

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)
AT MTWARA

CRIMINAL APPEAL NO 37 OF 2023

(Originating from Criminal Case No. 4 of 2022 of Liwale District Court at
Liwale)

THE REPUBLIC..... APPELLANT

VERSUS

OMARY BAKARY CHINGUILE1st RESPONDENT

KURUTHUM ABDALLAH NDOPE2nd RESPONDENT

HASSAN JOSEPH KIDAGAA3rd RESPONDENT

JUDGMENT

20th & 30th October 2023

LALTAIKA, J.

The appellant herein namely **THE REPUBLIC** is dissatisfied with the decision of the District Court of Liwale at Liwale in Criminal Case No. 4 of 2022. Specifically, and without going into the factual details considered unnecessary for this particular judgement, the said decision was based on a ruling emanating from a matter raised *suo motto* by the court pertaining to the DPP's consent.

The appeal is focused on one ground; that the learned Resident magistrate erred in law and in fact by holding that the certificate conferring jurisdiction was issued under the wrong provision of the law, specifically section 12(4) of **Economic and Organized Crimes Control Act Cap 200 RE 2019** (the EOCA).

When the appeal was called for hearing on the 20th of October 2023, the appellant and respondents enjoyed skillful services of **Mr. Melchior Hurubano**, learned State Attorney and **Mr. Stephen Lekey**, learned Advocate, respectively.

Submitting in support of the appeal, Mr. Hurubano stated that according to page 26 of the trial court's proceedings, on 9/3/2022, the trial court decided that the certificate conferring jurisdiction to it to try the economic and non-economic case was defective, citing that the certificate was issued under a **wrong provision of the law**. The learned State Attorney emphasized that the trial court had raised the matter *suo motto*.

The learned State Attorney informed the court that the said certificate was made under Section **12(4) of the EOCA**. According to the ruling of the learned Magistrate, Mr. Hurubano argued, it was claimed that the certificate had to be issued under section 12(3) of the EOCA.

Mr. Hurubano expressed the opinion that, since the charge contained both economic and non-economic offenses, the proper provision was section 12(4) as it was done. The learned State Attorney emphasized that he disagreed with the learned Magistrate who defined the term "**court**" to mean the High Court Economic Crimes Division only.

In support of this position, he cited the case of **KURWA LIMBU @MUSHA v. R.** Crim Appeal No 279 of 2018 CAT, Arusha (TANZLII), where the CAT stated:

"Since the appellant was charged with both economic and non-economic offences, the Principle State Attorney in charge ought to have issued the certificate under section 12(4) of EOCA..."

Based on the above Court of Appeal's position, Mr. Hurubano asserted that the learned RM erred in law in refusing the certificate and discharging the respondents. Consequently, he prayed that the ruling of the trial court be quashed and directed that the matter be tried from the point it had reached.

Mr. Lekey, counsel for the respondents, **opposed the appeal**. He pointed out that there was no dispute that the respondents were arraigned in court for both economic and non-economic offenses and that the certificate was issued under section 12(4) of EOCA. He emphasized that the term "court" in this section is defined under section 2(1) of the EOCA to mean the **Corruption and Economic Crimes Division of the High Court** established under section 3.

Mr. Lekey argued that this section is not ambiguous and does not require further interpretation. He referred to the CAT case of **Republic v. Mwasige Godfrey and Another** Crim Appeal No 355 of 2014 TANZLII and read out a part of the case emphasizing the need to avoid overzealous interpretation to maintain the legislator's intended meaning.

Mr. Lekey acknowledged **the LIMBU's case** cited by his colleagues but stated that the CAT in that case was not invited to interpret the meaning

of section 12(4) of the EOCA. Mr. Lekey expressed the opinion that if the CAT had been invited to interpret such a section, it would have reached the same conclusion that such a provision is not meant to confer jurisdiction to the District Court (the DC).

Mr. Lekey highlighted the wording of section 12(3), which uses a capital "C" when referring to the Corruption and Economic Crimes Court. He read out the provision, emphasizing the capital "C" and the mention of submitting a matter to a subordinate court.

He acknowledged that this Court is bound by the decisions of the Court of Appeal of Tanzania but argued that when there is a difference between the law and the court's decision (case law), the court must follow the statute.

He also noted that the CAT itself had indicated that it cannot always be rigid on precedents, citing the case of **JAWADU JUMA KAMUZORA v. Standard Chartered Bank (T) Ltd** Civil Appeal No 15 of 2019 (TANZII). The learned Counsel prayed that the appeal is dismissed entirely for lack of merit.

In a brief rejoinder Mr. Hurubano expressed his views on Mr. Lekey's assertion on the CAT's rigidity, characterizing it as a trap. He conveyed that CAT decisions hold binding authority over the court. Regarding section 12(3) and (4), he noted that the opposing counsel attempted to provide justification.

The DPP, in Mr. Hurubano's opinion, believed that such a section is intended for offenses triable by the court. He pointed out that, according to section 12(4), even the marginal note explicitly includes the words 'other

courts.' Mr. Hurubano concurred with the opposing counsel's assessment that section 12(4) is ambiguous, and he emphasized that the CAT's interpretation, being binding, was a response to this ambiguity. The learned State Attorney expressed hope that the ruling of the trial court would be overruled.

I have **dispassionately** considered the rival submissions in the light of the grounds of appeal. There is no doubt that the trial court needed to receive, from the Director of Public Prosecutions (DPP) consent and certificate conferring it with jurisdiction to entertain the economic case. It is equally beyond dispute that the offences with which respondents were charged included a noneconomic offence.

The only point of departure is the interpretation of the word "court". The learned State Attorney has relied on the Court of Appeal case that provided an interpretation albeit in a slightly different context. The learned Counsel for the respondent does not agree with direct applicability of the case cited as, in his opinion, the topmost Court of our country was not dealing with a similar scenario.

Should this court find that the highest Court had indeed proffered the meaning as suggested by the learned State Attorney, Mr. Lekey seemed to suggest, this court can still take a different path provided it does so for the purposes of advancing justice. He meticulously suggested that even the Court of Appeal itself has indicated willingness to reverse its previous decisions for purposes of fostering justice.

The doctrine *stare decisis* does not entail establishment of never changing system of precedent. To use the words of Lord Denning in **OSTIME V. AUSTRALIAN MUTUAL PROVIDENT SOCIETY** [1960] A.C. 459 at p. 489: "The doctrine of precedent does not compel your Lordships to follow the wrong path until you fall over the edge of the cliff."

On the contrary, the purpose of the doctrine is to promote consistency and stability in the legal system. I am convinced that the Court of Appeal's decision in **KURWA LIMBU @MUSHA v. R. (supra)** is not only a binding decision as per the doctrine of precedent but also, in my opinion, free from being a "wring path" that would lead to "the edge of the cliff."

Premised on the above, I allow the appeal. The District Court of Liwale is ordered to proceed with the case from where it ended.

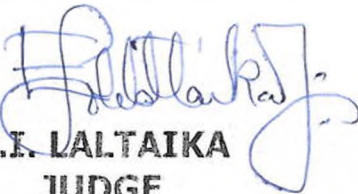
It is so ordered.




E.I. LALTAIKA
JUDGE
30.10.2023

Judgment delivered this 30th day of October 2023 in the presence of Mr. Steven Aron Kondoro, learned State Attorney for the Appellant, Suleha Tumba, learned Counsel for the respondents and the respondents.




E.I. LALTAIKA
JUDGE
30.10.2023

Court

The right to appeal to the Court of Appeal of Tanzania is fully explained.




E.I. LALTAIKA
JUDGE
30.10.2023