THE JUDICIARY OF TANZANIA

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT SHINYANGA

ECONOMIC APPEAL 202404172000010014

(Originating from Bariadi District Court in Economic Case No. 34 of 2023)

CHUBU S/O JEPA @ KIJA……..... Appellant

VERSUS

REPUBLIC..... Respondent

JUDGMENT

22nd & 30th May 2024

F.H. Mahimbali, J

The appellant and his fellow (not party to this appeal) were charged and convicted at the trial court for 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 (2) of the Economic and Organized Crime Act [Cap 200 R.E 2022]. They were consequently upon their conviction, each was 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 all boil into one main ground that the prosecution's case was not established beyond reasonable doubt to mount conviction as done.

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 resisting the appeal, was represented by Mr. Kadata learned state attorney

On the first ground of appeal that the issue of chain of custody was not established, Mr. Kadata considered this ground of appeal as unmerited and devoid of any merit as per PW4'S testimony and exhibit P.6. He urged this court to have a glance at the typed proceedings – pages 25 -27.

On the second ground of appeal that the appellant was not arrested within the National Park is equally devoid of any merit. Mr. Kadata submitted that on the strength of the evidence of PW1 & PW2 who clearly told the court how they arrested the appellant and his fellow after being found within the National Park, the coordinate points of the scene of crime were dully stated by these witnesses. The sketch map plan of the scene of

crime was then extracted and dully admitted as P. 2 exhibit. Thus this ground of appeal equally lacks any merit.

With the third ground of appeal that the prosecution side had failed to establish the charged offences as per legal standard is also unfounded as per available evidence in record. With the first offence the prosecution had to establish two things. Unlawful possession of weapons and that they were within the National park. On this fact, he submitted that PW1 & PW2 had squarely established both of these ingredients. PW1 had testified how the appellant was found with a knife, panga and five trapping wires and that they were found within the coordinate points of the National Park. Furthermore, PW1 had tendered the certificate of seizure (exhibit P1.) which certificate was also dully signed by the appellant (see pages 8-9 of the typed proceedings).

As if this is not enough, the extract of the map of the scene of crime was tendered as exhibit P.2 (see page 10 of the typed proceedings). Thus, the first offence was legally established without leaving any shadow of doubts, argued Mr. Kadata.

With the second offence, the prosecution had to establish three things.

One, that the appellant was found within the National Park. Two, that he was found in possession of government trophy. Thirdly, that he had no such permission from the Director of Wildlife. Making reference to P. 2 exhibit describing how the appellant was found within the National Park, it is sufficient in law that the appellant was found within the National Park. PW2 had testified to have asked the appellant whether he had any permit, he replied in negation (page 10 of the typed proceedings). Furthermore, he argued that PW3 had certified that what the appellant was arrested with were government trophy: Wildebeest meat. The same was valued (P.4 exhibit). With all these explanations, he boasted that it is clear that the prosecution had sufficiently on proof beyond reasonable doubt discharged their burden of proof.

With this submission it is the Republic's submission that this appeal is devoid of any merit thus liable for being dismissed in its entirety, concluded Mr. Kadata.

When probed by the court on the competence of the certificate conferring jurisdiction to the subordinate court and the consent of prosecution whether legally have met the legal standards set under s. 12(4) and 26(2) of the EOCCA taking into account of what was observed

by the CAT in the case of **Peter Kongori Maliwa & 4 Others vs. Rep,** Criminal Appeal No. 253 of 2020, CAT at Musoma, Mr. Kadata was hesitant to give his comment. However, after a short breath, replied that he has no right of challenging the position by the Court of Appeal as directed in the said case, he however stated that in the current case both the charge and certificate were filed on the same day, thus he wondered whether the requirement of naming the charged offences in the certificate conferring jurisdiction and consent instrument of prosecution, is applicable in all situations. Nevertheless, he left it for this court to decide correctly as per law in the circumstances of this case.

On his part, the appellant had nothing material to comment but left it to the court to decide as per correct position of the law.

To start with the legal competence of the instruments filed at the subordinate court initiating the said charge instead of the Economic Court, the Court of Appeal in that case of **Peter Kongori Maliwa & 4 Others vs. Rep** (supra), had this to say:

> *In the same token, both the certificate conferring jurisdiction to the trial court and the consent of the State Attorney In charge did not cite the provisions of law creating*

the respective economic offences. We, therefore, agree with the learned State Attorney that, the legal consequence of the omission is to vitiate the trial proceedings as the trial court acted without jurisdiction. Equally so, for the resulting proceedings of the first appellate court. There are many decisions in support of this position. See for instance, ***Dilipkumar Maganbai Patel v. Republic*** *(supra),* ***Rhobi Marwa Mgare and two others v. Republic****, Criminal Appeal No. 192 of 2005,* ***Elias Vitus Ndimbo and Another v. Republic****, Criminal Appeal No. 272 of 2007 and* ***Chacha Chiwa Marungu v. Republic****, Criminal Appeal No. 364 of 2020 (All unreported).*

In the case of **Dilipkumar Maganbai Patel** (supra), the Court of Appeal emphasized that:

"We have no doubt that in view of our deliberation above the consent and certificate conferring jurisdiction on the trial court were defective, though they were made under the appropriate provisions; section 12(3) and 26(1) of the EOCCA but referred to the provisions which the appellant was not charged with.

The consent and certificate did not refer to section 86(1), (2) (ii) and (3) of the WCA which was clearly cited in the charge sheet The certificate and consent were therefore incurably defective and the trial magistrate could not cure the anomaly in judgment as suggested by the learned State Attorney for the respondent The defects rendered the consent of the DPP and the certificate transferring the economic offence to be tried by the trial court invalid. For that reason, we are constrained to find that the trial and proceedings before the Resident Magistrate Court of Dar es Salaam at Kisutu in Economic Case No. 58 of 2016 and the High Court in Criminal Appeal No. 146 of 2018 were nothing but a nullity."

In the light of the foregoing discussion and guided by the above authorities, I am of the firm view that, the proceedings before the trial court, for the reason pointed out irregularities in the consent and certificate, was null and void. This is regardless, whether the said instruments are filed simultaneously with the charge sheet, but what is necessary is the legal compliance that said instruments authorizing institution of the economic cases name with it the charged offences. Thus,

them being nullity, I thus nullify the proceedings of the trial court, quash the conviction and set aside the sentence thereof.

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 in which we are called upon to rely on provides on the said identification:

> *"I checked them, and found to be wildebeest meat because they are dry, black, but inside there are white fiber and red tissues"*

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 appellants. 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 30th day of May 2024.

F.H. MAHIMBALI

JUDGE