

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

CRIMINAL APPEAL NO. 59 OF 2023

(Originating from District Court of Mlele in Economic Case No. 18 of 2023)

SIRI S/O JINASA @ SHIJAAPPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

31/10/2023, 5/5/2023

JUDGMENT

MWENEMPAZI, J:

The appellant was arraigned in the District Court of Mlele at Mlele and charged with two counts. In the first count the appellant was charged with the offence of Unlawful Possession of Government Trophy contrary to section 86(1)(2)(c) (iii) of the Wildlife Conservation Act, Cap. 283 R.E.2022 read together with paragraph 14 of the First Schedule to and section 57(1) and 60(2) of the Economic and Organized Crime Control Act, [Cap. 200 R.E.2022]. In this count the prosecution alleged that on the 13th day of November, 2022 at Kanoge Village within Mlele District in Katavi Region, was found in possession of Warthog meat (two pieces and one tail) valued at

USD 450 equivalent to Tshs. 1,043,550/= only, the property of the United Republic of Tanzania without any permit thereof.

In the second count the appellant was charged with the offence of Unlawful possession of Government Trophy contrary to section 86(1)(2)(c) (iii) of the Wildlife Conservation Act, Cap. 283 R.E.2022 read together with paragraph 14 of the First Schedule to and section 57(1) and 60(2) of the Economic and Organized Crime Control Act, [Cap. 200 R.E.2022]. In this count it was alleged that on the 13th day of November, 2022 at Kanoge Village within Mlele District in Katavi Region, the accused was found with Leopard Skin valued at USD 3500 equivalent to Tanzania Shillings 8,116,500/= being the property of the Government of the United Republic of Tanzania without any permit thereof.

Upon the hearing of the case, the appellants were found guilty and convicted with both counts of offences and sentenced to serve a term of Twenty Years in Jail in each count whereby the sentences were ordered to run concurrently.

The appellant filed this appeal and registered six (6) grounds of appeal. For the reasons to be known shortly I will not reproduce the grounds of appeal.

At the hearing the appellant was unrepresented and the responded was being served by Mr. Mathias Joseph. The appellant was brief in his submission that he prays his ground of appeal be considered and the appeal be allowed.

The learned State Attorney in his reply submitted that this is an appeal from Economic Case No. 18 of 2022. The appellant was charged with two counts. The appellant is alleged to have been found with warthog meat.

He submitted that they are supporting the appeal for legal reasons. The certificate and consent have no charging section, namely section 86(1) and 2(c) (iii) of Wildlife Conservation Act.

Lack of the charging section renders the proceedings fatal. The Court was deprived of its jurisdiction to try the case. In the case of **Dilipkumar Maganbai Patel Versus the Republic, Criminal Appeal No. 270 of 2019** the Court held that:

"Irregularities of the consent and certificate of the DPP with regard to the name and propriety of the provisions of the law, the trial court was not properly seized with jurisdiction to try the appellant as charged."

The counsel prayed that this court quashes the proceedings and the judgment. The way forward, due to evidence available, he prayed that this court orders for retrial. The evidence available is sufficient to prove the offence.

I have read the documents, the consent and certificate conferring jurisdiction issued by the Director of Public Prosecution. Indeed, the documents were issued and recorded in the proceedings dated 7/3/2023 to be part of the proceedings. However, the contents thought made under the proper law, they did not include the charging section.

In the case referred, ***Dilipkumar Maganbai Patel Versus the Republic, Criminal Appeal No. 270 of 2019(supra)*** it was held that:

"We have no doubt that in view of our deliberations 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 the provisions which the appellant was not charged with. The consent and certificate did not refer to section 86(1), (2)(c)(ii) and (3) of the WCA which

was clearly cited in the charge sheet. The certificate and consent were therefore incurably defective and the trial magistrate could not cure the anomaly in the Judgment...”

In the case, it was that observed that *‘in the event, having held that the consent and certificate were incurably defective there could not have been any valid proceedings before the trial court resulting in the conviction and sentence handed out to the appellant.’* The proceedings were thus nullified, conviction was quashed and sentence was set aside.

Similarly, in our case I proceed to nullify the proceedings of the trial court, quash judgement and conviction and set aside the sentence. As prayed by the counsel for the respondent I proceed to order for the original case file to be returned to the trial court and the case be tried de novo. In the mean time the appellant shall remain in custody pending retrial before the competent court.

Ordered accordingly.

Dated at **Sumbawanga** this 5th day of December, 2023


T. M. MWENEMPAZI
JUDGE

Judgment delivered in the Judge's chamber this 5th day of December, 2023
in the presence of the appellant and Mr. Ladislaus Michael, learned State
Attorney and Ms. Neema Nyagawa, learned State Attorney.




T. M. MWENEMPAZI
JUDGE
05/12/2023