

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE SUB REGISTRY OF MANYARA)

AT BABATI

CRIMINAL APPEAL NO. 82 OF 2023

(Arising from Economic Case No. 14 of 2021 in the District Court of Simanjiro at
Orkesumet)

IBRAHIMU IDRISA APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

Date of Last order: 12.10.2023

Date of judgement: 20. 10.2023

JUDGEMENT

MAGOIGA, J.

The appellant, **IBRAHIMU IDRISA** was on 21st day of April, 2022 arraigned in the District Court of Simanjiro (trial court) for two counts of; unauthorized possession of fire arms contrary to section 20 (1) (a) (b) and (2) of the Firearms and Ammunition Control Act, No. 2 of 2015 read together with paragraph 31 of the First Schedule to and sections 57(1) and 60(2) of the Economic and Organized Crime Control Act, [Cap 200 R.E. 2019] and unauthorized possession of ammunition contrary to section 21(a) (b) of the Firearms and Ammunition Control Act No. 2 of 2015 read together with paragraph 31 of the First Schedule to and

sections 57(1) and 60(2) of the Economic and Organized Control Act, [Cap 200 R.E.2019].

However, the said charge was substituted on 18.08.2022 and third count of unlawful possession of ammunitions was added.

It was alleged that the appellant on 04th day of April, 2022 at G-5 Guest house-Mererani area at Simanjiro district in Manyara region, was found in possession of two firearms to wit: one rifle 2.2 20177-2B ROJOVKA CAL 22, one rifle 375 NO.7252603901-BRN2KK-602 without license and 5 rounds of rifle 2.2 and 5 rounds of rifle 375 without license.

Having heard the case on merits, the trial Principal Resident Magistrate found the appellant guilty as charged and convicted him. Subsequently, the appellant was sentenced to serve Twenty (20) years custodial imprisonment for all counts, sentences to run concurrently and an order to confiscate the rifles and ammunition to the Government.

Aggrieved by conviction and sentence, the appellant preferred this appeal to this Court faulting the trial Principal Resident Magistrate on the following grounds, namely: -

- 1. That, the trial court erred in law to reject the appellant strong and probative defence without classifying a solid ground behind it verdict;*

2. *That the trial court erred in law and facts that the issue of possession of the firearms is very serious, therefore, in the absence of any other independent evidence, the evidence of PW1, PW2, PW3, PW4, PW5 and PW6 remained extremely weak to ground conviction;*
3. *That the trial court did failure observe that the prosecution side failed to prove the charge against the appellant beyond reasonable doubt as the whole case was not investigated and had no police investigator who appeared in court to testify and the appellant was the victim of that weakness from the prosecutor and should carry the benefit of the doubt from the prosecution.*

On the strength of the above grounds of appeal, the appellant prayed that this Court be pleased to set aside the judgement, conviction and sentence of the trial court and set the appellant free.

When this appeal was called on for hearing, the appellant was present and unrepresented, while the Republic was represented by Ms. Leah Viosena, learned State Attorney.

Before hearing commenced, this court noted that the consent and certificate given by Regional Prosecution Officer was given under section 26(1) of the Economic and Organized Crimes Control Act, [Cap 200 R.E. 2019] and did not cite the provision of sections 20(1) (b) and (2) and



21((b) of the Firearms and Ammunition Control Act, No.2 of 2015 which create the economic offences charged. With that note, this court invited the learned State Attorney to address the effect of such consent and certificate.

Ms. Viosena, learned Attorney readily conceded that upon going through the impugned consent and certificate which was given to the trial District Court, the same are conspicuously incurably defective. According to the learned Attorney, all offences falling under sections 3(3) and 12(3) of [Cap 200 R.E.2019] are treated economic offences triable by High court as such imperatively need the consent and certificate of the Director of Public Prosecutions or any other office delegated to consent and confer jurisdiction to lower court to try the said economic offences.

The learned Attorney as such pointed out that looking at the consent and certificate given in the instant appeal as raised *suo motu* by the court, is obviously incurably defective, for being given under section 26(1) by the Regional Prosecution Officer which powers are exclusively exercised by Director of Public Prosecutions instead of section 26(2) and for failure to cite sections 20(1) (b) and (2) and 21(b) of the Firearms and Ammunition Control Act. The learned Attorney, thus, strongly argued that much as the consent and certificate are incurably defective, then, the whole trial was



a nullity because the Simanjiro District court had no jurisdiction to try the economic offences without proper consent and certificate.

