

IN THE HIGH COURT OF TANZANIA
(SUMBAWANGA DISTRICT REGISTRY)
AT SUMBAWANGA
CRIMINAL APPEAL NO. 47 OF 2023

(Originated from the District Court of Tanganyika at Tanganyika in Economic Case No. 4 of 2023)

KALONGA ANDREA MASANJAAPPELLANT

VERSUS

THE REPUBLICRESPONDENT

JUDGMENT

26th February & 26th March, 2023

MRISHA, J

The appellant Kalonga Andrea Masanja was charged before District Court of Tanganyika in Economic Crime Case No. 4 of 2023. He was arraigned on a single count of being found in possession of Government trophy contrary to section 86(1) and 2(c)(iii) of the Wildlife Conservation Act henceforth the WCA, and section 57(1) and 60(2) of the Economic and Organized Crime Control Act [Cap 200 R.E. 2002] (the EOCCA).

In this connection it was alleged that on 28th day of March, 2023 at about 2300 hours at Mnyangara area, Tanganyika District within Katavi Region, the appellant was found in possession of Government trophy to wit: two pieces of dry meet of Hippopotamus valued at One thousand and five

hundred dollars (USD 1500) equivalent to Tanzania Shillings Three million five hundred eighty-three five hundred (TZS 3,583,500/=) without permission from the Director of Wildlife.

The record reveals that when the case was presented to the District Court for the first time on the 7th June, 2023 the charge was read over and explained to the appellant who pleaded guilty thereto, then the appellant's plea was taken upon which a plea of guilty was entered. Subsequently, the summary facts were read over and explained to the appellant who admitted some of the facts and disputed the rest, thus making the trial magistrate to record a change of plea into that of plea of not guilty.

On 20th June, 2023 when the case came before the trial court for preliminary hearing, the appellant was reminded the charged sheet and he pleaded guilty. In consequence thereof, he was found guilty, convicted on his own plea of guilty and sentenced to a term of twenty (20) years imprisonment.

The appellant is aggrieved with both conviction and sentence. He has thus, preferred this appeal through a Petition of appeal which contain three grounds of appeal, which I reproduce below: -

1. *That the trial court erred on law (sic) to in conducting trial and convict the accused un procedural.*
2. *That the trial court erred in law to convict an accused without inventory (sic) be submitted by prosecutor.*
3. *That the trial court erred in law for sentencing the accused (sic) unfairy and without considering the value of the said government trophy.*

At the hearing of the instant appeal the appellant appeared in person and had a legal service of Ms. Jenipher Biko, learned advocate whereas the respondent republic had the legal service of Godliver Shiyo and Jackson Komba, both learned State Attorneys.

The learned advocate for the appellant started to make her submission by praying to drop the abovenamed grounds of appeal and replace them by a single ground of appeal namely:

"That trial court had no jurisdiction to hear and determine the offence of economic case which faced the appellant."

Upon her prayer being granted, she submitted that the court with original jurisdiction to try economic offences is the High Court, Corruption and

Economic Crimes Division, as per section 3 of the Economic and Organized Crime Control Act (EOCCA), which vests the High Court with original jurisdiction to hear and determine cases involving economic offences. However, she submitted that under section 12(2) of the EOCCA, the Director of Public Prosecutions (the DPP) may issue a certificate confer jurisdiction to hear and determine the economic offence by a subordinate court.

She added that in the present appeal, the records of the trial court are silent on issue of certificate and consent of the DPP. She further contended that, although in the trial court casefile there is a certificate conferring jurisdiction to subordinate court to try economic crime case and consent of the Prosecution Attorney In charge, the trial court records do not show when those documents were tendered and admitted in court before the appellant's plea was taken.

It was her submission that in the circumstance the trial court had no jurisdiction to hear and determine the case against the appellant because the charge against the appellant was read over and explained to the appellant whose plea was taken without any proof to show that the certificate and consent were submitted and admitted by the trial court prior

to such plea taking, thus making both the plea and the proceedings to be a nullity.

To support her proposition, the learned advocate cited the case of **Salum Andrew Kamande v The Republic**, Criminal Appeal No. 513 of 2020 (unreported).

Also, she referred the case of **John Julius Martin and Paulo Samwel Girengi v The Republic**, Criminal Appeal No. 2020 (unreported), the Court held that: -

"Thus, we hold that because the instruments of consent and the certificate at page 3 of the record of appeal, were neither endorsed as having been admitted by the trial court, nor does the record show that the documents were admitted, the trial court tried the case without jurisdiction."

To more emphasis on that point, the appellant's counsel submitted that the trial court records are silent as to when the instruments of consent and certificate were admitted, thus, the trial court fell short of having requisite jurisdiction to entertain the economic offence the appellant was charged with. She therefore implored the court to follow the wisdom of the apex

court in case of **John Julius Martin and Paulo Samwel Girengi** (supra).

