

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBA DISTRICT REGISTRY

AT BUKOBA

ECONOMIC APPEAL NO. 05 OF 2022

(Originating from Economic Case No. 03 of 2019 of Muleba District Court)

EVELIUS BURCHARD @KWEYAMBA.....APPELLANT

VERSUS

THE REPUBLICRESPONDENT

JUDGMENT

13 & 16/02/2023

E. L. NGIGWANA, J.

The appellant and another person who is not a party to this appeal were charged with the offence of Unlawful Possession of Government Trophy contrary to section 86 (1) and (2) (c) (ii) of the Wildlife Conservation Act of 2009 as amended by section 59 of the Written Laws (Miscellaneous Amendments) No. 2 Act No. 4 of 2016 read together with paragraph 14 of the First Schedule and section 57 (1) of the Economic and Organized Crimes Control Act Cap 200 R:E 2002 as amended by section 16 of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016.

At the trial court, it was alleged that, on 15/12/2019 at Waisuka Guest House in Kagabiro Street within Muleba District in Kagera Region, the Appellant and Another were found in possession of Government Trophy to wit; one skin of

serval cat (Mondo) and meat valued at USD 500 without a valid written permit from the Director of the Wildlife Conservation Authority.

They both denied the charge; as a result, the case proceeded to a full trial at which the court was satisfied that the case against the appellant had been proved beyond reasonable doubt, therefore he was convicted and sentenced to twenty (20) years imprisonment while his co-accused was acquitted owing to the reason that the court found that the case against him had not been proved beyond reasonable doubt.

Aggrieved by the decision of the trial court, the appellant has knocked the doors of this court armed with seven grounds of appeal which can conveniently be merged into a single ground of appeal;

"That the trial court erred in law and facts by convicting the appellant on the case which was not proved beyond reasonable doubt".

However, before the commencement of the hearing, this court, on *suo motu* discovered an important issue touching on a point of law which is non-compliance to the relevant procedure before determining economic offences by subordinate courts.

Parties were accordingly invited to address this court. At the hearing of this appeal, the appellant appeared in person, unrepresented, whereas Mr. Amani Kilua learned State Attorney, appeared for the Republic/Respondent.

When invited to take the floor, the appellant briefly said the trial court proceeded with the case without jurisdiction and even if it is assumed that it had jurisdiction yet the case against him was not proved to against him beyond reasonable doubt. He ended his submission urging the court to consider his grounds and appeal and do justice.

In reply, Mr. Amani Kilua supported the appeal on the major ground that after careful perusal of the trial court proceedings, he discovered that consent and certificate of the Director of Public Prosecutions were never filed in the court as per the law before the commencement of the trial, thus the District Court of Muleba had no jurisdiction over the matter as said by the appellant. He added that in that respect, there is no need to argue the remaining ground because the legal issue raised by the court is sufficient to dispose of this appeal. The State Attorney referred this court to the case of **Fanueli Mantiri Ng'unda versus Herman Mantiri Ng'unda and 20 others**, Civil Appeal No. 8 of 1995 CAT (Unreported) where it was held among other things that the question of jurisdiction is fundamental, and without it, the court cannot entertain the matter. He added that as per the case of **Peter Msimbe and Another**

versus Republic, Criminal Appeal No.168 of 2020 CAT (unreported) where the trial court proceeded and finalized the matter without jurisdiction, in most cases, the appellate court has no option but to nullify the proceedings of the trial court for being a nullity. Mr. Kilua added that, in the present matter, considering the fact that the charge sheet revealed that on 15/12/2019, the appellant was found in possession of one skin of serval cat and meat but certificate of seizure dated 15/12/2019 shows that only one skin of serval cat was seized from him. Following the said defects, he cannot press for the re-trial of the appellant since such an order will certainly occasion a miscarriage of justice.

I have carefully heard submissions of both parties; therefore, the issue for determination is whether the trial court proceeded with the matter without jurisdiction.

It is trite law that every economic offence under the Act has to be preceded by the consent and certificate of the Director of Public Prosecutions (DPP) under section 26 (1) of the Economic and Organized Crimes Control Act Cap. 200 R:E 2019 which stipulates that;

"Subject to the provisions of this section, no trial in respect of an economic case offence may be commenced under this Act save with the consent of the Director of Public Prosecutions".

