THE JUDICIARY OF TANZANIA

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT SHINYANGA

HC/SHY/ECC/APP/10013/2024

ILANGA NDIBATO ..... Appellant

VERSUS

REPUBLIC..... Respondent

JUDGMENT

21st & 31st May 2024

F.H. Mahimbali, J

The appellant was charged and convicted at the trial court for an economic offence on two counts: Unlawful possession of weapon in the National Park contrary to section 17 (1)(b) and (2) of the National Park Act, Cap 282 R.E 2022 and unlawful possession of government trophy contrary section 86 (1) and (2) (c) (iii) of the Wildlife Conservation Act, Cap 283 R.E 2022 rea together with Paragraph 14 of the First Schedule to; and section 57 (1) and 60 (20 of the Economic and Organized Crime Act [Cap 200 R.E 2022]. He was consequently upon his conviction, sentenced to one year and twenty years imprisonment for the first and second count respectively.

Undaunted with both conviction and sentence, the appellant has preferred this appeal armed with three grounds of appeal which can be summarized this way:

1. The trial court relied much on hearsay evidence to mount the said conviction.
2. That, there was no any real evidence tendered in court but just relied on inventory form
3. That there was no sufficient evidence by the prosecution to establish the charge.

During the hearing of the appeal, the appellant was unrepresented, thus just prayed that his grounds of appeal be adopted to form part of his appeal submission. The respondent on the other hand who was not resisting the appeal but on legal grounds, was represented by Mr. Kadata learned state attorney

As to why he is supporting the appeal but on legal grounds, Mr Kadata submitted that according to the available record commencing the charge against the appellant, the trial court (Bariadi DC) had not been properly conferred with the jurisdiction over the matter as the enabling provision was not legally capable to empower the trial court to preside over the matter. He

clarified that as per law s. 26(1) of the EOCCA is the DPP'S own mandate and not any other law officer. As per signed certificate conferring jurisdiction was signed by senior state attorney, it had not fully enabled the subordinate court with the jurisdiction over the matter. The proper section ought to be s. 26(2) of EOCCA. For that matter the subordinate court was not fully clothed with jurisdiction to preside over the matter. Thus, all that had transpired is nullity as per law (see the case of **Chacha Chiwa Marangu vs Republic** (Criminal Appeal No.364 of 2020) [2023] TZCA 17311 (5 June 2023).

As to the way forward, Mr. Kadata prayed for retrial for the interests of justice and as per the evidence on record.

In his rejoinder, the appellant pressed for an acquittal arguing that retrial will not serve good justice of the case.

I have critically examined Mr. Kadata's submission, I am in agreement with him that it is without question that, under section 3 (3) of the EOCCA, it is the Corruption and Economic Crimes Division of the High Court which is clothed with jurisdiction to hear and determine economic crime cases, the offences stipulated under paragraph 14 of the First Schedule to the said EOCCA inclusive. Nevertheless, the courts subordinate to the High Court may have jurisdiction to try and determine economic crime cases if the DPP issues

a certificate conferring powers to such courts to try and determine them or rather transfers such offences to be tried by subordinate courts as per section 12 (3) of the EOCCA. The said section provides as follows:

> *"The Director of Public Prosecutions or any State Attorney duly authorized by him, may, in each case in which he deems it 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 as he may specify in the certificate"*

Apart from that, it is important to note that there is no trial of an economic offence which can commence unless there is a consent of the DPP issued under section 26(1) of the EOCCA which stipulates as follows:

> *"(1) Subject to the provisions of this section no trial in respect of an economic offence m ay be commenced under this Act save with the consent of the Director of Public Prosecutions. "*

Thus, it is true that the trial court (Bariadi DC) had not been properly conferred with the jurisdiction over the matter as the enabling provision was not legally capable to empower the trial court to preside over the matter. Since section 26(1) of the EOCCA is the DPP'S own mandate and not of any

other law officer, the subordinate's power to preside over the matter was vitiated. As per signed certificate conferring jurisdiction was signed by senior state attorney, it had not fully enabled the subordinate court to have jurisdiction over the matter. The proper section ought to be s. 26(2) of EOCCA.

In the case of **Omari Bakari @ Daudi v. Republic**, Criminal Appeal No. 52 of 2022 (unreported) citing its previous decision in the case of **Ramadhani Omari Mtiula v. Republic**, Criminal Appeal No 62 of 2019 (unreported), the Court stated that:

> *"Thus, without the DPP's consent and certificate, conferring the respective jurisdiction the District Court of Serengeti embarked on a nullity to try Criminal Case No. 8 of 1995. On that account, since the first appeal stemmed from null proceedings this adversely impacted on the appeal before the High Court."*

Furthermore, in the matter at hand, the appellant was charged with two offences. In the 1st count, the offence of unlawful possession of weapons in the National Park contrary to section 24 (1) and (2) of the National Park Act, Cap 282 R.E 2022; and the 2nd count of the offence of unlawful possession of Government trophies contrary to section 86 (1) and (2) (c) (iii)

of WCA read together with paragraph 14 of the First Schedule to the EOCCA. That is how the provisions under which the offences were committed were cited in the charge sheet. As it is, it is clear that while the 1st count was not an economic offence, the 2nd was an economic offence. This means that the appellant was charged with both economic and none conomic offences. Ordinarily, for the economic offences, they ought to have been tried and determined by the Corruption and Economic Crimes Division of the High Court. However, it would appear that, the DPP considering that there were both economic and non-economic offences which could be tried by a subordinate court, under section 12(4) of the EOCCA issued a certificate conferring jurisdiction to the District Court of Bariadi to try and determine such offences.

However, since the certificate was issued under section 12(4) of EOCCA, it can be deduced that it being a non-economic offence, it was covered in the certificate. The offences of unlawful possession of weapons in the national park/game reserve and unlawful possession of government trophies under section 17(1) and (2) of WCA and section 86 (1) and (2) (c) (iii) of WCA both read together with paragraph 14 of the First Schedule to the EOCCA, which were economic offences, were neither stated in the certificate conferring jurisdiction to the subordinate court nor the consent for

the trial of such offences. This was another anomaly of the case at the trial court.

On the way forward, I am of the considered mind that an order for retrial is not in the interest of justice due to the apparent weaknesses in the prosecution case in relation to the second count. The government trophies which were the basis of appellant's conviction of the said offence, do not suggest that they were dully established to be government trophy - wildebeest. The expert witness (PW2) in which we are called upon to rely on provides on the said identification:

> *"I examined it, and discovered it to be tuffed hairs and greyish brown at the beginning, it was equivalent to three wildebeest.."*

In my considered view, I wonder if this is a scientific descriptive explanation of the of the alleged wildebeest meat for this court exercising its real legal mind can find satisfaction that it was nothing but the alleged wildebeest.

In the circumstances, ordering for a retrial would give the prosecution a chance to fill in gaps and thus occasioning injustices to the appellant. That would be against the settled principle in the case of **Fatehali Manji v. Republic** [1966] E.A. 343, that retrial cannot be ordered for the purpose of

enabling the prosecution to fill up gaps in its evidence at the first trial. In the final result, I order the immediate release of the appellant from prison custody unless held there for some other lawful cause.

Order accordingly.

DATED at SHINYANGA this 31st day of May 2024.

F.H. Mahimbali

Judge