The last question from her to consider was what should be the way forward, that is whether to order acquittal or retrial. Ms. Jenipher Biko referred the case of **Fatehall Manji v Republic** (1966) 1 EA 343 and urged this court to be guided by the principle stated in the case of **Fatehall Manji** (supra) and acquit the appellant. She submitted, however, that if the court thinks different, then let it be pleased to order for retrial.

On the part of the respondent, Ms. Godliver Shio, conceded on the irregularity that the consent to prosecute the appellant and the certificate conferring jurisdiction on the trial court were not submitted and admitted in court. She also joined hands with the submission of the learned advocate for the appellant that the trial court had no jurisdiction to try the economic offence.

That, apart, the learned State Attorney prayed to the court to order retrial by the competent court with jurisdiction to hear the economic offence, without giving more details.

From the above submissions of the counsel for the parties it appears to me that both of them are in agreement that the District Court of Tanganyika had no jurisdiction to try the appellant who was arraigned before it for an economic offence.

Indeed, jurisdiction to try economic offence is vested in the High Court in terms of section 3 of the EOCCA. However, there is exception to the general rule; by a certificate conferring jurisdiction under section 12(3) or and (4) of the EOCCA, the DPP or any State Attorney authorized by him, may confer jurisdiction on a subordinate court to try an economic case. The DPP express his consent vide section 26(1) of the EOCCA to the case being tried by that subordinate court.

In the trial court, the appellant was charged and prosecuted with the offence of unlawful possession of government trophy which is an economic offence under section 12(3) of the EOCCA the High Court is vested jurisdiction to hear and determine the case.

However, it is on records that despite the certificate conferring jurisdiction was issued by the State Attorney in charge, the said certificate was not

endorsed or admitted by the trial court. This fact is mirrored from the trial court records as hereunder:

"Court; Charge read over and explained to accused person in the Language he understands that is Kiswahili who is asked to plea there to.

Accused plea; It is true I was found with the said two pieces of meat of hippopotamus in my house.

Court; Entered plea of guilty

Signed By

Accd; Signed

Date 7/6/2023"

However, the trial courts record reveal that there is a consent to prosecute the appellant and certificate conferring jurisdiction on the District Court of Tanganyika, but the records are silent on when the certificate conferring jurisdiction and consent of DPP were admitted or endorsed by the court in order to form part of the trial court proceedings. There is no clear record

showing how the consent and certificate found their way into the trial court records.

Thus, for what was transpired in the record, I subscribe the argument of the counsel for the parties that the appellant was tried without a proper certificate conferring jurisdiction on the District Court of Tanganyika and nor consent of his prosecution, hence, the proceedings of the trial court were nullity.

I have reached this conclusion by following the guiding principle stated in the case of **Salumu Andrew Kamande v The Republic** (supra) cited by Ms. Biko and other authorities including **Gaga Busalu & Dome Guenda @Ngumila v The Republic**, Criminal Appeal No. 586 of 2020 and **Shenda Musa @ Shenda & others v The Republic**, Criminal Appeal No. 355 of 2020 (both unreported), just to mention a few.

In the circumstance, I nullify the entire proceedings of the trial court, quash judgment and the conviction entered thereto. I consequently, set aside the sentence and orders resulting therefrom.

The last question is to consider the way forward, that is, whether to order acquittal of the appellant as submitted by Ms. Biko, or order retrial as prayed by the respondent.

In order for the appellate court to order retrial or not, it has to consider a number of factors. Those factors were outlined in the case of **Fatehali Manji v The Republic** (supra) and among the key factors is for the court to consider that if the case will be returned for a retrial, the prosecution will have an opportunity to fill in the gap in their evidence. Also, an order of retrial should be avoided if it will prejudice the appellant.

In the present appeal, the appellant pleaded guilty, no evidence was adduced by the prosecution to prove his case or not. It is my considered opinion that if I order a retrial of the peculiar circumstances of this case, I will provide prosecution chances of reorganizes their case and fill the gap, which may prejudice the appellant. This position was stated in the case of **Gaga Busalu & Dome Guenga @ Ngumila v The Republic** (supra) in which the Court of Appeal held inter alia that:

"This case presents a tricky scenario so we understand Ms. Sakafu's dilemma because the appellants pleaded guilty, therefore the

*prosecution had no opportunity to demonstrate whether they had enough evidence to prove the case or not. However, **ordering a retrial in the peculiar circumstances of the case will be providing the prosecution with a blank cheque to reorganize their case and fill in gaps, which may prejudice the appellants against the principles in Fatehali Manji's case (supra).***"
[Emphasis is mine]

For the foregoing reasons, I allow the appeal on the basis of the additional ground of appeal. Having nullified the proceedings, quashed the judgment and set aside the sentence, I refrain from making an order for a retrial, instead order the appellant's immediate release if he is not otherwise being lawfully held.

I so order.


A.A. MRISHA
JUDGE
26.03.2024

DATED at SUMBAWANGA this 26th day of March, 2024




A.A. MRISHA
JUDGE
26.03.2024