

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

CRIMINAL APPEAL No. 116 OF 2022

*(Originating from Economic case No. 37 of 2021 of Bariadi District
Court)*

KIJA BUHEMBE.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

Date of Last Order: 10th July 2023

Date of Judgment: 10th July 2023

JUDGEMENT

F.H. MAHIMBALI, J

The Appellant Kija S/O Buhembe was charged in the District Court of Bariadi on four counts of the charge namely; **1st UNLAWFULL ENTRY INTO THE NATIONAL PARK;** Contrary to section 21 (1) (a) (2) of the National Parks Act, Cap 282 R: 2019.

2nd UNLAWFUL POSSESSION OF WEAPONS IN THE NATIONAL PARK; Contrary to section 24 (1) (b) of the National Parks Act, Cap 282 RE 2019.

3rd UNLAWFUL POSSESSION OF GOVERNMENT TROPHIES, Contrary to Section 386 (1) (2) (iii) of the Wildlife Conservation Act, Cap 05 RE 2009 read together with paragraph 14 of the first schedule to

Section 57 (1) and 60 (2) of the Economic and Organized Crime Control Act, Cap 200 R: E 2019.

4th UNLAWFUL POSSESSION OF GOVERNMENT TROPHIES,

Contrary to section 86 ((1) (2) (iii) of the Wildlife Conservation Act, Cap 05 RE 2009 read together with paragraph 14 of the first schedule to Section 57 (1) and 60 (2) of the Economic and Organized Crime Control Act, Cap 200 R: E 2019.

After the full trial, the trial court found him guilty in all counts and sentenced him to suffer twenty (20) years for the third and fourth counts and one year imprisonment for the first and second counts. The sentences were ordered to run concurrently.

The appellant was aggrieved with the conviction and sentence hence this appeal with four grounds whose major complaint is to the effect that the prosecution had weak evidence to warrant his conviction and sentence because the prosecution case was hypothetical, and thus there was procedural irregularity in admitting exhibits.

At the hearing of this appeal the appellant was present in person while Ms Wapumbulya Shani, Mboneke Ndimubenya and Leonard Kiwango, learned State Attorneys represented the Respondent/ Republic.

The appellant in arguing for his appeal adopted his grounds and prayed that his appeal be allowed.

On the side of the Respondent, Ms. Shani, submitted by supporting the appeal by the appellant on the sense that, the charge against the appellant was based on economic and noneconomic matters, which required both certificate of conferring jurisdiction and consent to prosecute for the trial court to have jurisdiction to try the matter. Therefore, the trial Court lacked jurisdiction to try the matter.

She referred this Court to the decision in the case of: ***Chacha Chiwa Marungu versus Republic, Criminal Appeal No. 364 of 2020 (CAT) at Msoma.***

Further, Ms Shani argued there are exhibits admitted by the trial Court to wit; seizure certificate and inventory certificate were wrongly admitted as such exhibits were not read before the Court for securitization by either party. Ms, Shani then pressed for the release of the appellant.

In rejoinder, the appellant had no much to say, he only pressed for his appeal be allowed, conviction and sentence be quashed out and set side.

After I have heard both parties to the appeal, I have now to determine the appeal and the issue to be determined is whether this appeal has been brought with sufficient cause.

I have gone through the petition of appeal, records of the trial Court and submissions by both parties. I therefore, I should begin by making clear that this appeal has been brought with sufficient cause.

It is true that the trial Court had no jurisdiction to try the matter. Sections 12(3) and 26 of the Economic and Organized Crime Control Act, Cap 200 RE 2019, provides for the crucial requirement of consent and certificate conferring jurisdiction to the subordinate court to be issued by the DPP before a trial of an economic offence in a subordinate Court could commence. See also the case of ***Nico Mhando and 2 others Versus Republic, Criminal appeal No.332 of 2008*** (unreported) to the effects.

In the case at hand, the certificate enclosed lacks the provision of the law conferring jurisdiction to the trial Court, hence the filed certificate before the trial court court was nullity.

The law requires that, even if the certificate and consent were made under the proper provision of the law; section 12(4) and 26 (2) of the

Economic and Organized Crime Control Act (supra) such consent and certificate need to be in conformity with Section 17 (1)(2) and Section 86 (1)(2)(c) (iii) of Wild Conservation Act, read together with paragraph 14 of the First Schedule to the Economic and Organized Crime Control Act, which was not apparently in the case at hand.

With all this, I must conclude that the trial Court acted ultravires to the law of the land. So, in that regard, the proceedings in the trial court in Economic Case Number 37 of 2021, were nullity because the Certificate ad Consent in question were incurably defective.

In regards to the admissibility of exhibits, the law requires that, the documentary evidence to be read out in order to ascertain and make clear understood to the parties.

In the case of: ***Robinson Mwanjisi and Others versus Republic, (2003) TLR***, where the Court stated among other things that,

" Whenever it is intended to introduce any document in evidence, it should first be cleared for admission and be actually admitted, before it can be read out "

See also the case of : ***Mbaga Julius versus Republic, Criminal Appeal No.131 of 2015, Jumanne Mohamed and two others***

versus Republic, Criminal Appeal No.534 of 2015 (unreported) and the case of ***Nkolozi Sawa and Another versus Republic, Criminal Appeal No.574 of 2016 (CAT)*** at page 7.

In the case of **Nkolozi** (supra), the Court observed that:

"Failure to read out the documentary exhibits was irregular as it denied the appellants an opportunity of knowing and understanding the contents of the said exhibits "

In the case at hand, exhibits P1 Certificate of seizure, P3 evaluation report and P4 inventory form, were not read before the Court. The shortcoming to that effect is that such exhibits are expunged from the court records as they were wrongly acted upon immediately after their admission on failure to make them read over and explained in court.

Having expunged them, the prosecution case remains without any documentary evidence to prove the offence arraigned against the appellant. By so speaking, no other credible evidence which incriminate the appellant survives the charged offences.

With all these compounded observations, I find this appeal to have been brought with sufficient legal cause, I allow it and order the

appellant's immediate release from custody unless otherwise lawfully held.

DATED at SHINYANGA this 10th day of July, 2023.

**F. H. MAHIMBALI
JUDGE**

Judgment delivered today the 10th day of July, 2023 in the presence of the appellant and respondent represented by Ms Wapumbulya Shani, Mboneke Ndimubenya and Leonard Kiwango, learned State Attorneys and Ms Beatrice, RMA, present in Chamber Court.

Right of appeal explained.



**F. H. MAHIMBALI
JUDGE
10/7/2023**