

**IN THE HIGH COURT OF TANZANIA**

**DODOMA SUB-REGISTRY**

**AT DODOMA**

**DC. CRIMINAL APPEAL NO. 22 OF 2023**

*(Originating from Bahi District Court in Economic  
Case No. 01 of 2022)*

**YOHANA YORAM MORWA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

*9<sup>th</sup> & 16<sup>th</sup> October, 2023*

**HASSAN, J.:**

The appellant Yohana Yoram appeared before the District Court of Bahi where he was charged with the offence Unlawful Possession of Government Trophy under both Wildlife Conservation Act No. 5 of 2009 and Economic and Organized Crime Control Act, CAP 200 [R.E 2002]. For clarity and better alignments of the same, the whole charge sheet is verbalized hereunder:

**"CHARGE**

**STATEMENT OF OFFENCE**

*Unlawful Possession Of Government Trophy; contrary to section 86 (1)  
(2) (c ) and (3) (b) of the Wildlife Conservation Act No. 5 of 2009 read*

*together with paragraph 14 of the First Schedule and section 57 (1) and 60 (1) both of the Economic and Organized Crime Control Act, CAP 200 [R.E 2019] as amended by sections 13 (b) (2) (3) (4) and 16 (a) of the Written Laws (Miscellaneous Amendment) Act No. 3 of 2016.*

### **PARTICULARS OF OFFENCE**

**YOHANA YORAM MORWA** on 20<sup>th</sup> day of February, 2022 at Msisi village, within Bahi District in Dodoma Region was found in possession of eight (8) pieces of Pangolin Scales valued at Tanzania shillings 2,216,640/=, without permit from the Director of wildlife.”

After the full trial was commenced, the appellant was convicted and sentenced to serve twenty (20) years imprisonment. Pained by trial court’s decision, the appellant advanced to this court appealing against both conviction and sentence meted out.

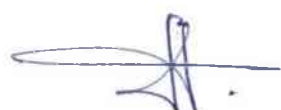
In brief, the facts leading to the charge are that, on 20<sup>th</sup> day of February, 2022, A/Inspector Ramadhani (PW3) accompanied by PW1 and other police officers went to the appellant’s house following the news that he wanted to kill VEO by spear. They arrived at 00:05 hours and went straight to the chairperson’s office. Thereafter, they went to the

appellant's house and knocked the door. It was his wife who opened the door. PW3 introduced himself and the purpose which brought them there, that they wanted to search for a spear which had poison. Since the appellant was drunk, PW3 ordered his wife to send them to the appellant's room. Thus, PW1, PW2 and PW3 all entered the appellant's room and using torch of PW1 and PW3, the appellant's wife showed them the spears and the folder of which there was poison inside.

After opening the folder, they found eight (8) pieces of pangolin shells. PW3 filled out a certificate of seizure which the appellant and his wife signed, together with PW1 and PW3 who stood as an independent witness. Thereafter, the appellant was arrested and escorted to Bahi Police Station with his exhibits. Finally, the appellant has been charged with the offence of Unlawful Possession of Government Trophy as herein-above mentioned.

On the date the appeal was called on for hearing, the appellant appeared in person unrepresented by counsel. Whereas, Ms. Prisca Kipagile, learned State Attorney appeared for the respondent Republic.

Thus, before the appellant was invited to present his appeal, the learned State Attorney wisely approached the court that she readily supports the appeal, based on what she had observed from the record of



proceedings. She stated that, looking on the records, it appears that the trial District Court of Bahi had no jurisdiction to try economic crime case. This is due to the fact that, section 113 (2) of the Wildlife Conservation Act which give mandate to the district court to try wildlife offences was not cited in the statement of the offence. Thus, the charge sheet which form base of the appellant's charge became defective.

In addition to that, another irregularity is that, although the Director of Public prosecution had provided for the consent to prosecute the appellant, and he also issued a certificate to confirm jurisdiction, the same were neither tendered by prosecution's attorney, nor admitted by the court to form part of the records as it appears at page 7 and 8 of the proceedings.

Therefore, with these anomalies, she averred that the trial District Court of Bahi had no jurisdiction to entertain the matter. Thus, she prayed the court to nullify proceedings, quash and set aside conviction and the sentence meted out by the trial court.

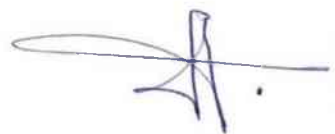
On the other side, the appellant mercifully supported what was submitted by the learned State Attorney and he had nothing to add.

Consequent to what was submitted by the learned State Attorney in her short submission, and based on my personal deliberation on the

point raised, and looking on the records from the trial District Court of Bahi, it is apparent that there was serious irregularity in the conduct of the trial court. That is **one**, failure to cite section 113 (2) of the wildlife conservation Act in the statement of the offence within a charge sheet and **two**, failure to tender and admit consent to prosecute the appellant and certificate which confirm jurisdiction from the Director of Public Prosecution.

