

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

**CRIMINAL APPEAL NO. 72 OF 2023**

*(Originating from Criminal Case No. 18/2022 of Bariadi District Court)*

**SITTA SABALE.....APPELLANT**

*VERSUS*

**THE REPUBLIC.....RESPONDENT**

**JUDGMENT**

*Date of last order: 27<sup>th</sup> October, 2023*

*Date of Judgment: 2<sup>nd</sup> November, 2023*

**MIRINDO, J.:**

This is an appeal by Sitta Sabale against his conviction by Bariadi District Court for an economic offence of unlawful possession of government trophy. He was charged under the provisions of section 86 (1) of the Wildlife Conservation Act, 5 of 2009 read together with the provisions of paragraph 14 of the first schedule to the Economic and Organised Crime Control Act [Cap 200 RE 2019] and the provisions of its sections 57 (1) and 60 (2).

At the trial before Bariadi District Court, the appellant was charged with two counts. Besides the count of unlawful possession of government trophy, he was charged with, but acquitted of, an economic offence of unlawful



hunting contrary to the provisions of subsection (1) and (2) of section 16 of the National Parks Act [Cap 282 RE 2002] read together with the provisions of sections 57 (1) and 60 (2), and paragraph 14 of the first schedule to the Economic and Organised Crimes Control Act [Cap 200 RE 2019].

Sitta appealed on the ground that his conviction was against the weight of evidence adduced before Bariadi District Court. He was unrepresented at the hearing of this appeal. He adopted his grounds of appeal in the Petition of Appeal and prayed that his appeal should be allowed. The respondent was represented by Mr. Leonard Kiwango, learned state attorney. Mr. Kiwango supported the appeal on a point of law that was not a ground of appeal and prayed that the Court should address it before continuing hearing the appellant's grounds of appeal. This appeal rises and falls on a question of law touching on the original jurisdiction of the Bariadi District Court to deal with the two counts of economic offence.

It is the Corruption and Economic Crimes Division of the High Court that is conferred with original jurisdiction try offences under the provisions of the Economic and Organised Crime Control Act, 13 of 1984 (now Cap 200 R.E. 2022). [Section 3(1) and 11 (1)]. However, the Director of Public Prosecution (DPP) may direct that a particular offence be instituted in a subordinate court



to the High Court. In exercising this discretion there are two conditions precedent before such proceedings are instituted in a subordinate court.

The first condition is that the DPP must consent either in person or through his duly authorised subordinates. Under section 26 (1) of the Economic and Organised Crime Control Act, a trial before subordinate court must be consented to by the DPP while section 26 (2) directs the DPP to create a system of prosecutorial consent by specifying that require his consent in person or those that may be consented to by his subordinates. The DPP first created a system of prosecutorial consent under section 26 (2) through the Economic Offences (Specification of Officers Exercising Consent) Notice,1984 (GN No 191 of 1984). This Notice was followed by Economic Offences (Specification of Offences Exercising Consent) Notice 2014 (GN No 284 of 2014) and the current Economic Offences (Specification of Offences for Consent) Notice,2021 (GN No 496H of 2021).

In the appeal before me, there is consent of the Regional Prosecuting Officer in the National Prosecution Service for Simiyu Region issued under section 26 (1). The question is whether the consent issued by the delegate of the DPP under section 26 (1) is valid.

Mr. Kiwango, learned state attorney, argued that the consent should have been issued under section 26 (2) of the Act as it emanated from the



delegate of the DPP and not the DPP in person. In support of this view, the learned state attorney invited this Court to take into account the recent position of the Court of Appeal in **Peter Kongori Maliwa and Others v Republic** (Criminal Appeal No.252 of 2020) [2023] TZCA 17350 (14 June 2023)

The Court of Appeal has established in a number of decisions that prosecutorial consent under the Economic and Organised Control Act is issued under section 26 (1): **Rhobi Marwa Magare and 2 Others v R**, Criminal Appeal 192 of 2005, Court of Appeal of Tanzania at Mwanza (2009); **Eward George Lekule v R**, Criminal Appeal 13 of 2002, Court of Appeal of Tanzania at Arusha (2004); **Elias Vitus Ndimbo and Another v R**, Criminal Appeal 272 of 2007, Court of Appeal of Tanzania Iringa (2012); **Jovinary Senga and 3 Others v R**, Criminal Appeal 152 of 2013, Court of Appeal of Tanzania at Bukoba (2014); **Emmanuel Rutta v R**, Criminal Appeal 357 of 2014, Court of Appeal of Tanzania at Bukoba (2015); **Magoiga Magutu alias Wansima v R**, Criminal Appeal 65 of 2015, Court of Appeal of Tanzania at Mwanza (2016); **Paulo Matheo v R** [1995] TLR 144 at 145.

