

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

**CRIMINAL APPEAL NO. 9 OF 2023**

*(Originating from compounding order made under section 116 of the Wildlife  
conservation Act by the Ngorongoro Conservation Area Authority on behalf of the  
Director of Wildlife dated 25<sup>th</sup> January 2023)*

**BARAKA MOSON KESOI.....1<sup>ST</sup> APPELLANT**  
**RAPHAEL OLERUYE OLOISHIRO.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**NGORONGORO CONSERVATION AREA AUTHORITY.....1<sup>ST</sup> RESPONDENT**  
**THE DIRECTOR OF WILDLIFE.....2<sup>ND</sup> RESPONDENT**  
**REPUBLIC .....3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

**10<sup>th</sup> May & 28<sup>nd</sup> July 2023**

**GWAE, J.**

The appellants namely; Baraka Moson Kesoi and Raphael Oleruye Oloishiro were found grazing their heads of livestock in Pololeti Game Reserve and Pololeti Game Control Area on 25<sup>th</sup> January 2023. Upon their admission, the 1<sup>st</sup> respondent, Ngorongoro Conservation Area Authority ordered the 1<sup>st</sup> and 2<sup>nd</sup> respondent to pay a compounding fine at the tune of Tshs. 13, 000,000/=for 130 heads of cattle and Tshs.2, 250,000/=for 90 heads of goats and sheep respectively.

It is revealed by the records, that on 25<sup>th</sup> January 2023 the 1<sup>st</sup> appellant paid the 1<sup>st</sup> respondent Tshs. 13,000,000/= through control number 991700131674 with payment reference No. 1700 90252 3512 7412743 payer phone being 0785015569. The records further reveal that, the 2<sup>nd</sup> appellant paid a total of Tshs. 2, 250,000/=being a fine to the 1<sup>st</sup> respondent through control number 991700131675.

Aggrieved by the 1<sup>st</sup> respondent's compounding order and fine, the appellants have now knocked the court's doors challenging both order and sentence on the following grounds;

1. That, the 1<sup>st</sup> respondent erred in law in exercising powers of compounding offences established under the Wildlife Conservation Act, Cap 283, Revised Edition, 2022 (WCA) exclusively vested in the Director of WCA
2. That, the sentence meted to the 1<sup>st</sup> appellant in payment of compounding fine of hundred thousand per head of livestock is illegal.
3. That, the 1<sup>st</sup> appellant was erroneously and illegally condemned to pay thirteen million shillings (Tshs. 13, 000, 000 /= ) purported in exercising the power of compounding offence under the WCA
4. That, the 2<sup>nd</sup> appellant was illegally condemned to pay twenty five thousand shillings (Tshs.25, 000/=) per head of goat and sheep.

When this matter was called on for hearing, the appellants through their counsel sought and obtained leave to file an additional ground of appeal to wit;

1. That, in the absence of Compounding Form, the act of the 1<sup>st</sup> respondent of compounding was illegal and unforeseeable in law

At the hearing of the appeal, Mr. Joseph Moses L. Oleshangay the learned advocate assisted by Mr. Jonas Masiaya and Denis Moses, both learned advocates appeared representing both appellants. On the other hand Ms. Teresia Asenga, Senior State Attorney assisted by Mr. Denis and Mr. Geoffrey Kilomo, both learned State Attorneys represented the respondents herein.

Submitting for the appeal, Mr. Joseph jointly argued ground 2, 3 and 4<sup>th</sup> ground of appeal. Primarily, Mr. Joseph addressed the court that, the impugned compounding offences as are pursuant section 116 of the WCA stipulating that the penalty should be not be less than 200, 000/= and not more than Tshs. 10,000,000/= when the offender has admitted. Mr. Joseph went on arguing that, the remedy available for an aggrieved

party is an appeal to the High Court by virtue of section 115 (5) of the WCA and any other procedural law.

Arguing to the appeal itself, Mr. Joseph stated that the compounding fines per head of cattle is illegal. He added that, the payment of compounding fine at the rate Tshs. 13,000,000/=for 130 heads of cattle by the 1<sup>st</sup> appellant and the payment of Tshs.25, 000/- per goat and sheep by the 2<sup>nd</sup> respondent was illegal. The appellants' counsel also argued that the respondents ought to abide with the law.