In the totality of the above situation, the learned Attorney urged this court to declare the trial court's proceedings and judgement a nullity and proceed to quash them altogether.

On the way forward, the learned Attorney strongly urged this court to order trial de novo of the appellant. In support of this position referred this court to the case of **Abunery Pauli @Shangile and 3 others Vs. Republic, Criminal Appeal No.123 of 2022 (HC) Shinyanga (Unreported)** in which it was held that under such circumstances, the proper remedy is to order trial de novo.

The appellant being a layman had nothing useful to reply to the legal point raised and argued by the learned Attorney.

Having heard and considered the submissions by learned Attorney and as rightly noted by this court, no doubt and dispute that, the trial record is obviously clear that both consent and certificate are incurably defective for two reasons as noted by the court and conceded by the learned Attorney that the consent was given under section 26(1) by the Regional Prosecution Officer, a section which is exclusively exercisable by the Director of Public Prosecutions alone. And, also that both the consent and certificate did not cite the sections which create economic offences under

the Act. This court guided by the Court of Appeal of Tanzania decision dealing with similar situation in the case of **Peter Kongori Maliwa & 4 others vs Republic, Criminal Appeal No. 253 of 2020**, (Musoma) CAT (unreported) in which it was emphatically clear that powers of the Director of Public Prosecutions under section 26(1) of the EOCCA to grant consent and certificate are not delegable.

Further, the Court of Appeal in the above case also discussed the effect of failure to cite the provisions in the consent and certificate which create the economic offence and which are subject of the charge and quoting the case of **Dilipkumar Maganbai Patel Vs Republic, Criminal Appeal No.270 of 2019(unreported)** had this to say:

"We have no doubt that in view of our deliberation above the consent and certificate conferring jurisdiction on the trial court were defective, though they were made under the appropriate provisions; section 12(3) and 26(1) of the EOCCA but referred to provisions which the appellant was not charged with. The consent and certificate did not refer to section 86(1) (2) (ii) and (3) of the WCA which was clearly cited in the charge sheet. The consent and certificate were therefore incurably defective and the trial magistrate could not cure the anomaly in judgement as suggested by the by the



learned Attorney for the respondent. The defect rendered the consent and certificate of the DPP transferring the economic offence to be tried by the trial court invalid. For that reason, we are constrained to find that the trial and proceedings before the Resident Magistrate Court of Dar es Salaam at Kisumu in Economic Case No 58 of 2016 and the High Court in Criminal Appeal No. 146 of 2018 were nothing but nullity."

In the light of the above authorities and guided by the doctrine of precedents, this court find that the circumstances of this appeal are similar to the above findings of the Court of Appeal in respect of the certificate and consent given by the Regional Prosecution Officer for reasons noted and argued by the learned Attorney.

Therefore, without much ado, this court is constrained to declare that, the proceedings and judgement of the Simanjiro District court are nothing but a nullity for want of proper consent and certificate conferring jurisdiction to the trial court to try economic offences that were facing the appellant.

That said and done, I do hereby under the provisions section 43(1) of the Magistrates' Courts Act, [Cap 11 R.E 2019], therefore, nullify the proceedings of the trial Court, quash the conviction and set aside the sentenced meted out against the appellant.



On the way forward, the learned Attorney prayed that the court be pleased to order a retrial because there is ample evidence to mount conviction to the appellant.

Having gone through the trial proceedings, exhibits and what transpired, I find that for the interest of justice, this is a fit case to order retrial. The appellant never resisted this prayer by the learned Attorney, I therefore, order and direct that the appellant be tried de novo at the District Court of Simanjoro before another magistrate after the prosecution comply with the law on issuance of consent and certificate. Given the time the appellant has spent the in prison, the consent and certificate be issued with immediate effect and trial be immediately conducted.

It is so ordered.

Dated at Babati this 20th day of October, 2023.



S.M. MAGOIGA

JUDGE

20/10/2023