Thus, moving from the above, the question which will need court determination is whether or not the trial District Court of Bahi had jurisdiction to try the matter.

In law, both aspects, together or severally, if violated, will result into the lack of jurisdiction for a District Court to try an economic crime case. For instance, when it was faced with the copious situation of not citing section 113 (2), the Court of Appeal in **Director of Public Prosecutions v. Pirbaksh Asharaf & 10 others, Criminal Appeal No. 345 Of 2017 (unreported)** at page 11 of the judgment the court held that the court lacks jurisdiction and thus, proceedings which is resulted from the court which does not have jurisdiction will be null and void and should not be considered.



On the next limb, with regard to the consent to prosecute the appellant and certificate to confirm jurisdiction is thus, generally, section 3 (1) and (3) (a) and (b) of the EOCC, confers jurisdiction to the Corruption and Economic Division of the High Court to hear and determine cases involving corruption and economic offences. However, the law provides further that, such jurisdiction can also be conferred to the subordinate courts upon consent and certificate of the Director of Public Prosecution (DPP).

Though, the prerequisite is that the consent and certificate conferring jurisdiction ought to be filed before the District Court and endorsed to form part of the court's proceedings. See **John Julius Martin & Another v. The Republic**, Criminal Appeal No. 42 of 2020 TZCA 789 [08. 12. 2022 Tanzlii]. And in the case of **Maulid Ismail Ndonde v. The Republic**, Criminal Appeal No. 319 of 2019 TZCA [29. 09. 2021 Tanzlii] it was held that:

*"...the consent and certificate signed on 10<sup>th</sup> April, 2018 were not officially received by the trial court.... consequently, in the absence of the consent and the certificate of the DPP, the trial court lacked jurisdiction*

*to try this case rendering the entire proceeding a nullity."*

Having carefully considered the circumstance of the present case, at page 7 of the trial proceedings, there is no consent to prosecute the appellant and no certificate conferring jurisdiction on the District Court of Bahi. The record does not reflect how they got into the court record to form part of the proceedings. I noted that, in the same page 7 of the typed record of proceedings, the Prosecutor informed the trial court that he has been supplied with the DPP consent and a certificate to confer jurisdiction and he prayed for another date for mention. That was on 28/07/2022, whereas, on 07/09/2022 when the matter was called again the Prosecutor proceeded to read the charge sheet and then fixed the matter for preliminary hearing.

However, I have also noted that both documents of consent and certificate are attached in the file and they were not endorsed by the court. But as it appears in the case of **Maulid Ismail Ndonde v. The Republic** (supra), they were not officially received by the trial court to form part of the trial records. So, how the two documents found their way in the case file is still a hard nut to crack.

Thus, since there was no record of endorsement of both consent and certificate, the omission is fatal. In the circumstance, it cannot be guaranteed that the trial District Court of Bahi was properly conferred with jurisdiction to try the case. Also, it cannot be said that the DPP had consented on the prosecution of the case. Same situation was tackled in the case of **Maganzo Zalamoshi @ Nyanzomola v. The Republic**, criminal Appeal No. 355 of 2016 (unreported); **Matheo Ngua & 3 Others v. The DPP**, Criminal Appeal No. 452 of 2017 (2020) TZCA 153 [03. 04. 2020 Tanzlii] and that of **Salumu s/o Andrew Kamande v. The Republic**, Criminal Appeal No. 513 of 2020 ACT (unreported) where it was held that:

*"We note in page 15 of the record of appeal, the PP informed the trial court that he has received the consent from the DPP, but the record is still silent as to whether the same was received to form part of the trial record. Since there is no clear indication discerning from the record of appeal as to how the consent and certificate find their way into the trial court record, we are in agreement with the counsel for the parties that the appellant was tried without a prior consent of his*

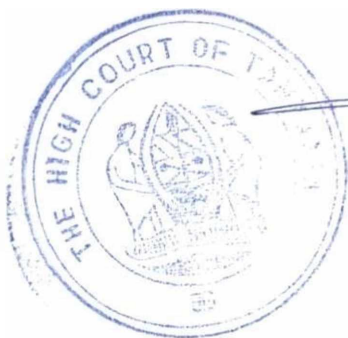
*prosecution and there was no certificate issued to confer jurisdiction on the district court...given that there was no consent and certificate, trial court lacked jurisdiction to try the appellant with an economic offence."*

Guided by the decisions above, I find that the whole trial court's proceedings were a nullity since a charge sheet yielding an economic offence was laid before the District Court which lacks jurisdiction to try the offence.

In the result, I hereby allow the appeal, quash conviction and set aside the sentence arrived by the trial court. In furtherance, I order release of the appellant from incarceration unless lawful held for another course.

It is ordered.

**DATED at DODOMA** this 16<sup>th</sup> day of October, 2023.



  
**S. H. HASSAN**

**JUDGE**