

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT TABORA

DC. CRIMINAL APPEAL NO. 31 OF 2022

*(From the Resident Magistrate's Court of Tabora Original Economic
Crime Case No. 79 of 2021)*

BANZA S/O KIBOKO @ RUBAFU.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

Date: 13/3/2023 & 17/3/2023

BAHATI SALEMA, J.:

The appellant **BANZA S/O KIBOKO @ RUBAFU** was arraigned in the Resident Magistrate's Court of Tabora where he was charged with 1st count; unlawful entry in a game reserve contrary to section 15(1) and (2) of the Wildlife Conservation Act, No. 5/2009, 2nd count unlawfully possession of a weapon in a game reserve contrary to section 17(1) and (2) of the Wildlife Conservation Act, No. 5 /2002 read together with paragraph 14 of the first schedule to and Section 57 (1) & 60 (2) of the Economic and Organized Crime Control Act, Cap. 200 [R.E. 2019] as amended and 3rd Count: Unlawful Fishing in a Game Reserve c/s 19 (1)

(2) (d) of the Wildlife Conservation Act No. 5/2009 read together with Paragraph 14 of the First Schedule to and Section 57 (1) & 60 (2) of the Economic and Organized Crime Control Act, Cap. 200 [R.E.2019] as amended and sentenced to serve a custodial sentence of twenty years imprisonment. This appeal is against the conviction and sentence, on the grounds namely: -

- 1. That, the case for the prosecution was not proved against the appellant beyond reasonable doubt as required by the law.*
- 2. That, the learned Senior Resident Magistrate acted without jurisdiction for entertaining the matter before her without consent from the Director of Public Prosecution.*
- 3. That, the alleged plea of guilty by the appellant was ambiguous and equivocal.*
- 4. That, the omission by the prosecutor to tender the alleged weapon and dry fish coupled with the failure to read aloud*

The appellant prays this court to allow the appeal, quash the conviction, set aside the sentence, and order for the appellant's release from prison custody.

When the matter was called on for hearing the appellant was self-represented whereas Ms. Tunosye Luketa learned State Attorney appeared for Republic.

The appellant prayed to this court to adopt the grounds of appeal to form part of his submissions.

Responding, Ms. Luketa quickly conceded to the second ground of appeal raised by the appellant and addressed the court on it. She stated that it is true the learned Resident Magistrate acted without jurisdiction for entertaining the matter before him without consent from the Director of Public Prosecution. On that ground, she prayed to this court to allow the appeal and for the interest of justice to order a retrial.

I have had to canvass the submission by both parties as well as the record of appeal. The issue is whether the appeal has merit.

Section 3(1) of the Economic and Organized Crime Control Act, Cap.200 only the High Court has jurisdiction to sit in Economic cases. The district or any other subordinated court is conferred jurisdiction by a certificate of transfer and consent issued by the Director of the Public Prosecution under sections 12(3) and 26(1) of the Act respectively.

In this matter at hand, the learned State Attorney supported her submission and asked the court to quash to nullify and quash the proceedings as well as the judgment on the ground that the trial court had no jurisdiction and order for retrial.

Having painstakingly traversed the record I noted that it is true indeed that no certificate was issued. Therefore I am of the considered

view that without the certificate of transfer and consent of a DPP issued under section 12(3) and 26(1) of the Act, Cap. 200, the court did not have the requisite jurisdiction over the case. As a result, I quash the entire proceedings and set aside the sentence and the resultant orders. Having quashed the entire proceedings, the learned State Attorney requested a retrial order. The principle in ordering retrial was comprehensively deliberated in the case of **Fatehali Manji V Republic** [1966] EA 343 where the court held that;

"In general a retrial may be ordered only when the original trial was illegal or defective; it will not be ordered where the conviction is set aside because of insufficiency of evidence' or for the purposes of enabling the prosecution to fill gaps in its evidence at the first trial. Each case must depend on its facts and circumstances and an order for retrial should only be made where the interest of justice requires it."

Guided by the above principle, the interest of justice do require a retrial in the present case. I also agree with the learned Senior State Attorney that the circumstances of this case warrant making an order for retrial. Thus, I find merit and accordingly order a retrial before a court of competent jurisdiction.

Order accordingly.

A. Bahati

**A. BAHATI SALEMA
JUDGE
17/3/2023**

Court: Judgment delivered in presence of appellant.

A. Bahati

**A. BAHATI SALEMA
JUDGE
17/3/2023**

Right of Appeal fully explained.



A. Bahati

**A. BAHATI SALEMA
JUDGE
17/3/2023**