

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE SUB- REGISTRY OF MANYARA)

AT BABATI

CRIMINAL APPEAL NO. 94 OF 2023

(Appeal from the decision of the District Court of Babati in Economic Case No. 17 of 2022 Hon. V. J. Kimario- SRM)

JOHN DAFFI LULU @ TLATLA.....1ST APPELLANT

ZEBEDAYO SAFARI.....2ND APPELLANT

VERSUS

REPUBLICRESPONDENT

Date of last order: 7/11/2023

Date of Judgment: 10/11/2023

JUDGMENT

MAGOIGA, J.

The appellants, **JOHN DAFFI LULU @ TLATLA AND ZEBEDAYO SAFARI**, hereinafter referred to as the first and second appellants respectively were arraigned before District Court of Babati (the trial court) charged with one count of unlawful possession of government trophy contrary to section 86(1) and (2)(b) of the Wildlife Conservation Act [CAP 283 RE 2022], (hereinafter referred to as the WCA) read together with paragraph 14 of the first schedule to and sections 57(1) and 60(2) of the economic and Organized Crime Control Act [CAP 200 RE 2019], (hereinafter referred to as the EOCCA).

It was alleged that on 23/10/2022 at Burukeli within Babati District in Manyara region, the appellants were found in possession of government trophy namely two elephant tusks equivalent to one killed elephant valued at USD 15,000.00 equivalent to Tshs 35,100,000/- (as per the exchange rate by then) the property of the Tanzania Government without permit from the Director of Wildlife.


The appellants pleaded not guilty to the charge, hence, full trial ensued. In attempt to establish its case the prosecution paraded seven witnesses and tendered several exhibits. On the other hand, the appellants were the sole witnesses for the defence.

After hearing the matter, the trial court was convinced that the case against the appellants was proved beyond reasonable doubt and consequently convicted and sentenced the appellants to serve custodian sentence of 20 years.

Aggrieved with the sentence and conviction meted out against the appellants, have preferred joint memorandum of appeal with 5 grounds of appeal, which I will not reproduce them here for the reason that will be apparent shortly.

When the appeal was called on for hearing, the appellants appeared in person, with no legal representation. On the other hand, the respondent was represented by Ms. Roida Kisinga learned State Attorney.

Before hearing of the appeal had commenced, Ms. Kisinga raised a concern that the consent and certificate conferring jurisdiction to the trial court issued by the Regional Prosecution Officer were incurably defective for not being not signed before filed to confer the court jurisdiction and trial to commence. Not only that but also the consent was issued under section 26(1) of EOCCA whereby Regional Prosecution Officer, which powers are only vested to the Director of Public Prosecutions. According to Ms. Kisinga, the powers of the Regional Prosecution Officer are to be issued under section 26(2) of EOCCA. Further, the learned Attorney submitted that, the certificate conferring jurisdiction was defective as it was issued under section 12(4) instead of section 12(3). According, to the learned State Attorney, section 12(3) is applicable where there are economic offences only while section 12(4) is applicable where there are both economic and non-economic offences. She pointed out that in the instant matter, the appellants were charged with only economic offence, hence, the proper provision ought to be section 12(3) of EOCCA and not section 12(4) of the same Act.



It was, thus, argument of the learned Attorney that, basing on the above anomalies, there were no proper consent and certificate conferring jurisdiction to the trial court to entertain the matter. She, thus, urged the court to nullify the proceedings, set aside judgment and conviction for same were conducted without jurisdiction.

As to the way forward, the learned Attorney urged this court to order a retrial of the appellants because there is ample evidence on the record against the appellants and no filling of gaps is there.

Being laypersons, the appellants had nothing of substance to respond. They leave to the court to decide the way forward.

Having gone through the record, it is without doubt that the consent as well as the certificate conferring jurisdiction to the trial court, purported to have been issued by the Regional Prosecution Officer were not signed. This implies that the Regional Prosecution Officer never issued consent and certificate conferring jurisdiction to the trial court.

