

IN THE HIGH COURT OF TANZANIA
(SUMBAWANGA DISTRICT REGISTRY)
AT SUMBAWANGA
DC. CRIMINAL APPEAL NO. 04 OF 2023

(Original from Mlele District Court in Economic Case No. 7 of 2022)

GILBERT EVOD @ MTITIMYA1ST APPELLANT

SHUKURU EDWARD @ CHEKWE2ND APPELLANT

VERSUS

REPUBLICRESPONDENT

JUDGMENT

6th November & 12th December, 2023

MRISHA, J.

The appellants were aggrieved by the decision of the District Court of Mlele at Mlele (the trial court) in Economic Case No. 07 of 2022 delivered on 24.10.2022 in which the said trial court convicted both of them on the 1st, 2nd and 3rd counts as per the charge sheet, and sentenced each of them to serve a sentence of twenty (20) years in jail for each count, and for the 6th

and 7th counts, each accused person was sentenced to serve the imprisonment sentence for a term of one (1) year in jail for each count.

In brief, the appellants were charged with a total of seven counts all of which were relating to Economic crimes. In the first count, they were charged with the offence of being in Unlawful possession of government trophy contrary to section 86(1) and (2)(c)(i)(ii) of the Wildlife Conservation Act No. 5 of 2009 (the WCA) read together with paragraph 14 of the First Schedule of the Economic and Organized Crime Control Act, Cap 200 R.E. 2019 (the EOCCA).

In the third and fourth counts, they were charged with the offence of Unlawful possession of Firearms and Ammunition under the Firearms and Ammunitions Control Act No. 2 of 2015 (the FACA) read together with paragraph 31 of the First Schedule to, and section 57(1) and 60(2) of the EOCCA.

In fifth count, the above-named accused persons were charged with the offence of being in unlawful possession of explosives contrary to section 3(1) and (2) of the Explosives Act Cap 45 R.E. 2002, whilst in the sixth count, they were charged with the offence of unlawful entry into game reserve contrary to section 15(1) and (2) of the WCA and in seventh count,

they were charged with the offence of Unlawful carrying of weapons into the game reserve contrary to section 17(1) and (2) of the WCA.

It was alleged that on 07.04.2022 at Musu River area in Rukwa Game Reserve within Mlele District in Katavi Region, the appellants were found in possession of Warthog meat valued at USD Dollar 450 equivalent to Tshs. 1,054,800/=, Impala meat valued at USD Dollar 390 equivalent to Tshs. 914,160/=, being the properties of the Government of the United Republic of Tanzania without any permit from the Director of Wildlife.

That on the same date and place, the appellants were found in possession of three locally muzzle loading gun commonly known as "*Gobole*", 148 Ammunitions of muzzle loading guns commonly known as "*Gobole*" without any permit thereof and also, they were found possessing two axes, two knives and two machetes into the Musu River area in Rukwa Game Reserve without any written permit from the Director of Wildlife.

After hearing evidence from both sides, the trial court found that the offences of unlawful possession of government trophy, unlawful possession of firearm, unlawful possession of ammunition, unlawful entry into game reserve and unlawful carrying of weapons into game reserve the appellants were charged with, had been proved by the prosecution side on the

standard required by the law. Thereafter, it convicted and sentenced the each of them, as indicated above.

Dissatisfied, the appellants lodged the instant appeal in order to challenge the convictions and sentences awarded to them by the said trial court. Their petition of appeal is predicted into four (4) grounds of appeal, but for the reasons to be stated shortly, I will refrain from dealing with them, rather I will choose a different direction in order dispose of the present appeal.

At the hearing of the present appeal, the appellants appeared in person with no legal representation and urged this court to adopt their grounds of appeal so that they form part of their submissions in chief. They also requested the court to allow their appeal and let them free. On the adversary side, Mr. David Mwakibolwa, learned State Attorney who was assisted by Ms. Atupelye Makoga, also learned State Attorney, appeared for the respondent Republic.

The appellants raised four grounds of appeal. However, when Mr. Mwakibolwa was called on to respond to the appeal, he supported the appeal and diverted from responding on the grounds of appeal; instead, he informed the court that upon a serious examination of the trial court's

record, he has realized that the Consent of the Prosecution Attorney in the charge sheet and a Certificate conferring jurisdiction to the subordinate court to try an economic offence, were defective by failure to contain a charging section thus, rendering the trial court proceedings and judgment invalid.

