

**IN THE HIGH COURT OF TANZANIA
(SUMBAWANGA DISTRICT REGISTRY)**

AT SUMBAWANGA

CRIMINAL APPEAL CASE NO. 68 OF 2022

(Originated from the Decision of the District Court of Kalambo at Matai in Economic Case No. 2 of 2022)

LEONARD SIMPUNGWE APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

06th April & 07th June, 2024

MRISHA, J.

This appeal stems from the conviction meted out to, and the sentence concurrent sentence of twenty (20) imprisonment in respect of two counts of economic offences imposed upon the appellant namely **Leonard Simpungwe** by the the District Court of Kalambo at Matai (the trial court) vide Economic Case No. 2 of 2022.

The first count according to the charge sheet that was tabled before the trial court, was Unlawful possession of firearm contrary to section 20(1)(a) and (b) of the Firearms and Ammunition Control Act No. 2 of 2015 read together with paragraph 31 of the First schedule and section 57(1) and 60(2) both of the Economic and Organized Crime Control Act, Cap 200 R.E. 2019 [now R.E. 2022] (the EOCCA).

And, the second count was Unlawful possession of ammunition contrary to section 21(a)(b) of the Firearms and Ammunition Control Act No. 2 of 2015 read together with paragraph 31 of the First schedule and section 57(1) and 60(2) both the Economic and Organized Crime Control Act [Cap 200 R.E. 2022].

The particulars of the offence in the first count, were that on the 28th day of June, 2022 at Legazamwendo Village within Kalambo District in Rukwa Region the appellant was found in possession of one local made Pistol without a licence or permit to possess the same.

As for those in the second count, it was alleged that on the same date and place as mentioned in the first count, the abovenamed appellant was found in possession of two ammunitions (2) without a license to possess the same.

When called upon to plead to the charged sheet which was read over and properly explained to him, the appellant pleaded guilty to all counts whereafter having filed the consent and certificate conferring the subordinate court with jurisdiction to try economic offence case, the Public Prosecutor prayed and was granted leave by the trial court to read the facts of the case to the appellant, which he did, and finally prayed to produce four (4) intended exhibits to wit: seizure note, cautioned statement, one (1) Pistol and two (2) ammunitions.

Subsequently, the appellant was asked whether he had any objection on production of those intended documentary and physical exhibits and his response was in the affirmative. As a result, the Seizure note was admitted as Exhibit P₁, cautioned statement as Exhibit P₂, one (1) local made Pistol, as Exhibit P₃ and the two (2) ammunitions were admitted collectively as Exhibit P₄.

Thereafter, the appellant was asked whether he admits the facts which were read over and explained to him by the public prosecutor and admitted to all those facts, and then the trial court convicted and sentenced him in respect of all counts, as above stated. Consequently, the trial court ordered that exhibits P₃ and P₄ be destroyed by the officers of Kalambo Police Station at Matai.

Aggrieved with the decision of the trial court, the appellant has preferred to appeal to this court faulting the trial court's decision on five grounds of appeal contained in his petition of appeal.

When the appeal was called on for hearing, the appellant appeared in person, unrepresented whereas the respondent Republic was represented by Mr. Mathias Joseph and Mr. Ladislaus Akaro, both learned State Attorneys.

At the outset, the appellant sought to adopt the petition of appeal for it form part of his submission in chief, a prayer which was granted by the court. He also

prayed to the court to consider his grounds of appeal, allow his appeal, quash the conviction meted out to him, set aside sentence and set him free.

In reply, Mr. Ladislaus Akaro supported the instant appeal based on the second ground of appeal. He submitted that no appeal will be heard where the appellant is convicted and sentenced on his own plea of guilty, except as to the extent or legality of sentence. He cited the case of **Josephat James v Republic**, Criminal Appeal No. 16 of 2010 in order to support his position.

He also argued that although the appellant pleaded guilty to the charged offences, the facts which were read over and explained to him by the Public Prosecutor, do not disclose those offences.

He contended that basically the trial court with original jurisdiction to try economic offences is the High Court; reference being made to section 3(3) of the EOCCA which vests the High Court with jurisdiction to hear and determine cases involving economic offences.

He went on submitting that however, the Director of Public Prosecution (the DPP), may by a certificate, order any case involving an economic offence triable by the High Court, be tried by such subordinate court, as provided under section 12 (3) of the EOCCA.

He further submitted that the appellant herein was charged and prosecuted before the trial court District Court of Kalambo at Matai after the Regional Prosecutions Officer of Rukwa Region had issued a certificate and consent to it on 11th July, 2022.

However, Mr. Akaro submitted that unfortunately, both the certificate and consent appears to lack the charging section which is section 20(1)(a)(3) and 21(a) and (b) of the Firearms and Ammunition Control Act No. 2 of 2015 and for those circumstances, it was his argument that the omission to insert those provisions of law in the abovenamed legal documents makes all the proceedings of the trial court a nullity. He referred the case of **Hashim Nassoro @ Almas v DPP**, Criminal Appeal No. 312 of 2019 at page 11 (unreported) just to cement his position.

Finally, he argued that since the trial court had no jurisdiction to hear and determine the economic offences the appellant was charged with, the remedy thereto, is to order a retrial. To buttress his position, he referred the case of **Fatehali Manji v Republic** (1966) 1 EA 343. In rejoinder, the appellant being a lay person had nothing to add.

I have personally, considered the foregoing submissions of both parties. I agree with the learned State Attorney that the trial court did not have jurisdiction to

hear and determine the case against the appellant. This is because; it is the High Court which is vested with original jurisdiction to hear and determine the economic offences. That is provided under section 3 of the EOCCA which declare that:

"The jurisdiction to hear and determine cases involving economic offence under the Act is hereby vested in the High Court."