In the case of **John Julius Martin & another v Republic** Criminal Appeal No. 42 of 2020 Court of Appeal of Tanzania (Unreported), the Court of Appeal faced an akin situation in which the certificate conferring jurisdiction

as well as the consent of the DPP to try an economic offence were found on the record of the trial court but they were not endorsed. The Court of Appeal observed on page 8 thus;

*"...because the instruments of the consent and certificate on page 3 of the record of appeal, **were neither endorsed as having been admitted by the trial court, nor does the record show that the documents were admitted**, the trial court tried the case without jurisdiction."*[Emphasis added].

Equally important, the consent was issued under section 26(1) of EOCCA but the same was issued by Regional Prosecution Officer. Powers to issue consent under section 26(1) of the EOCCA are limited to the Director of Public Prosecution and such powers are not delegable. Such omission was a fatal irregularity as it was pointed out in the case of **Peter Kongori Maliwa & 4 others v Republic** Criminal Appeal No. 253 of 2020 Court of Appeal of Tanzania at Musoma (unreported).

Similarly, the certificate conferring jurisdiction to subordinate court was incurably defective for being issued under section 12(4) of the EOCCA. As

rightly pointed out by Ms. Kisinga, such provision is applicable where there are both economic and non economic offences. In the instant matter the appellants were only charged with an economic offence, hence, the appropriate provision should have been section 12(3).

The above cumulative defects rendered the consent and certificate incurably defective, hence, the trial court had no jurisdiction to determine the matter. It embarked on nullity. In the case of **Ramadhani Omary Mtiula vs The Republic**, Criminal Appeal No. 62 of 2019 (unreported) when referring to the decision in **Fanuel Mantiri Ng'unda vs Herman Mantiri Ng'unda and 20 Others**, Civil Appeal No. 8 of 1995 (unreported) the Court of Appeal observed thus: -

*" The question of jurisdiction for any court is basic, it goes to the very root of the authority of the court to adjudicate upon cases of different nature **The question of jurisdiction is so fundamental that courts must as a matter of practice on the face of it be certain and assured of their jurisdictional position at the commencement of the trial....** It is risky and unsafe for the court to proceed with the trial of a case on the*

assumption that the court has jurisdiction to adjudicate upon the case. [Emphasis added

Further, in the case of **Jumanne Leonard Nagana @ Azori Leonard Nagana & another v The Republic**, Criminal Appeal No. 515 of 2019 Court of Appeal of Tanzania at Musoma (unreported) it was observed thus;

"The fate which befalls the proceedings and a decision made without jurisdiction is a nullity. Even where a court decides to exercise a jurisdiction which it does not possess, its decision amounts to nothing."

In the foregoing discussion and guidance by the Court of Appeal, by virtue of the powers vested in this under the provisions of section 43(1) of the Magistrates' Court Act, [Cap 11 R.E. 2019] I hereby exercise by powers of revision and consequently, nullify the proceedings and set aside judgement, the sentence and conviction meted out against the appellants as they stemmed from a nullity.



As to the way forward, the learned State Attorney urged the court to order retrial because there is ample evidence on record against the appellant.

In our jurisdiction is a trite law, under the circumstances, there are two alternative orders that a court can make after nullifying proceedings like in the instant matter. Those orders can be either to order trial *de novo* or to release and set the appellant free. The principles guiding the court on whether to order trial *de novo* or to release the appellant was expounded in the case of **Fatehali Manji v The Republic** [1966] E.A, 343, in which the court observed that for the court to order a retrial, it should ensure that the prosecution is not going to utilize the opportunity of a rehearing to amount a better prosecution case by filling in the gaps, all to the detriment of the appellant.

I have keenly gone through the trial court record, and nothing was noted that by ordering retrial, the Republic will have chance of filling in gaps. Therefore, for the interests of justice, I order that this matter be tried *de novo* after the Republic comply with law in giving consent and certificate. This matter to be tried by another magistrate competent to try it and upon getting with immediate effect in consideration of the days the appellants



have been in prison. This case file be remitted to the trial court for retrial against the appellants before another magistrate.

It is so ordered.

Dated at Babati this 10th November 2023



[Handwritten signature in blue ink]

S. M. MAGOIGA

JUDGE

10/11/2023