

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SHINYANGA SUB-REGISTRY)

AT SHINYANGA

CRIMINAL APPEAL NO. 40894 OF 2023

(Originating from Economic Case No. 21/2023 from the District Court of Bariadi)

MATULA s/o SHIGALUAPPELLANT

VERSUS

REPUBLIC..... RESPONDENT

JUDGMENT

Date of Last Order 24.04.2024

Date of Judgment: 17.05.2024

MWAKAHESYA, J.:

In the District Court of Bariadi District at Bariadi the appellant, Matula s/o Shigalu, was tried and convicted of: Unlawful possession of weapons in a national park c/s 24(1) and (2) of the National Parks Act(the first count); Unlawful possession of Government Trophy c/ss 86(1) and (2)(c)(iii) of the Wildlife Conservation Act read together with Paragraph 14 of the First Schedule to section 57(1) and 60(2) of the Economic and Organized Crime

Control Act (the second count); and Unlawful possession of Government Trophy c/s 86(1) and (2)(c)(ii) of the Wildlife Conservation Act read together with Paragraph 14 of the First Schedule to section 57(1) and 60(2) of the Economic and Organized Crimes Control Act (the third count).

At the end of the trial he was convicted of all offences and sentenced to a fine of TZS 100,000/= or two years imprisonment on the first count, and imprisonment for 20 years for each on the remaining counts.

It was the prosecution's case that, on 09.04.2023 at Mlima Nyaruboro area within Serengeti National Park within Bariadi District, Simiyu Region, the appellant was found in possession of: a *panga*; two knives; and four pieces of wire, without a permit. He was also found in possession of one dry skin of wildebeest and one dry skin of an impala, without a valid permit from the Director of Wildlife.

Michael Manyama (PW1) and Maiko Anthony Tuma (PW2) park rangers at Serengeti National Park and who are the arresting officers testified that on the material date they arrested the appellant in a bush within Serengeti National Park and found him in possession of the offensive material. A certificate of seizure (Exhibit P1), a map (Exhibit P2); a *panga*;

two knives; and four animal trapping wires (Exhibit P3 collectively) were tendered during trial.

Meanwhile, a trophy valuation certificate (Exhibit P4) was tendered by one Michael Shirima (PW3), a wildlife officer. Exhibit P4 was to the effect that the wildebeest and impala skins were worth a combined value of TZS 2,488,800/= (USD 1040 at that time's exchange rate of TZS 2345). PW3 also testified on how he was able to identify the trophies and determine the animals they derived from.

Aggrieved by the convictions and sentences the appellant preferred the present appeal through a petition of appeal containing three grounds. For reasons to be made obvious shortly I do not endeavor to reproduce the same.

At the hearing, the appellant appeared in person, unrepresented, while the respondent Republic was represented by Ms. Nyamnyaga Magoti, learned State Attorney.

Although both parties intimated that they were ready for the hearing of the appeal Ms. Magoti brought to the attention of the court, that there



was a serious legal defect which she wished to address before proceeding with the appeal. I duly granted her leave to highlight the same.

The learned State Attorney submitted that, the trial court entertained the matter while the consent for prosecution of the economic offence(s) was flawed. She went on to submit that District Courts have no jurisdiction to try economic offences unless there is a consent of the Director of Public Prosecutions (the DPP), and The DPP gives the relevant consent under section 26(1) of the Economic and Organized Crimes Control Act (EOCCA).

She submitted further that, the DPP may delegate the powers, of giving consent, to other officers, who will exercise those powers under section 26(2) of the EOCCA. In the case at hand the requisite consent was given by the Regional Prosecutions Officer of Simiyu Region (RPO) and therefore it was supposed to be given under section 26(2) of the EOCCA.

However, the learned State Attorney explained that, the said RPO gave the consent for prosecution citing section 26(1) of the EOCCA which is specifically reserved for the DPP. The learned State Attorney concluded that, by doing so it was equivalent to the requisite consent not being given at all. She solidified her proposition through the decision of the Court of

Appeal in **Chacha Chiwa Marungu vs. The Republic**, Criminal Appeal No. 364 of 2020 (unreported), where the Court observed that a defect in the consent for prosecution was equivalent to having no consent at all and a subordinate court which will entertain such matter will have entertained it without jurisdiction

The learned State Attorney moved this court to nullify the proceedings and judgment of the trial court and order a retrial. In reply the appellant, rather obviously, prayed to be set free.

Undoubtedly, as submitted by the learned State Attorney, jurisdiction to try economic offences lies with the Corruption and Economic Crimes Division of the High Court as provided under section 3 of the EOCCA. However, through certificates issued under section 12(3) or 12(4) and section 26(1) or 26(2) of the EOCCA the DPP can authorize a subordinate court to try economic offences. Section 12(4) deals with jurisdiction to try a non-economic offence(s) alongside economic offences; while section 26(1) deals with consent for prosecution. For the sake of this appeal it is section 26 that is of interest. The same is reproduced as follows:



"26 (1) 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 Prosecutions.

(2) The Director of Public Prosecutions shall establish and maintain a system whereby the process of seeking and obtaining of his consent for prosecutions may be expedited and may, for that purpose, by notice published in the Gazette, specify economic offences the prosecutions of which shall require the consent of the Director of Public Prosecutions in person and those the power of consenting to the prosecution of which may be exercised by such officer or officers subordinate to him as he may specify acting in accordance with his general or special instructions.

(3) The Director of Public Prosecutions shall have and may exercise in relation to prosecutions under this Act the same power which is conferred on him in respect of public and private prosecutions by the Criminal Procedure Act."

[Emphasis supplied].

As it can be seen, the consent for prosecution can be given under two umbrellas: the first being by the DPP himself (section 26(1)); and the second by an officer subordinate to him (section 26(2)). The consent for prosecution given during trial was given by the Regional Prosecutions Officer for Simiyu Region (RPO) and was given under section 26(1) of the EOCCA instead of section 26(2). This was clearly erroneous.

Faced with an akin situation, the Court of Appeal in **Chacha Chiwa Marungu vs. The Republic** (supra) had this to say at pages 10-11:



"Apart from that, as was rightly submitted by Mr. Malekela, in this case, the consent (page 7 of the record of appeal) was issued by Mr. Valence S. Mayenga, Senior State Attorney under the powers conferred by section 26 (1) of the EOCCA to the DPP and not any other person. This was wrong as the power under those provisions is exercisable by the DPP in person. Mr. Mayenga ought to have exercised his powers under section 26 (2) of EOCCA read together with the Economic Offences (Specification of Offence Exercising Consent) Notice."

The effect of the imperfection is that the entire trial in the District Court was conducted without consent for prosecution, rendering it nugatory thus leaving me with no other choice than to nullify the trial court's proceedings, quash the conviction and set aside the sentence meted out against the appellant.

I therefore, nullify the proceedings of the District Court, quash the convictions and set aside the sentences handed out to the appellant

However, in the interest of justice I make an order for retrial before a different magistrate upon filing of the requisite jurisdictional and prosecution certificates. And in the event the appellant is convicted and sentenced then time already spent in prison should count as time served and deducted from the sentence. Meanwhile, the appellant is to remain in custody pending retrial.

It is so ordered.

DATED at **SHINYANGA** this 17th day of May, 2024



A handwritten signature in black ink, appearing to be "N.L. Mwakahesya".

N.L. MWAKAHESYA

JUDGE

17/05/2024