

**IN THE HIGH COURT OF TANZANIA
TANGA SUB-REGISTRY
AT TANGA**

CRIMINAL APPEAL NO. 83 OF 2023

*(Arising from the Judgment of the District Court of Pangani at Pangani in Economic
Case No. 03 of 2022)*

**YUSUFU MOHAMED SALIMU @ RAJANI YUSUPH.....APPELLANT
VERSUS**

THE REPUBLIC.....THE RESPONDENT

JUDGMENT

Mteule, J.

14/03/2024 & 28/03/2024

In the District Court of Pangani, the Appellant herein was charged and convicted with the offence of unlawful possession of firearm contrary to **section 20 (1) (b) and (2) of the Firearms and Ammunitions Control Act, Act No. 2 of 2015** read together with **paragraph 31 of the First Schedule to and Section 57 (1) and 60 (2) of the Economic and Organised Crimes Control Act [Cap 200 RE 2022]**. He was sentenced to serve twenty (20) years imprisonment. He is aggrieved by the decision of the trial District Court, hence preferred this appeal before this Court basing on the following grounds;

- 1. That, the learned trial Magistrate erred in law and in fact by convicting the Appellant on involuntary and equivocal plea of guilty.*
- 2. That, the learned trial Magistrate erred in law and in fact by convicting the Appellant as he was not aware of what he was admitting and the consequences of admitting.*

3. That, the case against the appellant was not proved beyond all reasonable doubt.

The appeal was argued by a way of written submissions. The Appellant was not represented whereas the Respondent was represented by Ms. Betty Sogga, State Attorney. Parties duly filed their submissions and when I was composing the judgment, I noticed some three legal issues which needed to be addressed firstly. The first issue was on the lack of certificate on record to confer jurisdiction to the district court to try the economic offence under which the appellant was charged with, in accordance with **Section 12 of the Economic and Organised Crime Control Act Cap 200 RE 2022 (EOCA)**. Secondly, there was a concern of existence of two charge sheets in the Lower Court record without any indication of any order of substitution of charge. Thirdly, there is existence of two names of the accused person in one case file.

Due to these legal issues, parties were called upon to address the court on the matter.

Betty Sogga State Attorney argued the legal points on behalf of the Respondent. She started with the first issue which she believed to carry more weight, with possibility of finalising the matter. She admitted that the certificate that conferred jurisdiction to the District Court was not in the trial court record. According to her **Section 3 (3) of EOCA** grants exclusive jurisdiction of cases of corruption and economic cases to the High Court. However, where it is necessary, the DPP may issue consent and certificate to confer jurisdiction to the District Court or Resident Magistrate Court to try the said economic offences. She further referred to **Sections 12 (3) and 26 (1) of EOCA** which have similar effects.

Ms. Betty Sogga submitted that where any of the certificates is lacking in the trial court proceedings, the Court of Appeal of Tanzania sitting at Mbeya has given a guidance. She referred to the case of **DPP vs Semani Gwema Mswima, Criminal Appeal No. 601 of 2022** whose decision was issued in February 2024 at pages 12 and 13 of the decision, where the Court stated that, where the consent and certificate were not issued to the subordinate court, the remedy is to acquit the convict, since ordering retrial may not be viable. The Court of Appeal set aside the conviction and sentence and acquitted the Respondent with liberty to the DPP to file a new case.

She submitted further that in the instant case at page 6 and 4, cases were cited with the same issue where the Court of Appeal arrived at the same position. She referred to the case of that of **Romward s/o Michael vs Republic (Criminal Appeal 38 of 2009) [2013] TZCA 449 (17 September 2013)**, where the Court of Appeal at page 9 quashed the proceedings and set aside the conviction and sentence as held in the case of **Semani supra**.

Ms. Sogga therefore concluded that the District Court did not have jurisdiction to try the matter and she left to the court to decide the way forward.

Having heard the submissions of the Respondent's State Attorney, I agree with Betty Sogga SA that, it is the legal position that for an economic offence to be tried in the subordinate court, there must be a DPP's consent for prosecution and a certificate conferring jurisdiction to that subordinate court to try the offence. (See section 12 of the EOCA). See also the cases of **DPP vs Semani Gwema Mswima, supra**,

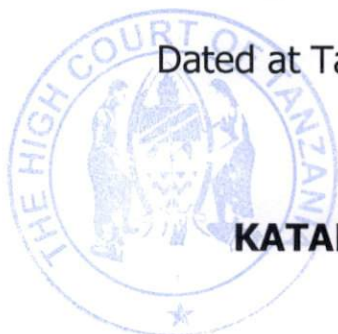
Romward s/o Michael vs Republic supra and Cretus Sambu @ Kimbwenga & Another vs Republic (Criminal Appeal 270 of 2010) [2013] TZCA 225 (10 July 2013) and Abraham Adamson Mwambene vs Republic (Criminal Appeal 148 of 2011) [2013] TZCA 181 (7 June 2013).

Since it is not disputed that the certificate of DPP to confer jurisdiction was not issued to the trial court, it means the trial court did not have jurisdiction to try the matter. It convicted and sentenced the appellant without any jurisdiction to do so. Having found lack of jurisdiction in the District Court, I see no reason to dwell further on the grounds of appeal as the issue of jurisdiction renders the entire proceedings a nullity. What remains now is what shall be the way forward?

In the cases cited above, the Court of appeals has given guidance that in this kind of a situation, the appropriate measure is to nullify the proceedings of the trial court for being held without jurisdiction and to quash and set aside the conviction and sentence and acquit the appellant leaving it to the DPP to decide to start the trial afresh if he so wishes.

From the foregoing, I nullify the proceedings in the District Court in Economic case No. 3 of 2022 and quash and set aside the conviction and sentence and acquit the appellant. It is so ordered.

Dated at Tanga this 28th day of March 2024




KATARINA REVOCATI MTEULE

JUDGE

28/3/2024

Court:

Judgement delivered this 28th Day of March 2024 in the presence of Betty Sogga SA for the Respondent and in the absence of the Appellant.



A handwritten signature in blue ink, appearing to read "Katarina Revocati Mteule".

KATARINA REVOCATI MTEULE

JUDGE

28/3/2024