He also argued that since there are two regulations relating to Game Control and Pololeti Game Reserve (Gn. 421 of 2022) followed by GN of 14<sup>th</sup> October 2022, GN. No. 604 of 2022. Therefore, the director, under section 3 of the Act (WCA) does include the Director meant under Ngorongoro Conservation Act (NCA) and that, the term-protected areas includes game reserve, Control Area and so on and so forth but not the 1<sup>st</sup> respondent.

He went on arguing that the Director imposing as a subordinate court ought to have imposed the fine not be less than Tshs. 100,000/= and not more than 500,000/= under section 21 (1) of the WCA and that,

If the director thought that, he was exercising his power under GN. 604, he ought to have invoked section 18 (2) (4) & (5) of the WCA by imposing

Mr. Joseph also submitted that, the basis for imposition of the fine is not a number of the heads of cattle or heads of sheep or goats but an offence committed as opposed to what the 1<sup>st</sup> respondent did. Therefore payment of Tshs. 13,000,000/= for 130 herds of cattle @ Tshs. 100,000/= by the appellant was illegal per se notwithstanding the offence of grazing purpose. Equally, the payment of Tshs. 2, 250,000/= for the goats and sheep (90 goats and sheep) @ Tshs. 25,000/= by the 2<sup>nd</sup> respondent. The appellants' counsel fortified their submission by citing the Case of **Jumane Paul vs. DPP**, Criminal Appeal No. 36 of 2020 (unreported) at page 8 regarding the illegal sentence and the case of **Elijah Eniwowe vs. Republic, Economic** Criminal Appeal No. 1 of 2023 (unreported).

Elaborating the 1<sup>st</sup> ground of appeal, Mr. Joseph submitted that, the 1<sup>st</sup> respondent had no jurisdiction to impose fine where the offence in Paloleti Control Area except the 2<sup>nd</sup> respondent. He went on to state that in order for a public authority to exercise certain powers there must be law creating such power. In our case, there is Ngorongoro Conservation Area Act, Cap 284 that, does not prohibit grazing, thus there will not be an offence for compounding. It is thus his opinion that, the Wildlife's

Director would not therefore delegate his power to the 1<sup>st</sup> appellant's Director or any employee of the Ngorongoro Conservation Area Authority. Thus, the 1<sup>st</sup> respondent's acts were illegal.

Mr. Denis also submitted on the issue of jurisdiction emphasizing that the issue of jurisdiction by citing the courts' decisions in the case of **Japhet Mapunda and two other vs. Lukresia Ciprian**, PC. Criminal Appeal No. 2 of 2021 (unreported) and the case of **Republic vs. Ahmed Ruambo**, Criminal Revision No. 3 of 2017 (unreported).

Mr. Geoffrey also added that since under section 56 of Cap 1, if there is a law specific for a designated area that specific law shall apply. Therefore, the law creating Ngorongoro Conservation Authority would not apply outside its area created by the law.

Mr. Geoffrey argued additional ground, by stating that, in the absence of the compounding form the act of the respondents was illegal as section 116 (7) of the WCA. He added that forms and manner of compounding shall be ascribed in the Regulations made by the Minister responsible under section 281 of the WCA, there is Regulations for the WCA's operations. Under Reg. 2 of the Regulations. Hence, according to him there was non-compliance with the mandatory requirement of the

procedural law (Regulations), 2012 as provided under section 53 (2) of the Chapter 1.

Ms. Asenga resisted this appeal and I prayed for adherence of Article 27 of the URPC. She went on arguing that, livestock are not allowed to enter into the Game Reserve that is why the Director of Wildlife may confiscate under section 116 (3.) of WCA.

She also muscularly confronted the appellants' assertion that, the 1<sup>st</sup> respondent had no jurisdiction by stating that under section 10 (2) and 11 of the WCA where the 2<sup>nd</sup> respondent is among the units which control or enforce the law relating to Conservation. However, she argued that, under section 3 of the WCA, an authorized officer; includes an employee of Ngorongoro Conservation Area. Henceforth, the 1<sup>st</sup> respondent had full mandate and that the 2<sup>nd</sup> respondent has power over any protected area including Ngorongoro Conservation.