The applicability of section 26 (1) in issuing prosecutorial consent was addressed in **Hamidu Abdallah Bila v R**, Criminal appeal No.73 of 2004, Court of Appeal of Tanzania at Mbeya (2005). In the District Court of Songea,



the appellant along with three others were jointly charged with, and convicted of, two counts of unauthorised possession of firearm contrary to paragraph 19 of the first schedule to the Economic and Organised Crime Control Act and its sections 56 (1) and 59 (2), read together with sections 13 (1) and 31 (1) of the Arms and Ammunition Ordinance. In his first ground of appeal, on a further appeal to the Court of Appeal, the appellant contended that the provisions of section 26 (1) were not complied with by the Republic. In dismissing this ground of appeal, the Court of Appeal held that:

*Our perusal of the court record shows that one Augustino Dominic Shio, Principal State Attorney, having been authorized by the Director of Public Prosecutions, under his hand duly consented to the prosecution of the case and that the appellant Hamid Abdallah@ Bila be tried in the District Court of Songea for the offences enumerated in the certificate.....*

Given that there are contending views in the Court of Appeal on the appropriate provision for prosecutorial consent to be issued by delegates of the DPP, this Court is duty bound under the doctrine of judicial precedent to act judicially in adopting either position. Pursuant to the *ratio decidendi* in **Arcopar (O.M) SA versus Harbert Marwa and Family Investments Co Ltd and 3 Others**, Civil Application 94 of 2013, Court of Appeal of Tanzania at Dar es Salaam (2015) that where there are conflicting decisions in civil cases, it is preferable to follow the most recent one unless it can be shown to be inconsistent with general principles of law. In Practice Direction – Judicial



Precedent [1966] 3 All ER 77, it was stated that departure from judicial precedent should take into account the need to ensure certainty in criminal law. In the last paragraph of the Practice Statement, it is stated that:

*In this connection they will bear in mind the danger of disturbing retrospectively the basis on which contracts, settlements of property and fiscal arrangements have been entered into and also **the especial need for certainty as to the criminal law.** [Emphasis added]*

The importance of certainty was further stressed in **Jumuiya ya Wafanyakazi Tanzania versus Kiwanda cha Uchapishaji cha Taifa** [1988] TLR 146 where the full bench of the Court of Appeal not only adopted the Practice Statement of 1966 and overruled **Zambia Tanzania Road Services v JK Pallangyo** [1982] TLR 24 not simply because it was wrongly decided but it had "paralysed the system for settlement of trade disputes' by importing a different (though related) legislative scheme to the trade dispute" at page 155.

Again in **D. 3769 PC. Tegeza v R**, Criminal Appeal 128 of 1994, the Court of Appeal stressed the importance of legal certainty in relation to judicial precedent. In this case a question arose whether the Court of Appeal was bound by its previous decision in **Charles Samson v R** [1990] TLR 39. In the latter case, the Court of Appeal had held that a trial court is empowered under section 194(6) of the CPA to take into account the defence of *alibi* even where such defence has not been disclosed by an accused person before the prosecution closes its case. In the former case, the High Court





judge directed neither himself nor the assessors to the defence of *alibi* raised by the appellant. It was held that:

*We are satisfied Samson's case is on all fours with the case currently before us with regard to the issue of the defence of alibi. Under the doctrine of stare decisis this court is bound to stand by Samson's case and apply it to the case at hand in the interests of legal certainty and the Rule of law.*

As far as **Peter Kongori Maliwa's** case introduces unpredictability on the application of subsections (1) and (2) of section 26 and constitutes a departure from settled law, it is inapplicable in the present appeal.

