

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

CRIMINAL APPEAL NO 58 OF 2023

(C/f criminal case No. 18 of 2022, District Court of Arumeru at Arumeru)

BARAKA NGEDIAYANYE LEMWATO APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

17th & 24th July, 2022

TIGANGA, J.

Before the District Court of Arumeru, the appellant, Baraka Ndedianye Lemwato stood charged with the offence of unlawful possession of government trophies contrary to sections 86(1) and (2)(b) of the Wildlife Conservation Act [Cap. 283 R.E 2022] read together with paragraph 14 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 2022]

The particulars were that, on 17th November, 2022 at Ngivilati Lemanda Oldonyosambu area in Arumeru District and Arusha Region, the appellant was found in unlawful possession of government trophy to wit Zebra heads and meat which is equivalent to two killed Zebra valued at USD

1200 each and both valued at USD 2400 equivalent to Tsh. Five million, five hundred ninety-five thousand and eight hundred only (Tsh.5,596,800/=)only the property of the government of the United Republic of Tanzania without a permit from the director of wildlife.

The charge sheet was filed together with the Consent and Certificates issued by the Prosecution Attorney in charge on behalf of the DPP. Therefore when he was arraigned, he pleaded guilty to the charge, and admitted to the facts allegedly constituting the offence he was charged with. He was found guilty on his own plea and convicted as charged consequent of which he was sentenced to pay a fine of Tsh. 55,968,000/= or to serve 20 years imprisonment. Aggrieved by the decision of the trial court, he filed three grounds of appeal as follows:-

1. That the trial Court Grossly erred in law and in fact to convict and sentence the appellant as the trial court lacked jurisdiction to try the case at hand since there was no consent of the Director of Public Prosecutions and certificate conferring jurisdiction to the subordinate court to try the case at hand since Economic Case No, 18/2022 it falls under the Economic Offence, the same consent and

certificate was neither endorsed nor does the record show that the documents were submitted. (See the Case of **John Julius Martin & Another vs Republic**, CAT At Arusha, Criminal Appeal No. 42/2020 at page 8 of its judgment)

2. That the trial Court grossly erred in law and fact when it believed that the appellant Unequivocally pleaded to the narrated facts (the case of **Michael Adrian Chaki vs The Republic** [2021] TZCA 454)
3. That, even considering the admitted facts, his plea was imperfect, ambiguous, or unfinished, so the lower court erred in law in treating it as a plea of guilty.

When the appeal was called for hearing the prosecution through Ms. Akisa Mhando, the learned Senior State Attorney conceded to the appeal based on the first ground of appeal, asked the appeal to be allowed, but asked the court to order a retrial because the court did not have jurisdiction to hear and determine the case, therefore whatever went on was a nullity. He said looking at the fact the prosecution has enough evidence to prove the case at the required standard.

As earlier on pointed out, the charge sheet was filed while attached with the consent and the certificate. Even though there were in the case file the two documents, the learned Senior State Attorney conceded the appeal on the first ground. Now to understand why she has readily conceded, I find it apt, to refer to the case of **John Julius Martin & Another vs Republic**, CAT At Arusha, Criminal Appeal No. 42/2020. In that case, the two documents are the consent and the certificate conferring jurisdiction to the subordinate court. However, the Court of Appeal found that the proceedings did not show how the two documents found their way to the case file, and neither were the document themselves endorsed to have been received in the proceedings and made part of the record. While agreeing with the counsel for the appellant, decided on page 8 of the judgment, which for clarity I reproduce in extensor as follows.

"According to section 3 of the EOCCA, the court with jurisdiction to try economic offences was, at the time of the trial of the appellants and to date, is the High Court. However, section 12 (3) of the EOCCA, provides that:

"(3) The Director of Public Prosecutions or any State Attorney duly authorised by him, may, in each case in which he deems it necessary or appropriate in the public

interest, by certificate under his hand, order that any case involving an offence triable by the Court under this Act be tried by such court subordinate to the High Court as he may specify in the certificate."

The law, that is, section 26 (2) of the same Act, the EOCCA, provides further for a requirement of the consent from the DPP or a person authorized by him, before such an offence is tried. That section provides:

"(2) The Director of Public Prosecutions, shall establish and maintain a system whereby the process of seeking and obtaining of his consent for prosecutions may be expedited and may, for that purpose, by notice published in the Gazette, specify economic offences the prosecutions of which shall require the consent of the Director of Public Prosecutions in person and those the power of consenting to the prosecution of which may be exercised by such officer or officers subordinate to him as he may specify acting in accordance with his general or special instructions."

*The instruments referred to in the above provisions, that is, the certificate conferring jurisdiction on the subordinate court to try an economic offence and the consent, are the contested documents subject of discussion in the first ground. In this respect, the issue is, **is it enough for the instruments to***

*just be delivered in the trial court's file or a prosecuting attorney should orally move the trial, court in session before commencement of trial for it to endorse the documents as admitted and also record that act in writing. According to Ms. Ngotia, the mere presence of the documents in the trial court's file, is legally enough and the subordinate court has jurisdiction. Respectfully, **we do not agree with her, because that is not the position maintained by this Court.** In **Maganzo Zelamoshi @ Nyanzomola v. R**, Criminal Appeal No. 355 of 2016 (unreported), there was a certificate and the consent in the record of the trial court, but the documents were not endorsed by the trial magistrate as having been duly admitted on record. In another case of **Mauiid Ismail Ndonde v. R**, Criminal Appeal No. 319 of 2019 (unreported), **there was neither an endorsement on the face of the consent and the certificate, nor did the trial court's record reflect that there were such documents on record.** In both cases, the Court nullified the proceedings of both the trial courts and of the High Court, **because the certificate and the consent documents, had no legal force as they were not endorsed by the trial magistrate as having been admitted them on record.** The situation in the above cases is akin to the state of affairs obtaining in this case. Thus, we hold that because the instruments of consent and the certificate at page 3 of the*

*record of appeal, were neither endorsed as having been admitted by the trial court, nor does the record show that the documents were admitted, the trial court tried the case without jurisdiction. Under the laws of this country, any decision reached by any court without jurisdiction is a nullity, see **Maganzo Zelamoshi @ Nyanzomola** (supra). Thus, the first ground of appeal questioning the jurisdiction of the trial court succeeds. Accordingly, the proceedings of the trial court are nullified. The conviction of the appellants and the sentence imposed upon them are equally quashed and set aside. Likewise, the proceedings of the High Court are nullified and the judgment based on the nullified proceedings, is quashed and set aside for having originated from a nullity."*

The case cited herein above is akin to the situation in the case at hand, based on the authority of the decision of the Court of Appeal cited herein above, I in the equal tone, allow the appeal based on the first ground of appeal, nullify the proceedings, which resulted in a conviction and sentence of the appellant because the consent and the certificate on record have not been endorsed and the proceedings do not show that they were received on record to form part of the proceedings and the record of the court. I consequently quash the conviction and set aside the sentence imposed against the appellant.

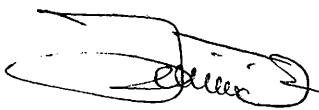
I was asked by the learned state attorney that I make an order that the case be tried de novo. In law, as the case was not heard on merits, there only available option is for this court to order the retrial for the court to make sure that it has requisite jurisdiction and for the Republic to parade its evidence to prove the case at the required standard.

In consequence thereof, the appeal is allowed as already held herein above, the matter be sent back to the subordinate court to comply with the law.

It is accordingly ordered

Dated and delivered at **Arusha** this 24th day of July 2023.




J.C. TIGANGA
JUDGE