The DPP is mandated to delegate his powers in terms of section 26 (2) of Cap. 200 R: E 2019. Section 12 (3) of the Act, Cap. 200 R: E 2019 provides that:

*“The Director of Public Prosecutions or any State Attorney duly authorized by him, may, in each case in which he deems 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**”.*

It is apparent that where there is no consent and certificate of the DPP, no subordinate court can be said to have requisite jurisdiction to try an economic case. In the case at hand, there are two documents in the trial court file to wit; **“Consent of the Prosecution Attorney In charge”** consenting to the prosecution of Evelius s/o Burukadi@Kweyamba and another and **“Certificate of the Prosecutions Attorney in Charge conferring Jurisdiction to the subordinate court to try Economic Crimes Offence”** conferring jurisdiction to the District Court of Muleba to try one Evelius s/o Burukadi@ Kweyamba and another, but the documents had no Economic Crime Case number, endorsement of the trial magistrate and were never filed in court and reflected in the court proceedings to have formed part and parcel of the court record. Now, whether the said instruments not formed part and

parcel of the court records were enough to confer jurisdiction to the District court of Muleba is a question which needs to be answered and I will be guided by the here under Court of Appeal decision in answering that question.

The Court of Appeal of Tanzania in the case of **John Julius Martin and Another versus The Republic**, Criminal Appeal No.42 of 2022, was confronted by submission made by the learned State Attorney Ms. Ngotia, that the mere presence of the documents to wit; certificate and consent of the DPP in the trial court's file, is legally enough and the subordinate court has jurisdiction.

The Court asked itself whether it is enough for the herein above instruments to just be delivered in the trial court's file or a prosecuting attorney should orally move the trial court in session before commencement of trial for it to endorse the documents as admitted and also record that act in writing. The Court had this to say;

*"Respectfully, we do not agree with her, because that is not the position maintained by this Court in **Maganzo Zelamoshi @ Nyanzomola v. R**, Criminal Appeal No. 355 of 2016 (unreported), there was a certificate and the consent in the record of the trial court, but the documents were not endorsed by the trial magistrate as having been duly admitted on record. In another case*

of Maulid Ismail Ndonde v. R, Criminal Appeal No. 319 of 2019 (unreported), there was neither an endorsement on the face of the consent and the certificate, nor did the trial court's record reflect that there were such documents on record. In both cases, the Court nullified the proceedings of both the trial court and of the High Court, because the certificate and the consent documents had no legal force as they were not endorsed by the trial magistrate as having been admitted them on record. The situation in the above cases is akin to the state of affairs obtaining in this case. Thus, we hold that because the instruments of consent and the certificate were neither endorsed as having been admitted by the trial court, nor does the record shows that the documents were admitted, the trial court tried the case without jurisdiction."

Being guided by the here in above decision, it goes without saying that in the matter at hand the trial court to wit; Muleba District Court commenced the Economic Case No 3 of 2019 without obtaining the consent of the DPP and the certificate conferring jurisdiction to it, and thus, it had no jurisdiction to try the matter.

It should always be noted that the question of jurisdiction is so fundamental that a court must as a matter of practice on the face of it be certain and assured of their jurisdictional position at the commencement of the trial because it is

risky and unsafe for the court to proceed with the trial of the case on the assumption that the court has jurisdiction to adjudicate upon the case. See the case of **Ramadhani Omari Mtiula versus The Republic**, Criminal Appeal No. 62 of 2019 CAT (unreported).

Since in the case at hand, the trial court had no jurisdiction, I firmly hold that the purported trial of the appellant was a nullity. In similar vein, the proceeding and the judgment made based on a null proceeding of the trial court were also a nullity. See **Mhole Saguda Nyamagu versus Republic**, Criminal Appeal No. 337 of 2016 and **Fanueli Mantiri Ng'unda versus Herman Mantiri Ng'unda and 20 others** (Supra), (Both unreported).

Also being guided **Peter Msimbe and Another versus Republic**, (Supra) and considering the circumstances of this case, I agree with the learned State Attorney that it is not in the interest of justice to order re-trial because it will certainly occasion miscarriage of justice. In the event, I order for an immediate release of the appellant unless he is otherwise held for another lawful cause.

It is so ordered.



E.L. NGIGWANA

JUDGE

16/02/2023

Judgment delivered this 16th day of February, 2023 in the presence of the Appellant in person, Mr. Amani Kilua, learned State Attorney for the Republic, Hon. E.M. Kamaleki, Judges' Law Assistant, Ms. Sophia Fimbo, B/C.



E.L. NGIGWANA

JUDGE

16/02/2023