Without prejudice the above provision of the law, it is important to bear in mind that the economic offence case cannot be commenced without obtaining the consent of the DPP, as required under section 26(1) of the EOCCA, which provides that:

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

In the trial court, the appellant was charged and prosecuted with an offence of unlawful possession of firearm and two ammunitions which is an economic offence, and the High Court is the one vested with original jurisdiction to try that case. Despite the fact that the Regional Prosecutions Officer issued a certificate conferring the said trial court with jurisdiction to try such economic case under section 12(3) of the EOCCA, the said certificate lacked the charging section. This is mirrored from the court records as hereunder:

**"CERTIFICATE CONFERRING JURISDICTION TO SUBORDINATE COURT
TO TRY AN ECONOMIC CRIME CASE**

I **PASCHAL JULIUS MARUNGU**, Regional Prosecutions Officer of Rukwa Region, **DO HEREBY** in terms of section 12(3) of the Economic and Organized Crime Control Act [Cap 200 R.E. 2019] and GN No. 296H of 2021 **ORDER** that **LEONARD S/O SIMPUNGWE** who is charged for contravening the provision of paragraph 31 of the First Schedule to, and section 57(1) and 60(2) of the Economic and Organized Crime Control Act, [Cap 200 R.E. 2019] **BE TRIED** by the District Court of Kalambo at Matai.

Dated at Sumbawanga this 11th day of July, 2022

Sgd

REGIONAL PROSECUTIONS OFFICER"

Moreover, the consent of the Regional Prosecutions officer to prosecute the appellant stated as follows:-

"CONSENT OF THE REGIONAL PROSECUTIONS OFFICER

I, **PASCHAL JULIUS MARUNGU**, Regional Prosecutions Officer of Rukwa Region, **DO HEREBY** in terms of section 26(2) of the Economic and Organized Crime Control Act, [Cap 200 R.E. 2019] and Government Notice No. 496H of 2021 **CONSENT** to the prosecution of **LEONARD S/O SIMPUNGWE** for contravening the provision of the paragraph 31 of the First Scheduled to, and section 57(1) and 60(2) of the Economic and Organized Crime Control Act, [Cap 200 R.E. 2019].

Dated at Mpanda this 11th day of July, 2022

Sdg
REGIONAL PROSECUTIONS OFFICER"

From the above scripts, it is apparent that both the certificate conferred jurisdiction to the subordinate court and consent of the Regional Prosecutions Officer did not have the insertion of section 20(1)(a)(3) and 21(a) and (b) of the Firearms and Ammunition Control Act No. 2 of 2015 which is the proper charging section, as rightly submitted by Mr. Akaro.

The law is settled that, a certificate and consent of the DPP or State Attorney without reference to the relevant provisions of the law creating economic offence, are incurably defective and renders the trial court proceedings a nullity. This stance has been emphasized by the Court of Appeal in various cases. See **Peter Kongori Maliwa and 4 Others v Republic**, Criminal Appeal No. 252 of 2020 [2023] TZCA 17350, (14 June 2023) Tanzlii, **Dilipkumar Maganbai Patel v Republic**, Criminal Appeal No. 270 of 2019 [2022] TZCA 477 (25 July 2022) Tanzlii and **Chacha Chiwa Marungu v Republic**, Criminal Appeal No. 364 of 2020 [2023] TZCA 17311 (5 June 2023) Tanzlii.

In the case of **Chacha Chiwa Marungu v Republic** (supra) the Court of Appeal held inter alia, that:

"Even if the said certificate and consent were made under the proper provisions of the law; sections 12(4) and 26 of the EOCCA, since such consent and certificate of transfer did not make reference to the sections 17(1)(2) and 86(1)(2) (c) (iii) of WCA which when read together with paragraph 14 of the First Schedule to the EOCCA make them economic offences, then the said certificate and consent were incurably defective. In this regard, the proceedings in the trial District Court in Economic Case No. 129 of 2019 and in the High Court Appeal No. 5 of 2020 were a nullity because the certificate and consent in question were incurably defective. So, the proceedings in the trial court which culminated in the conviction of the appellant and sentence was a nullity."

Since it has been observed in the case at hand that the alleged consent and certificate conferring jurisdiction to the trial court to try the appellant lack the charging section which appears in the charge sheet, I am constrained to follow the guiding principle cited by the learned State Attorney for the prosecution which was stated in the case of **Chacha Chiwa Marungu v Republic** (supra).

Having said so, I proceed to find and hold that the trial and proceedings before the trial court were a nullity. Therefore, based on the foregoing reasons, I nullify the whole proceedings of the trial court; quash the judgment and the conviction entered thereto. I also consequently, set aside the sentence which was imposed upon the appellant.

Having concluded that the trial court lacked jurisdiction and that its proceedings were a nullity, the next issue for consideration is whether or not a retrial should be ordered by this court. In present case, the appellant pleaded guilty to the offence charged, the prosecution had no chances to demonstrate their evidence to prove their case or not during trial. In the circumstance, it is my considered opinion that ordering a retrial in this peculiar case, will be providing the prosecution Republic with chances of filling in the gaps of their case which will occasion miscarriage of justice on the part of the appellant. I therefore, refrain to take that direction.

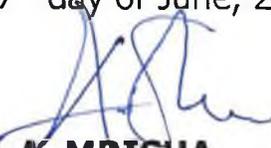
Instead, I order for the immediate release of the appellant unless he is otherwise lawfully held.

It is so ordered.



A.A. MRISHA
JUDGE
07.06.2024

DATED at **SUMBAWANGA** this 07th day of June, 2024.



A.A. MRISHA
JUDGE
07.06.2024