

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

CRIMINAL APPEAL NO. 50 OF 2023

(Originating from Economic Case No. 1 of 2020 Bariadi District Court)

SAMWELI JOSEPH.....APPELLANT
VERSUS
THE REPUBLIC.....RESPONDENT

JUDGMENT

24th October & 22nd December 2023.

MASSAM, J.:

The appellant here in above was charged before the District Court of Bariadi at Bariadi with three counts, Unlawful possession of the Government Trophies contrary to section 86 (1) and (2) (b) of the Wildlife Conservation Act No. 5 of 2009, read together with paragraph 14 of the first schedule to, Section 57 (1) and 60 (2) of the Economic and Organized Crime Control Act (CAP 200 R.E 2019).

The particulars of the offence as per the charge sheet was that, on 29th day of July, 2021 at Lamadi village within Busega District in Simiyu Region was found in unlawful possession of Government trophies to wit one fresh piece of behind limb meat of wildebeest equal to one wildebeest

unlawfully killed valued at one thousand nine hundred dollars usd 650 equivalent to Tsh 1,501,500/= the property of Tanzania Government.

At the trial, the Appellant was found guilty after the prosecution had proved their case beyond reasonable doubt, hence convicted and sentenced to face imprisonment of twenty years.

During the hearing of this appeal, the appellant appeared in person unrepresented, while the respondent was represented by Mr. Kiwango learned State Attorney.

Aggrieved therein, the appellant rightly lodged his appeal in this court with 4 (four) grounds, as follows **first** that the trial court erred in law to pass sentence without sufficient evidence which adduced by the public witnesses. **Second** the court misdirected himself to convict him in regard that no any independent witness who come before the court to prove that he was arrested with the said trophies. **Third** the trial court erred in law and in fact to hold conviction that the offence of possession of government trophies properly proved to the effect that in the course of trial no any exhibits were showed by the prosecution side to satisfy the court truly he was with the said trophies. **Fourth** the court erred to pass a sentence

where by the prosecution side did not prove the case beyond reasonable doubt.

During the hearing of this appeal, the appellant appeared in person unrepresented, while the respondent was represented by Mr. Kiwango learned State Attorney.

In submitting his appeal, the appellant contended that, the trial court did not do justice when convicting him, hence he prays to be let free.

On the respondent's side, Mr. Kiwango, supported this appeal due to the illegalities found at the hearing of this case at the trial court to the effect that, since this is an economic case, it was therefore supposed to be heard by the High court, but Bariadi District Court conducted the hearing after had been given consent by DPP, but the same was wrongly done as it was given by RPO under Section 26(1) of EOCCA Cap 200 R.E, 2019 while that Section is only used by DPP when giving consent to the subordinate court to entertain matters like this and the said section is not delegated. The RPO was required to give consent under section 26(2) of EOCCA.

He referred this court to the case of **Peter Kongori Maliwa Vs. Republic, in Criminal Appeal No. 253 of 2020, at page no. 9** which

held that, the consent in that Section is given by DPP only, RPO was required to use Section 26(2) of EOCCA and not Section 26(1) of EOCCA which he used.

He submitted further that, due to that error, the trial court had no jurisdiction to entertain the said case, but since the evidence adduced by the prosecution was strong enough to prove on that the accused person committed these offence, as it was found that on the said date at Makanisa Lamadi the appellant was found with wildebeest meat selling it, the certificate of seizure was filled the same was supported by the evidence of PW2 wildlife officer who identified the said meat to be of wildebeest meat the said certificate of seizure was admitted as exhibit P.2, The said evidence was also supported by PW3 who filled the inventory and was tendered as exhibit P3.

Again the bucket and motorcycle which was used to carry that meat was tendered as exhibit P4. He prays this court to nullify the trial court proceedings, and quash the decision there to, and order retrial as nowhere shows that, by ordering re trial prosecution will fill the gap. He referred this court to the case of **Msigwa Matonya Vs. Republic, Criminal Appeal No. 492/2020**, and the case of **Fatenal Manji Vs. R, 1996 E.A 343**, so

I pray for retrial. On his rejoinder, the appellant told this court to disregard the respondent's submission and support his grounds of appeal.

