

**IN THE HIGH OF THE UNITED REPUBLIC OF TANZANIA**

**(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**CRIMINAL APPEAL CASE No. 82 OF 2022**

*(Originating from the Economic Case No. 18 of 2021 of Mlele District Court)*

**NYEMBI CHAGU @ SHIJA.....APPELLANT**

**VERSUS**

**THE REPUBLIC.....RESPONDENT**

**JUDGMENT**

*17/05/2023 & 14/06/2023*

**MWENEMPAZI, J.:**

The appellant herein was arraigned before the District Court of Mlele for two counts, whereby the first count was unlawful possession of government trophy contrary 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 Sections 57 (1) and 60 (2) of Economic and Organized Crimes Control Act Cap 200 R. E. 2019, and the second count was unlawful possession of weapons in the National Park without any permit contrary to Section 24 (1) (b) and (2) of the National Park Act Cap 282 R. E. 2002.

After the charges were read and explained to the accused person in the language best understood to him, he denied all charges in which a full trial was inevitable. At the end of the trial, the appellant was found guilty of the two counts and in turn he was convicted and sentenced to serve the term of twenty years in prison for the first count and to pay five of Tshs. 20,000/= (twenty thousand) or serve a term of six months in prison for the second count respectively and the sentences were ordered to run concurrently.

Being aggrieved by the decision of the trial court, the appellant filed his appeal to this court which consisted of five (5) grounds of appeal whereas they all suggest that he was convicted and sentenced over the charges which were not proved to the required standard of the law.

On the hearing date, the appellant appeared for himself as he had no legal representation while the respondent, Republic was represented by Marietha Maguta learned State Attorney.

The appellant was invited to submit for his grounds of appeal and as layman as he is, he only prayed for this court to consider his grounds of appeal and that it should not hesitate to release him because is not a poacher.

Responding to the appellant's submission, Ms. Maguta submitted that as the appellant filed five grounds of appeal, her side supports the appeal due to the deficiency in the law which is in the proceedings. She added that, in an economic case to be heard in the subordinate court, there must be a consent of the Director of Public Prosecution (DPP) and Certificate of transfer of jurisdiction. She then cited Section 26 (1) of Economic and Organized Crimes Control Act, Cap 200 R. E. 2019 which provides for the requirement of Consent before prosecuting a suspect in the subordinate court. She added that, Section 12 (3) and (4) of Economic and Organized Crimes Control Act, requires the presence of a Certificate of transfer.

Ms. Maguta then referred this court to the case of **Dilip Kumar Maganbai Patel vs Republic, Criminal Appeal No. 270 of 2019** Court of Appeal of Tanzania at Dar es Salaam at page 10-1, where it held that, there must be a section describing the offence as it is in the charge sheet. That, lack of the provisions means the court had no jurisdiction and also lacked consent to charge the accused for the economic offence.

The learned State Attorney submitted further that, in this case the appellant was charged for being found with Government Trophies Contrary 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 Cap 200. That, the appellant was also charged of unlawful possession of weapons contrary to Section 24 (1) (b) and (2) of the National Park Act Cap 282 R. E. 2002.

Ms. Maguta elaborated that, the provisions of law pronouncing the offence are absent in the Consent document. That means the trial Court had no jurisdiction to try the appellant with the first count in the charge sheet namely, Unlawful possession of the Government trophy contrary to section 86(1)(2) 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 Economic and Organized Crimes Control Act, Cap. 200 R.E. 2019. The Counsel prayed that this appeal be allowed and that this case be ordered to start afresh, meaning a trial de novo as the evidence is overwhelming against the appellant.

The appellant himself had nothing to re-join but reiterated that he prays to be released.

After reading the grounds of appeal and the submissions made by both sides, and also reading the records of the trial court before me, I am fortified that the only issue to be delt with in this appeal is **whether the trial court had jurisdiction to entertain this matter.**



Despite the fact that the respondent herein had supported this appeal, still this court is obligated to analyse the validity of the support of this appeal by the respondent. To start with, in its various decisions, the Court of Appeal of Tanzania had emphasized the compliance with the provisions of section 12 (3), 12 (4) and 26 (1) of the Economic and Organized Crimes Control Act, Cap 200 R. E. 2019, and held that the consent of the DPP must be given before the commencement of a trial involving an economic offence. See, **Rhobi Marwa Mgare & 2 Others vs The Republic, Criminal Appeal No. 192 of 2005, Elias Vitus Ndimbo & Another vs The Republic, Criminal Appeal No. 272 of 2007, Nico Mhando & 2 Others vs The Republic, Criminal Appeal No. 332 of 2008** (all unreported).

As hinted earlier by the learned State Attorney, I did peruse the documents conferring jurisdiction to the trial court, and indeed they fall short of the requirements of the law. The two documents reveal that the appellant was charged with the offence of unlawful possession of government trophies without specifying the provisions of law pronouncing the offence. There was no mention of the provisions of section 86(1) and (2) of the Wildlife Conservation Act, No. 5 of 2009 but only paragraph 14 of the first Schedule to and section 57(1) and 60 (2)

of Economic and Organized Crimes Control Act, Cap. 200 R.E. 2019. The other offence is the Unlawful possession of Weapons in the National Park without having a permit contrary to section 24(1)(b) and (2) of the National Park Act, Cap. 282 R.E. 2002. The latter being non – economic offence, there was no need of consent or certificate of transfer.

This means, the appellant was correctly tried, convicted and sentenced over one count, the 2<sup>nd</sup> count but as far as the first count is concerned, the court had no jurisdiction to entertain the same. And therefore, up until this decision by this court, the appellant had already served a sentence for the second count as the court imposed on him to pay a fine of Tshs. 20,000 (twenty thousand) or serve a sentence of imprisonment for a term of six (6) months in jail. The trial court had no jurisdiction to try the appellant on the first count of the charge hence the conviction and sentence were a nullity due to defective consent and certificate of transfer.

It is my firm holding that the defects rendered the consent of the DPP and certificate transferring the economic offence to be tried by the trial court invalid. For that reason, it is my finding that the trial and proceedings at the trial court were nothing but a nullity in respect of the 1<sup>st</sup> Count of the charge. In the event, having held that the consent and certificate were incurably defective there could not have been any valid

proceedings before the trial court resulting to an invalid conviction and sentence handed out to the appellant.

Consequently, I proceed to allow this appeal, and nullify the proceedings of the trial court, quash the conviction and set aside the sentence in respect of the 1<sup>st</sup> count of offence. As the effect of nullifying the proceedings restores the appellant to the position as he was not tried for the first count, and given the fact that the evidence in respect of the offence has been submitted by the respondent to be overwhelming, I order that the appellant be subjected to trial *de novo* for the offence of Unlawful possession of the Government trophy contrary to section 86(1)(2) 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 Economic and Organized Crimes Control Act, Cap. 200 R.E. 2019. The trial be conducted by the court with jurisdiction as required by the law. In the meantime, the accused shall remain in custody to await the new trial. It is so ordered.

Dated and delivered at **Sumbawanga** this 14<sup>th</sup> day of June, 2023.



  
**T. M. MWENEMPAZI**

**JUDGE**

Judgment delivered in judge's chamber in the absence of the appellant who is reported by the prison officer that he is sick and in the presence of Ms. Ashura Ally, State Attorney for the Respondent.



  
**T.M. MWENEMPAZI**

**JUDGE**

**14/06/2023**

ORIGINAL