

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(SUB REGISTRY OF SHINYANGA)
AT SHINYANGA**

CRIMINAL APPEAL NO. 40895 OF 2023

(Originating from Economic Crime Case No. 22 of 2023 Bariadi District Court)

MALUNGU HAGI GOLINGO.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

21st & 24th May 2024.

MASSAM, J.

The appellant there in above was charged before the District Court of Bariadi at Bariadi with two counts, **First** unlawfully possession of weapons in the National Park contrary to Section 24 (1) and (b) of the National Parks Act ,[Cap 282 R:E 2019] and **Second** unlawfully possession of Government Trophies contrary to section 86(1) and (2) (b) of the Wildlife Conservation Act No 5 (Cap 200 R;E 2022) read together with paragraph 14 of the first schedule to, and section 57 (1) and 60(2) of the Economic and Organized Crime Control Act [Cap 200 R;E 2022.

The particulars of the offences were as such that, on 24th April 2023 at korongo la majiya tabu area in Serengeti National Park within Bariadi District in Simiyu region accused person was found in unlawfully possession of weapon to wit one panga, one knife and six animal trap

wires without permit and moreover he was found unlawfully possession of government trophy to wit six dry pieces of buffalo meat unlawfully killed valued at a total of usd 1900 equivalent to Tshs 4,465,000 the property of Tanzania government without valid permit from the director of wildlife

At the trial, the prosecution managed to prove both offences against the accused person, and subsequently, was convicted and sentenced to serve two years imprisonment for the 1st offence, and for the second offence, to serve 20 years imprisonment.

Aggrieved herein, rightly lodged this appeal in this court with 4 (four) grounds, for convenient purposes all grounds clock within one ground that, **the prosecution case was not proved beyond reasonable doubt.**

During the hearing of this appeal, appellant appeared in person unrepresented, while the respondent was represented by Mr. Goodluck Saguye, learned State Attorney.

In submitting his appeal, the appellant informed this court that, the trial court did not do justice hence he prayed for the court to consider his grounds of appeal and left him free as he was convicted without good cause.

Replying to the appellant ground of appeal the respondent stated that, he is not supporting the appeal but in arguing this appeal he found out that there were some procedural irregularities was done in conducting the hearing of this case at the trial court. He added that the consent which confers the jurisdiction of the trial court to hear the said case was wrongly filed as it was brought by wrong section. He said that the said consent was signed by RPO under section 26(1) of EOCCA while the right section for RPO was section 26(2) of the said law. Again, he said that section 26(1) is for DPP only and cannot be delegated. So, the act of the RPO to sign the said consent with the section which was for DPP was wrong which make the trial court to lack jurisdiction to entertain the said case as per Section 12(3) Of EOCCA which gives power only The High court division of corruption and organized crime powers to entertain the said economic but it gives the subordinate to entertain the said cases after been conferred it with the consent and certificate.

Coming to this case the consent given was signed by the wrong person which make the same to be defective and the trial court to lack jurisdiction to entertain this case. So according to that he praying this court to nullify the proceedings of the trial court case and because there was

strong evidence to convict the accused as per the evidence given, he prays to this court to order the re trial of this case.

Appellant in his rejoinder he said he knows nothing about the charge he was charged with. He insisted to be released.

After I have heard both parties to the case, I have now to determine the appeal and the issue to be determined is whether this appeal has been brought with sufficient cause.

I have gone through the petition of appeal, records of the trial Court and submissions by both parties and found that ,It is true that the trial Court had no jurisdiction to try the matter pursuant to Sections 12(3) and 26(1) of the Economic and Organized Crime Control Act, Cap 200 RE 2019, as the said certificate conferring jurisdiction and consent to prosecute at the subordinate court by that section used ought to have been signed by the DPP himself and not any other State Attorney or the signatory of the said certificates authorizing a trial of an economic offence in a subordinate Court. See also the case of ***Nico Mhando and 2 others Versus Republic, Criminal appeal No. 332 of 2008*** (unreported) to the effects.

In the case at hand, the certificate of conferring jurisdiction tendered before the trial court was made under the provision which vests the power to DPP only to confer jurisdiction to subordinate courts. Mindful, the one who signed the said certificate was a Regional Prosecution Attorney in Charge whom his powers are enshrined under Section 26 (2) of the Act and not in section 26(1) as he did. Therefore, the certificate submitted before the trial Court was nullity from the beginning and thus the trial court lacked perquisite jurisdiction to try the matter. Again the law requires that, even if the certificate and consent were made under the proper provision of the law; Section 12(4) and 26 (2) of the Economic and Organized Crime Control Act (supra) such consent and certificate need to be in conformity with Section 17 (1) (2) and Section 86 (1) (2) (c) (iii) of Wild Conservation Act, read together with paragraph 14 of the First Schedule to the Economic and Organized Crime Control Act, which was not apparently in the case at hand (see also **Rhobi Marwa Mgare and two others v Republic Criminal Appeal No. 192 of 2005** and in the case of **Peter Kongoli Maliwa and 4 Others V. the Republic**, Criminal Appeal No. 253 of 2020 – all unreported)

With all this, I must conclude that the trial court determine the case without having powers to do so the act which is against to the law of the

Having so observed, the next issue to consider is what is the way forward to acquit appellant as prayed by appellant or to order the retrial as prayed by the respondent. As we saw before there spondent/Republic is praying for retrial whereas the appellant is pressing for an acquittal. After a thoroughly perusal of the trial court records, I have realised that, there is enough evidence together with exhibits which connect the accused person with these offences as according to the evidence of all witnesses Pw1 to PW4 all witnesses testified how they arrested appellant and found him with possession of government trophy and weapons, and how they evaluate that trophy and take later on take him to the court and in that evidence there is no way that, if this court will order a retrial, the prosecution will have chance to fill in gaps as it was discussed in the case of **Fatehal Manji V. Republic** (1966) E.A 343, which held that,

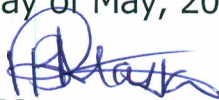
*"In general, a retrial will be ordered only when the original trial was illegal or defective. **It will not be ordered where the conviction is set aside because of in sufficient of evidence for the purposes of enabling the prosecution to fill up the gaps in its evidence at the***

trial. Even where a conviction is vitiated by a mistake of the trial court for which the prosecution's not to blame it does not necessary follow that a retrial shall be ordered; each case must depend on its own facts and circumstances and an order of retrial should only be made where the interest of justice require." [Emphasis added].

From the above case, and in the present matter, the appellant was charged with an economic offence, therefore on the other hand, whether the claims are true or not the records of proceedings should provide an answer to that. In the circumstances, this court finds out that it will be for the interests of justice to order for retrial. Appeal allowed to the extent explained above. Thus, I remit the matter to the District Court of Bariadi at Bariadi for a retrial before another magistrate of competent jurisdiction.

It so ordered

DATED at SHINYANGA this 24th day of May, 2024.



R.B Massam
JUDGE
24/05/2024

Right of appeal explained.



R.B. Massam
JUDGE
24/05/2024