Having gone through the submissions by the parties, the centre issue for determination is **whether the trial court was properly vested with jurisdiction to try this offence appellant charged with.**

To start with, it is clear from the provision of Section 3(3) of the EOCCA, that, all economic offenses are to be tried within the jurisdiction of the Corruption and Economic Crimes Division of the High Court. However under the provision of Section 12(3) of the same Act, the same powers have been vested to the subordinate Court upon being given consent by DPP or any state attorney dully authorized by him. The provision of section 12(3) supra provides that,

"The Director of Public Prosecution or any state Attorney dully authorized by him may in each case in which he deems it necessary or appropriate in the public interest by certificate under his hand order that any case involving an offence triable by the court under this Act be tried by such Court subordinate to the high court as he may specify in the certificate"

Again, it is a matter of law that, before the subordinate court try such offenses, it has to be availed with DPP's consent under the provision of section 26(1) of the EOCCA, which states that,

"Subject to the provision of this section, no trial in respect of the economic offence may be commenced under this Act save with the consent of the Director of public Prosecution"

In our present case, and as per the evidence testified by the prosecution to wit, the Respondent herein above, it is from his evidence that, consent was issued by Regional Prosecution Officer/Attorney (RPO) instead of DPP under the provision of Section 26(1) of EOCCA, whereby in that section, it is only DDP who had been vested with powers to use such provision of law and the said power cannot be delegated, in this case, the consent was signed by a Regional Prosecution Attorney in Charge whose powers are enshrined under section 26 (2) of the Act and not section 26(1) as she did.

Therefore, the consent submitted before the trial Court to try this offence was invalid and thus the trial court lacked perquisite jurisdiction to try the matter. The above position was insisted by the Court of Appeal in numerous cases including the case of **Peter Kongori Maliwa & 4 others**

vs Republic, (Supra) as cited early by the respondent, the Court of Appeal citing in approval with the case of **Dilipkumar Maganbai Patel v. Republic, Criminal Appeal No. 270 of 2019** (unreported) where it was held inter alia that;

"We have no doubt that in view of our deliberation 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) (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 judgment as suggested by the learned State Attorney for the respondent. The defects rendered the consent of the DPP and the certificate transferring the economic offence to be tried by the trial court invalid. For that reason, we are constrained to find that the trial and proceedings before the Resident Magistrate Court of Dar es Salaam at Kisutu in Economic Case No. 58 of

***2016 and the High Court in Criminal Appeal No. 146 of 2018
were nothing but anullity"***

Guided by the case law above, this court is agreeing with the learned State Attorney that their failure to cite the proper provisions of the law in the consent vitiates the trial proceedings and renders the whole proceedings and judgement of the trial court a nullity.

On the way forward, the learned State Attorney prayed to the court to order a retrial. On the other hand, the appellant prayed to be acquitted and set free. The State Attorney prayed to the court to order retrial, for the reasons that, the evidence tendered before the trial court was sufficient to prove the offense against the appellant, preferably the evidence of PW2, and PW3 who were the wildlife officers and the one who examined the said meat and found out that it is a wildest meat and the ones who filled the inventory and valuated the same. Again exhibit P2 (valuation report), P4 which is the motorcycle and bucket and P3 inventory form were tendered to the court and proved that the appellant was found with the said meat, hence the appellant was connected with these offence.

This court find a time to peruse the the trial court records to see the evidence brought by the prosecution side together with the exhibits

tendered, and I have realized that, there is enough evidence which connect the appellant with the offence and there is no way that, if this court will order a retrial, the prosecution will have chance to fill in gaps as it was debated in the case of **Fatehal Manji V. Republic** (1966) E.A 343, which held that,

*"In general, a retrial will be ordered only when the original trial was illegal or defective. **It will not be ordered where the conviction is set aside because of insufficient of evidence for the purposes of enabling the prosecution to fill up the gaps in its evidence at the trial. Even where a conviction is vitiated by a mistake of the trial court for which the prosecution's not to blame it does not necessary follow that a retrial shall be ordered;** each case must depend on its own facts and circumstances and an order of retrial should only be made where the interest of justice require."* [Emphasis added].

From the above case, and in the present matter, this court find out that there was enough evidence sufficient to convict the appellant, and because the original record was illegal as the consent of giving the jurisdiction to the said court was invalid, that means, the appellant

conviction was vitiated by mistakes of the trial court, so it will be for the interests of justice to order for retrial.


Consequently, therefore, in this appeal, this court is nullify the proceedings of the trial court, quash the conviction and set aside the sentence thereof.

Thus, I remit the matter to the District Court of Bariadi at Bariadi for a retrial before another magistrate with competent jurisdiction.

It so ordered

DATED at **SHINYANGA** this 22nd day of December, 2023.




R.B. Massam
JUDGE
22/12/2023