He cited the case of **Dilipkumar Maganbai Patel v Republic**, Criminal Appeal No. 270 of 2019 (unreported) CAT at Dar es Salaam to bolster his proposition. In elaboration, he said, failure by the prosecution to insert the charging section in the consent and certificate conferring jurisdiction in Economic Case No. 7 of 2022, made the trial subordinate court to lack the requisite jurisdiction to try the case before it.

He therefore, urged this court to quash the proceedings, convictions of both accused persons as well as the trial court's judgment and set aside sentences meted out to the said appellants. On the fate of the both accused persons, he prayed the court to order that the casefile be returned to the trial court so that a proper certificate will be issued and trial commence afresh, the reason being that there is sufficient evidence on the side of the prosecution Republic/respondent to prove their case against both appellants on the standard required.

He further submitted that the prosecution Republic/respondent will rely on the available direct evidence, documentary evidence as well as physical evidence to discharge such legal duty. He further proposed that once a retrial order is made, both appellants have to remain in custody pending retrial before a court with competent jurisdiction. He was of the view that the approach he had suggested, suffices to dispose of the present appeal otherwise, dealing with four grounds of appeal will be an academic exercise.

As expected, the appellants had nothing to re-joinder on the legal issues submitted by Mr. Mwakibolwa. Being lay persons, beyond their knowledge; they also left it to the court to determine the appeal and set them free. However, as I have said before, I will not take time to address the grounds of appeal which the appellants have raised through their petition of appeal because I am certain that legal issue raised by counsel for the respondent at this appellate stage and which was not challenged by the appellant, touches the jurisdiction of the trial court in respect of economic offences, and it is enough to dispose of the present appeal.

The issue for my determination here is whether the trial court had jurisdiction to try the economic case against the appellants herein. In the

case of **Balthazary Kinasha v Paula Bernad Nindi**, Misc. Land Appeal No. 69 of 2020 (unreported), this court took inspiration on the definition of term "*jurisdiction*" as provided in the **Halsbury's Laws of England**, 4th Edition Reissue Vol. 10 para 314, which goes thus:

*"By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision. **The limits of this authority are imposed by the statute**, charter or commission under which is constituted, and may be extended or restricted by similar means" [Emphasis supplied]*

I am inspired to with the above definition as it is the position of the law that a court of law cannot have power to inquire into and determine any matter brought before it unless it has been conferred with jurisdiction to do so by either statute or other means, as indicated above.

Yet again, it is a trite law that the issue of jurisdiction can be raised at any stage of the case, including the appellate stage; see the case of **Shungu Walyane v Jackson Mwasaka**, Misc. Land Appeal No. 4 of 2022(unreported). Having appreciated the above principles of law which in

my view are useful to guide this court in determining the present case, I am now in a good position to answer the above issue accordingly.

As far as the EOCCA is concerned, the court with competent to try the offence under that law, is the High Court. However, under section 26(2) of EOCCA, the Director of Public Prosecution henceforth the DPP, is vested with power to give consent for the economic case to be tried by a court subordinate to the High Court. Also, the DPP or any officer authorized by him is required by certificate, to order that any case involving an offence triable by the High Court under the EOCCA, be tried by the subordinate court, as he may specify in the certificate.

The records of the trial court bear it out that the State Attorney In charge for Katavi erroneously issued the consent that the case be tried by the District Court of Mlele and the certificate conferring the trial court with jurisdiction to try the appellant because the said consent and certificate did not have the charging provisions which are sections 86(1) and (2) (c) (ii) of the WCA.

In order to fortify the above court's observation, I find it significant to reproduce the relevant parts of the charge sheet, the consent of the Regional Prosecution Officer as well as that of the Certificate conferring

jurisdiction to Subordinate court to try Economic case, which parts are the subject of my discussion, in order to show where the alleged irregularity is. Starting with the charge sheet particularly on first count, it can be reflected as follows:-

"IN THE DISTRICT COURT OF MLELE DISTRICT

AT MLELE

(ECONOMIC CRIMES JURISDICTION)

ECONOMIC CRIME CASE NO. 07 OF 2022

REPUBLIC

VERSUS

1. GILBERT S/O EVOD @MTITIMYA

2. SHUKURU S/O EDWARD @CHEKWE

CHARGE

1ST COUNT

STATEMENT OF OFFENCE

UNLAWFUL POSSESSION OF GOVERNMENT TROPHY:

Contrary to section 86(1) & (2)(c)(ii) of the Wildlife Conservation Act No. 5 of 2009 as amended 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 R.E. 2019].