Similarly, Ms. Asenga argued that, under section 116 of the WCA, the 2<sup>nd</sup> respondent had no power impose compounding offences in respect of economic offences as per law, 2016. She went on arguing that, applicability of section 18 and 21 of WCA is when the matter is before the

court of law unlike when power exercisable under section 116 (2) (a) (b) of WCA when the offender admits an offence.

The respondents' leading counsel went on submitting that, there was no basis for the compounding fines in respect of heads of cattle or heads of goat and sheep that, was applied by the 1<sup>st</sup> respondent in the compounding order. She further argued that, the appellants' counsel are just making speculations.

Regarding the compounding fine of the heads of cattle, admitting the excess of three million, the learned senior state attorney urged this court to step into shoes of the trial court and order proper compounding fine as per the law.

Lastly, the counsel for the respondents responded to the complaint on the compounding form that the same was dispensed with since the appellants admitted the offence against them in writing. She thus invited the court to refer to **Gitabeka Giaya vs. Republic**, Criminal Appeal No. 44 of 2020 (unreported-CAT) at Arusha. At page 14- 15 of the typed judgment.

In his brief rejoinder, Mr. Joseph stated that, the appellants are not disputing that, the offence of grazing the livestock in protected area.



Under section 10 (2) of WCA, the power exercised was under WCA's director and not NCA and that, the compounding fines ought to have been effected to the 2<sup>nd</sup> respondent. He also reiterated that it was necessary for the fine imposing officer to look at section 18 and 21 creating offences since section 116 of the Act does not create any offence.

Now, for the court's determination of the appellants' ground of appeal. Starting with the first ground of which reads,

***That, the 1<sup>st</sup> respondent erred in law in exercising powers of compounding offences established under the Wildlife Conservation Act, Cap 283, Revised Edition, 2022 (WCA) exclusively vested in the Director of WCA***

Generally, any power or mandate must be created by the law be it principal or subsidiary legislation. Hence, a person or body vested with the powers is the one who can legally exercise such powers. This position was rightly stressed in **Republic vs. Ahmad Ally Ruambo**, Criminal Appeal No. 3 of 2017 (unreported) where the Court of Appeal stated that;

*"We say so because jurisdiction is the creature of statute and this is the initial aspect to begin with for a judge or magistrate before embarking on jurisdiction of a case."*

In our instant case it is no doubt that, the one who exercised a compounding of offences to the appellants was the 1<sup>st</sup> respondent and

not the 2<sup>nd</sup> respondent. More so, the appellants' heads of livestock were found grazing in Pololeti Game Reserve area and not in Ngorongoro Conservation Area. According to section 116 (2) of the WCA, it is the Director who may compound offence. However, according interpretational section 3 of the WCA, the term an authorized officer includes among other employees an employee of Ngorongoro Conservation Area. For the clarity of section 3 of WCA defining, the term "authorized officer is hereby reproduced;

*"Authorized officer" means the Director of Wildlife, a wildlife officer, wildlife warden, wildlife ranger or police officer, and includes the following-*

*(a) An employee of the Forest and Beekeeping Division of or above the rank of forest ranger;*

*(b) An employee of the national parks of, or above the rank of park ranger;*

***(c) An employee of the Ngorongoro Conservation Area of or above the rank of ranger;***

*(d) An employee of the Fisheries Division of, or above the rank of fisheries assistant;*

*(e) An employee in a Wildlife Management Area of a designation of a village game scout;*

*(f) An employee of the Marine Parks and Reserve of, or above the rank of marine parks ranger;*

*(g) an employee of Tanzania Wildlife Management Authority of or above the rank of conservation ranger;*

*(h) An employee of the Antiquities Division of, or above the rank of conservator of antiquities; and*

*(i) Any other public officer or any person, who shall be appointed in writing by the Director.” (Emphasis mine)*

According to the interpretation of section 3 of the Act, if the authorized officer includes the Director of Wildlife and Wildlife officers of different ranks or cadres as well as employees of the Ngorongoro Conservation Area Authority of or above the rank of ranger. It follows therefore the Director of the NCAA is a person with jurisdiction to order compounding of offence in Wildlife Conservation. The public employees mentioned in section 3 of the WCA are persons conferred with power to issue order relating to compounding of offences on behalf of the Director of the Wildlife Conservation Area Authority. Therefore, the appellants' assertions that, an order pertaining to compounding of offences is exclusively devolved in the Director of the Wildlife is misconception of the law.

