consent the prosecution of the suspects under section 26(3) of the Economic and Organized Crime Control Act, Cap 200 R.E 2019.

The impugned case was filed in the District Court of Mlele and the consent was filed on 08/12/2020. Reviewing the documents, it shows that only the provisions in the Economic and Organized Crime Control Act and sections establishing the offence are missing. The appellants were charged with the offence of Unlawful Possession of Government Trophy contrary to section 86(1) and 2(b) of the Wildlife Conservation Act No. 5 of 2009. These provisions are not present in the certificates.

It is a legal principal in the case of **Dilipkumar Maganbai Patel Vs. The Republic**, Criminal Appeal No. 270 of 2019 Court of Appeal of Tanzania at Dar es Salaam at page 7 – 12. The court observed that lack of junction sections vitiates the jurisdiction of the Court.

The counsel submitted that due to the position pronounced in the case herein above, the Respondent is supporting the appeal. They are however, praying that the Judgment of the trial court and conviction be quashed and sentence set aside and the case be remitted back to the trial court to be tried de novo in the Court with competent jurisdiction.

In rejoinder the Appellants had a different position. They reiterated their position in the grounds of appeal and prayed that the appeal be allowed and they be released.

I have as well read the Certificate conferring jurisdiction to the subordinate court and a certificate of consent filed in the trial court on the 8th December, 2020.

The documents have no charging sections cited in them. Thus, they are incurably defective as it was held in the case of Dilipkumar Maganbai Patel vs. The Republic, Criminal Appeal No. 270 of 2019, Court of Appeal of Tanzania at Dar es salaam (Tanzlii). Since the documents conferring jurisdiction to the Subordinate court are defective, the trial of the appellants was conducted without the court being clothed with the necessary jurisdiction to trial the cases as required by the law. Thus, the trial in the

subordinate court was null and void ab initio. I proceed to nullify the proceedings, quash the judgment and conviction therefrom and set aside the sentence.

As a result of quashing the proceedings and judgment of the trial court, the appellant stand to be as if they were not prosecuted at all. The way forward is for the case to be heard afresh. I therefore order that the file is remitted back to the trial court so that the case is tried afresh (trial de novo) as soon as possible subject to compliance to legal requirement as discussed in this judgment. In the meanwhile, the appellants shall remain in custody pending retrial by a competent court.

It is ordered accordingly.

Dated and delivered at Sumbawanga this 31st day of May, 2023.



A handwritten signature in black ink, appearing to read "T.M. Mwenempaazi".

T.M. MWENEMPAZI

JUDGE