However, the prosecutorial consent issued under section 26 (1) suffers another procedural hurdle. It made incomplete reference to the provisions under which the economic offences were to be tried. It referred only to the provisions of the Economic and Organised Crime Control Act and no reference to the provisions of section 16 (1) and (2) of the National Parks Act [Cap 282 RE 2002] and section 86 (1) and (2) (b) of the Wildlife Conservation Act, 2009 that create the offences of unlawful hunting and unlawful possession of government trophy. It has been repeatedly held that prosecutorial consent is defective if it does not state the offences to be prosecuted in the subordinate court: **Chacha Chiwa Marangu versus Republic** (Criminal Appeal No.364 of 2020) [2023] TZCA 17311 (5 June 2023); **Emmanuel Rutta versus R**, Criminal Appeal 357 of 2014, Court of Appeal of Tanzania at Bukoba (2015);



The second condition is that the DPP in person or his duly authorised state attorney, must, under section 12 (3) issue a certificate of transfer or certificate conferring jurisdiction to a specific subordinate court. Section 12 (4) authorises the DPP to issue a certificate of transfer for trial of prosecution of non-economic offence or both an economic offence and a non-economic offence in a subordinate court: **Elias Vitus Ndimbo and Another v R**, Criminal Appeal 272 of 2007, Court of Appeal of Tanzania Iringa (2012); **Jovinary Senga and 3 Others v R**, Criminal Appeal 152 of 2013, Court of Appeal of Tanzania at Bukoba (2014). Once issued the certificate confers jurisdiction upon the court to which it has been lodge. [Section 12 (5)]

According to case law, the certificate conferring original jurisdiction to a subordinate court issued under subsection (3) or (4) of section 12 should state the offence which is to be tried, the offence-creating provisions, and specify the subordinate court designated to try the offence.

In this appeal, the certificate conferring jurisdiction, issued under section 12 (3), cited the sentencing provisions under the Economic and Organised Crime Control Act but overlooked the offence-creating provisions under the National Parks Act and the Wildlife Conservation Act that were cited in the charge. The Court of Appeal has held in **Dilipkumar Magambai Patel v Republic** (Criminal Appeal 270 of 2019) [2022] TZCA 477 (25 July 2022)





and **Peter Kongori Maliwa and Others v Republic** (Criminal Appeal No.252 of 2020) [2023] TZCA 17350 (14 June 2023) that a certificate of transfer is defective and cannot confer original jurisdiction if it does not state the offence-creating provisions that are to be laid before the subordinate court. It follows that the certificate issued for the trial of Sitta s/o Sabale was defective and Bariadi District Court had no jurisdiction to try him.

It is for these reasons that I invoke the revisional powers of this Court and declare that the proceedings before Bariadi District Court were a nullity. The trial court lacked requisite jurisdiction on account of the defective certificate of transfer and prosecutorial consent to try the economic offences brought before it. I nullify the proceedings, quash the conviction and set aside the sentence.

Mr. Kiwango prayed that after declaring the proceedings a nullity, this Court should order a retrial before a court of competent jurisdiction. He argued that in the circumstances of this case the order of retrial would not amount to allowing the prosecution to fill gaps in its case.

Taking into account that it is only a short time since the acts leading to the charge against the appellant took place, the nature of the prosecution evidence at the trial, the short period spent in prison by the appellant for a



sentence of 20 years' imprisonment; it is in the interest of justice that the appellant be retried before a court of competent jurisdiction.

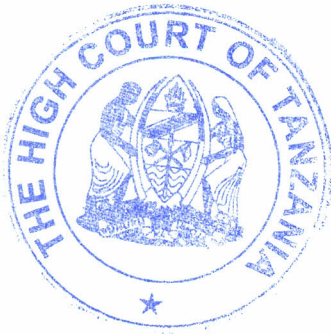
It is so ordered.



**F. M. MIRINDO**  
**JUDGE**  
**02/11/2023**

**Order:** Judgment delivered this 2<sup>nd</sup> day of November, 2023, in the presence of the appellant in person and Mr Leonard Kiwango, State Attorney for the respondent. B/C Ms. Sumaiya Hussein-(RMA) present.

Right of appeal explained.



**F. M. MIRINDO**  
**JUDGE**  
**02/11/2023**