It is however true as submitted by the appellants' counsel that when there is specific piece of legislation for specific purpose that statute should

be applicable rather than the general law. Nevertheless, in our present matter, the WCA does recognize not only the Director of Ngorongoro Conservation Area Authority but also all NCAA's employees of rank of ranger or above. This 1<sup>st</sup> ground of appeal is thus dismissed for want of merit.

***In ground 2 and 4 on whether the sentence meted to the 1<sup>st</sup> appellant in payment of compounding fine of hundred thousand per head of livestock is illegal and whether the 2<sup>nd</sup> appellant was illegally condemned to pay twenty five thousand shillings (Tshs.25, 000/=) per head of goat and sheep.***

It was the argument of the appellants' advocates that it was illegal and justifiable to order payment of hundred thousand (Tshs.100, 000/=) and twenty five thousand per head of cattle and goat/ sheep whereas the counsel for the respondents were of the opinion that, the compounded fines are silent. In order to be safer in determining this ground of appeal, it is apposite if relevant provision of the law vesting the Director of the WCAA is reproduced in its extensor as herein under;

*"116.-(1) this section shall apply to offences committed under this Act in relation to protected areas.*

*(2) The Director may compound an offence by requiring a person to pay a sum of money: Provided that-*

***(a) The sum of money shall not be less than two hundred thousand shillings but not exceeding ten million shillings;***

***(b) The power conferred by this section shall only Wildlife Conservation Act [CAP. 283 R.E. 2022] 91 be exercised where the person admits in writing that he has committed the offence and that he agrees to the offence being compounded under this section; and***

*(c) The Director shall give a receipt to the person from whom he receives the amount of money.*

*(3) Where the Director compounds an offence under this section, he may order the forfeiture of-*

*(a) The animal, game meat or trophy in relation to which the offence was committed; or*

*(b) a weapon, article or thing used in the commission of the offence or for the storage, processing, preparation or cooking of the animal, livestock, game meat or trophy in relation to which the offence was committed.*

*(4) Where an offence is compounded in accordance with the provisions of subsection (2) and proceedings are brought against the offender for the same offence, it shall be a good defence for that offender if he proves to the satisfaction of the court that the offence, which he is charged with, has been compounded under subsection (2). Cap. 20*

*(5) Where a person is aggrieved by an order made under subsection (2) or (3), he may, within thirty days of the order being made, appeal against such order to the High Court and the provisions of Part X of the Criminal Procedure Act shall apply mutatis mutandis to every appeal as if it was an appeal against a sentence passed by a District Court in the exercise of its original jurisdiction.*

*(6) The Director shall, at an interval and in a form as the Director of Public Prosecutions may direct, submit to the Director of Public Prosecutions a return of all offences compounded under this section.” (Emphasis supplied).*

*(7) Forms and manner of compounding of offences shall be as prescribed in the regulations made under this Act.*

My understanding of section 116 (2) (a) of the WCA quoted above, is that, when a person admits an offence in writing under section 116 (2) (b) of the Act, the Director may compound the offence (s) so admitted and order such person to pay a sum of money not less than Tshs. 200,000/= but not more than Tshs.10,000,000/=. Thus, he has discretion to order a payment of fine within the said ambit (**Tshs.200, 000/=** to **Tshs. 10, 000, 000/=**). However, as correctly argued by the appellants’ advocates, the basis for issuing compounding order is not as per head of cattle, goats, or sheep but on other situations not stipulated in section 116 of the WCA, such as repetition of the same offence by the same

person or if the offence is rampant and the like. Nevertheless, the Director ought to have leniently acted towards the exercise of the discretion power since the appellants' voluntarily admitted and exhibited their readiness to pay fines.

I am also of the considered view as that of the learned senior state attorney for the respondent that, the fines provided for under section 18 of the WCA is exercisable upon a conviction entered against a person by a competent court relating the offences created under the Act and not the Director of WCAA.