PARTICULARS OF OFFENCE

GILBERTS/O EVOD @MTITIMYA and SHUKURU S/O

EDWARD @CHEKWE, on the 07th day of April, 2022 at Musu River area in Rukwa Game Reserve within Mlelele District in Katavi Region, were found in possession of Warthog meat valued at USD Dollar 450 equivalent to Tshs. 1,054.800/= being the property of the Government of United Republic of Tanzania without any permit from the Director of Wildlife..."

Coming to the consent, the same reads as follows: -

"CONSENT OF THE PROSECUTIONS ATTORNEY IN CHARGE

*I, **HONGERA GABRIEL MALIFIMBO**, Prosecution Attorney in-charge of Katavi Region, do hereby in terms of section 26(2) of the Economic and Organized Crime Control Act [Cap 200 R.E 2-19] read together with part III of the schedule to the Government Notice No. 496H of 2021 **DO HEREBY CONSENT** to the Prosecution of **GILBERT S/O EVOD @MTITMYA** and **SHUKURU S/O EDWARD @CHEKWE** for contravening paragraph 14 and 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], the particulars of which are set out in the charge sheet.*

Dated at Mpanda this 19th day of July, 2022

Sgd

HONGERA GABRIEL MALIFIMBO

PROSECUTION ATTORNEY IN-CHARGE

Presented for filing this 19th day of 07 2022"

And with regard to the Certificate, the same reads as follows: -

***"CERTIFICATE CONFERRING JURISDICTION TO
SUBORDINATE COURT TO TRY AN ECONOMIC CRIMES CASE***

*I, **HONGERA GABRIEL MALIFIMBO**, Prosecutions Attorney in-charge of Katavi Region, in terms of section 12 (3) of the Economic and Organized Crime Control Act [CAP 200 R.E. 2019] read together with part III of the schedule to Government Notice No. 496H of 2021 do hereby **ORDER** that **GILBERT S/O EVOD @MTITIMYA** and **SHUKURU S/O EDWARD @CHEKWE** who are charged for contravening paragraph 14 and 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] **BE TRIED** by this **DISTRICT COURT OF MLELE DISTRICT AT MLELE.***

*DATED at **MPANDA** this 19th day of July 2022*

Sgd

***HONGERA GABRIEL MALIFIMBO**
PROSECUTION ATTORNEY IN-CHARGE"*

From the above excerpts, it is clear that the consent and certificate which were tabled before the trial court, do not depict anywhere in their contents that section 86(1) and (2)(c)(iii) of the WCA which is clearly

shown in the charge sheet containing economic offences the appellants herein were charged with, was inserted in them.

Since the alleged consent and certificate conferring jurisdiction to the trial court to try the appellants, do not have an insertion of the charging provision of the law which appears in the charge sheet, I am constrained to follow the guiding principle stated by the Court of Appeal in the case of **Dilipkumar Maganbai Patel v Republic** (supra), and proceed to find that the certificate and consent filed before the trial court, were incurably defective, and for that reasons, I am inclined to find that the trial and proceedings before the District Court of Mlele at Mlele in Economic Case No. of 2022, were a nullity.

It is my settled view that the trial court had no jurisdiction to try the Economic Crime Case No. 07 of 2022 in the absence of the valid consent and certificate of the DPP to prosecute them. With the above reasons, the issue raised above is therefore answered in the affirmative.

Since the above deliberation and reasons are enough to dispose of the present appeal, I hereby nullify the proceedings of the trial court; quash the convictions and set aside all the sentences meted out to the appellants.

Having considered the prevailing circumstance of the case at hand and parties' arguments on legal issue raised by the respondent's counsel at this appellate stage, and which was not challenged by the appellants herein, I hold that this is a fit case to order a retrial in order to meet the ends of justice, as I hereby do.

In furtherance of the above, and for the purpose of avoiding doubts, I order that the retrial of the appellants' case will be subject to certificate coffering jurisdiction and consent of the DPP or any officer authorized in his behalf, to prosecute the appellants.

In the meantime, the appellants shall remain in custody pending retrial before a court of competent jurisdiction, and finally, I direct the trial court upon being clothed with such jurisdiction, to consider the period the appellants have spent in prison custody, when assessing proper sentence(s) to be imposed upon them in the event it convicts them on the charged offences.

It is so ordered.


A.A. MRISHA
JUDGE
12.12.2023

DATED at **SUMBAWANGA** this 12th day of December, 2023.




A.A. MRISHA
JUDGE
12.12.2023