

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

CRIMINAL APPEAL No. 114 OF 2022

(Originating from Economic case No. 24 of 2021 of Bariadi District Court)

ZENGO MAPEMBE 1ST APPELLANT

YOHANA KAPANU @NHONDI 2ND APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

31ST JULY 2023

JUDGEMENT

F.H. MAHIMBALI, J

The Appellants Zengo Mapembe and Yohana Kapanu @ Nhondi were 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 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.

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.

It was alleged by the prosecution that the appellants committed these offences on 17th day of June 2021 at Mto Simiyu area, in Serengeti National Park within Bariadi District in Simiyu Region. The appellants denied the charges.

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

The appellants were 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 each one's conviction and sentence and thus unestablished as per law.

At the hearing of this appeal the appellants appeared in person while Ms Wapumbulya Shani, and Goodluck Saguya, learned State Attorneys represented the Respondent/ Republic.

The appellants in arguing the appeal adopted the grounds of appeal and prayed that their appeal be allowed.

On the side of the Respondent, Ms. Shani, submitted by supporting the appeal by the appellants contending that, the charge against the appellants 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. However, she faulted the certificate and consent filed, did not mention the provisions of the charged offences in which the appellants were charged with. Therefore, the trial Court lacked jurisdiction to try the matter and the proceedings thereof are vitiated. On this stand, she relied support from the decision in the case of **Chacha Chiwa Marungu V. The Republic**, Criminal Appeal No. 364 of 2020 at pages 5-6, CAT at Musoma.

Furthermore, as to the way forward of the case, she contended that had there been sufficient evidence in record, they would have prayed for retrial. However, as per evidence circumventing this case, didn't establish the charged offences, relying on the stand of the Court of Appeal in the case of **Masunga Limbu @ Ghabu & Maduhu Limbu Vs. Republic**, Criminal Appeal No. 304 of 2019, she prayed that the appellants be set at liberty unless lawfully held by other causes.

In rejoinder, the appellants had no much to say, but only pressed for their appeal to be allowed, conviction and sentence meted out by the trial court be quashed and set aside.

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 should begin by making clear that this appeal has been brought with sufficient cause.

Since the charge against the appellants involved economic offences, it is true that the trial Court had no direct jurisdiction to try the matter save the Corruption and Economic Crimes Division of the High Court

pursuant to section 3(1) and (3) of the Economic and Organized Crime Control Act, Cap 200, R.E 2019. The provisions of sections 12 and 26 of the Economic and Organized Crime Control Act, Cap 200 RE 2019, provide 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 commences. See also the case of ***Nico Mhando and 2 others Versus Republic, Criminal appeal No.332 of 2008*** (unreported) to the effects. However, such powers can be exercised by the state attorneys duly gazetted.

In the case at hand, the certificates enclosed not only lack the provision of the law conferring jurisdiction to the trial Court, but also were preferred under section 26(1) which section only empowers the DPP and not any other officer. The DPP's powers are delegable under section 26(2) of the Economic and Organized Crime Control Act, Cap 200 RE 2019. Hence, the filed certificate before the trial court under section 26(1) which was signed by state attorney instead of being made under section 26(2) vitiated the proceedings at the trial court as the said certificate/consent was not properly certified and consented (see also **Omari Bakari @ Daudi V. Republic**, Criminal Appeal No. 52 of 2022 and **Ramadhani Omari Mtiula V. Republic**, Criminal Appeal No. 62 of 2019 on the

importance DPP's Consent and certificate before commencement of an economic charge before subordinate courts).

The above notwithstanding, 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 as well argued by Ms Shani Wampumbulya making reference to the case of **Chacha Chiwa Marungu V. The Republic**, Criminal Appeal No. 364 of 2020 at pages CAT at Musoma.

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 24 of 2021, were nullity because the Certificate and Consent in question were incurably defective.

As what is the way forward after such a vitiated proceeding on nullity, I concur with Ms Shani, the learned state attorney that since the evidence in record is wanting maintaining conviction, it will be superfluous to order retrial. If the prosecution are in that stand, and upon my careful

scanning of the evidence in record, I have no good reasons to differ with the republic's good view on it.

With all these compounded observations, I find this appeal to have been brought with sufficient legal cause, I allow it and order the appellants immediate release from custody unless otherwise lawfully held.

DATED at SHINYANGA this 31st day of July, 2023.



F.H. MAHIMBALI

JUDGE

Judgment delivered today the 31st day of July, 2023 in the presence of the appellants and respondent represented by Ms Wapumbulya Shani, and Goodluck Saguya, learned State Attorneys and Ms Beatrice, RMA, present in Chamber Court.

Right of appeal explained.



F.H. MAHIMBALI

JUDGE

31/07/2023