Upon my perusal of the annextures appended to the appellants' Memorandum of Appeal, I have not seen any indication that, 130 heads of cattle whose total fine was Tshs. 13 ,000, 000/= the basis was 100,000/= shillings per head. The compounded fine of Tshs. 13,000,000/= was the billed amount for all 130 heads of cattle owned by the 1<sup>st</sup> appellant ("FINE POLOLETI-NG'OMBE 130").

Similarly, the annexure relating to the compounded fine in respect of 75 goats and 15 sheep totalling 90 paid by the 2<sup>nd</sup> appellant does not specifically state that the 2<sup>nd</sup> appellant was to pay for each head of goat or sheep Tshs. 25,000/= as purportedly asserted by the counsel for the appellants. Thus, it is wrong to speculate that, the basis for the ordered

compounded offence was Tshs. 100,000/= per head of cattle or Tshs.25,000/=per head of goat and that of sheep. Hence, the 2<sup>nd</sup> and 4<sup>th</sup> ground of appeal abound to fail as hereby dismiss them.

As to the 3<sup>rd</sup> appellants' complaint, **that the 1<sup>st</sup> appellant was erroneously and illegally condemned to pay thirteen million shillings (Tshs. 13, 000, 000/=) purported in exercising the power of compounding offence under the WCA**

As rightly emphasised by the Court of Appeal in **Republic vs. Ahmad Ally Ruambo** (supra), jurisdiction or authority to do a certain duty is derived by the law. The Director of NCAA was therefore to order payment of fine in respect of the compounded offence admitted by the 1<sup>st</sup> appellant within the ambit of the statutory provisions and not otherwise. The discretion given to the Director under section 116 (2) of the Act has its limits that is to say not less than 200,000/= and not more than Tshs. 10, 000,000/=. Hence, the compounded fine of Tshs. 13,000,000/= was illegal as it is beyond the prescribed maximum fine imposable by the Director as was correctly complained and conceded by the appellants and respondents respectively.

The Director or any other person in authority has no power under the applicable law to compound an offence (s) for more than ten million as plainly stipulated in the statute (see court's decisions in **Uganda vs.**



**Sisto Angalifo Welli** (1966) 1 EA 324 and **Jumanne Paul @ Ndabila vs. Republic** (supra) and **Mfundo vs Republic** (1975) 1 EA 63). This ground of appeal is thus allowed to the extent that Tshs. 3,000,000/= in excess was illegal and the same must be reimbursed back to the 1<sup>st</sup> appellant.

**In the last ground on whether in the absence of Compounding Form, the act of the 1<sup>st</sup> respondent of compounding was illegal and unforeseeable in law**

From outset, I am of the considered view that, the compounding of offences requires an admission in writing by an accused person that, he has committed the offence to be compounded and that he is willing to have the offence compounded pursuant to section 116 (2) (b) of the WCA. Hence, there must be formal admission in conformity with the Wildlife Conservation Regulations, GN. 2018 OF 2012 where names of a person accused of an offence, his signature as well as the name and signature of the officer compounding the offence, date as well as amount of fine by way of compound.

Though the parties especially respondents during hearing had not been able to demonstrate compliance with section 116 of WCA and Rule 2 of the Wildlife Conservation (Compounding of Offences) (Forms)

Regulations, 2012, I have entertained them to properly re-address me since the additional grounds was raised in the course of hearing. Having asked the parties to readdress the court, the respondents' counsel was able to give me copies of the compounding forms duly signed by the accused persons now appellants as well as the officer compounding. That being the position. It is quite clear that there was compliance with the law before compounding of the offences. The additional grounds of appeal is thus dismissed.

Having deliberated as herein and basing on the foregoing reasons, the appellants' appeal is dismissed save for reimbursement of three million Tshs. 3,000,000/= to the 1<sup>st</sup> appellant which was paid in excess of the statutory maximum amount.

It is so ordered

**DATED** and delivered at **ARUSHA** this 28<sup>th</sup> day of July, 2023.

  
**M.R. GWAE**  
**JUDGE**

**Court:** Right of appeal to the Court of Appeal fully explained



  
**M.R. GWAE**  
**JUDGE**  
**28/07/2023**