

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

AT MOROGORO

CRIMINAL APPEAL NO. 64 OF 2023

(Originating from Economic Case No. 1 of 2022 in the District Court of Malinyi at
Malinyi)

ABASI CHARLES SAWA APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

Date of Last Order: 13.05.2024

Date of Judgement: 17.05.2024

JUDGEMENT

MAGOIGA, J.

The appellant, **ABASI CHARLES SAWA** aggrieved with the decision of Malinyi District Court in Economic Case No.1 of 2022 (the trial Court) appealed to this court armed with 5 grounds of appeal but for the reasons to be apparent in this judgement will not produce them herein.

When this appeal was called on for hearing, the appellant was ready for hearing and the respondent was represented by Mr. John Mkonyi and Ms. Monica Matwe, learned State Attorneys.

However, considering the first ground of appeal which was on the competency of the consent and certificate issued by the Director of Public Prosecutions before the hearing of the Economic case in the trial court, I invited the learned State Attorney, this being a point of law to address



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this court if the said consent and certificate were properly issued and the way forward.

Ms. Matwe readily conceded that, indeed, the consent to prosecute the economic case and the certificate conferring the jurisdiction to the trial court issued by the Morogoro Regional Prosecutions Officer were incurably defective and rendered the whole trial and judgement of the trial court a null and void for failure to cite the provisions which create the offence which the appellant stood charged before the trial court. In support of the position, the learned Attorney cited the case of **Peter Kingoli Maliwa and 4 others Vs. Republic. Criminal Appeal No. 253 of 2020 CAT (Musoma)** on Tanzlii and **Hassan Nassoro @ Almasi Vs. DPP, Criminal Appeal No. 312 of 2019 CAT (Sumbawanga)** on Tanzlii in which decisions, the highest Court of the land, was loud and clear that where consent and certificate allowing trial and conferring jurisdiction to subordinate court do not contain sections which created the offence in dispute are null and void as such render the whole trial and resultant judgement incompetent and vitiated for want of jurisdiction.

However, the learned Attorney was quick to point out that under the circumstances, this court is to nullify the proceedings and judgement of the trial court and order retrial. Further guided by the same decision, Ms. Matwe argued that it is only when the evidence is wanting and for

avoidance of filling the gaps that the Court can set the appellant free. In the circumstances of this appeal, however, the learned Attorney argued that the evidence on record is clear and no fear of filling gaps and urged this court to order retrial after nullifying the trial court proceedings and judgement.

The appellant being a layman had nothing useful to reply save that he prayed that this court set him free and allow him join his family.

Indeed, as rightly noted and rightly conceded by the learned State Attorneys, no dispute that the certificate conferring jurisdiction to trial court and the consent to prosecute the instant economic case were conspicuously and incurably defective for failure to cite the provisions which created the offence the accused was charged.

Consequently, as guided by the case of **Peter Kingoli Maliwa and 4 others Vs. Republic (supra)** above rendered the whole trial a nullity because was conducted without proper jurisdiction. Without much ado, the instant appeal follows the same fate.

On the foregoing reasons, I hereby under the provisions of section 44(1)(a) of the Magistrate Court's Act, Cap 11 R.E.2022 doth hereby exercise my revisional powers and nullify the entire proceedings when trial began without jurisdiction and quash and declare the judgement in the Economic Case No. 1 of 2022 a nullity.



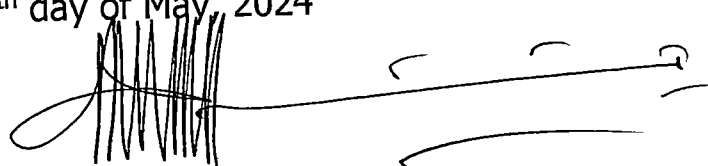
Next in this appeal is the way forward, Ms. Matwe prayed and urged this court to order retrial of the accused person because there is ample evidence on record and no filling of gaps by prosecutions. The appellant on the other hand prayed that this court be pleased to set him free.

I have had time to go through the record, and I did not find anywhere the prosecution will fill in gaps. I have equally considered the evidence on record, and if things remain the same, I found there is evidence to establish prima facie case.

That said and done, I am constrained to order the retrial of the accused person in the Malinyi District Court. For the interest of justice and for conveniences, the trial be expedited for the interest of justice.

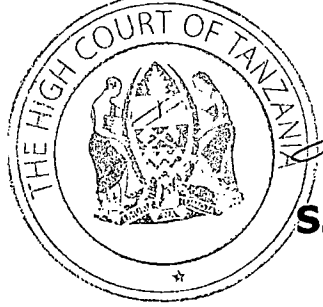
Order accordingly.

Dated at Morogoro this 17th day of May, 2024



S.M. MAGOIGA
JUDGE
17/05/2024

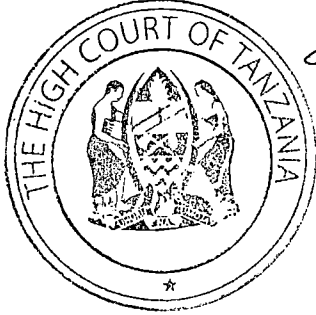
COURT: This judgement delivered under my Hand and Seal of this court in chambers this 17th day of May, 2024 in the presence of the appellant and Ms. Monica Matwe, learned State Attorney for the Republic.



S.M. MAGOIGA

**JUDGE
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COURT: Right of appeal fully explained



S.M. MAGOIGA

**JUDGE
17/05/2024**