

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
MBEYA SUB REGISTRY  
AT MBEYA**

**CRIMINAL APPEAL NO. 178 OF 2023**

*(Originating from the district court of Mbeya at Mbeya in Economic Case  
No. 1 of 2022)*

**JIDAI NZENZE MASONGA ..... 1<sup>ST</sup> APPELLANT**

**ONESMO NZILA ..... 2<sup>ND</sup> APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

Hearing date: 19/2/2024

Date of judgment: 18/3/2024

**NONGWA, J.**

In the District Court of Mbeya at Mbeya in Economic Case No. 8 of 2022, the appellants above named were charged and convicted from own plea of guilty on two offences of unlawful possession of fire arm and ammunition respective. The first count was unlawful possession of of fire arms contrary to section 20(1) and (2) of Fire Arms and Ammunitions Control Act No. 2 of 2015 read together with paragraph 31 of the first schedule to and section 57(1) and 60(2) of the Economic and Organised Crime Control Act Cap 200, R.E 2002 [now R.E 2022], (the EOCCA). In the particular of offence, it was alleged that on

10<sup>th</sup> October, 2020 at Mbalizi area within the district and Mbeya region the appellants were found in possession of fire arm to wit local made gun pistol known as GOBORE and pistol without a valid licence or permit.

The second count was unlawful possession of ammunition contrary to section 21(a) and (b) of the Fire Arms and Ammunition Control Act No. 2 of 2015 read together with paragraph 31 of the First Schedule, and sections 57 and 60 (2) of the EOCCA. The particulars of the offence were that on 10<sup>th</sup> October, 2020 at Mbalizi area within the district and Mbeya region the appellants were found in possession of ammunition to wit one bullet without licence or permit.

The record reveal that on 30/6/2022, the state attorney informed the court that she had secured consent and certificate of transfer for a subordinate court to try an economic case, the same was marked filed. On 6/7/2022, the court set to take plea of the appellants, upon the charge being read to them plead not guilty to both offences and preliminary hearing was conducted on that date. Then on 11/8/2022 hearing of prosecution case started, one witness testified. Hearing of prosecution case resumed on 12/10/2022, the first appellant informed the court that he wanted to change his plea, the

charge was read over to him and plead guilty however, the magistrate ordered full trial after the 2<sup>nd</sup> appellant had not admitted to all facts.

On 8/11/2022, the 2<sup>nd</sup> appellant prayed to be reminded the charges, when it was read to him, he plead guilty, the 1<sup>st</sup> appellants are recorded to have plead guilty on that date in both counts. As usual facts of the case were read to the appellants by the state attorney which was all admitted. Then the court accordingly convicted the appellants and ordered them to pay fine of Tsh. 2,000,000/= or serve five years imprisonment in default.

This decision angered the appellants who jointly filed the present appeal with three grounds of appeal which will not be reproduced here because the judgment is not based on grounds raised.

At the hearing of appeal, the appellants appeared in person unrepresented, the respondent Republic was represented by Mr. Stephen Rusibamayila State Attorney. When the appellants were given chance to submit on their grounds opted the state attorney to start first and reserved their rights to rejoin.

When Mr. Rusibamayila was given chance to submit, outrightly informed the court that the consent and certificate conferring jurisdiction to the subordinate court was defective, **one**, consent to try the appellants was issued under section 26(1)(2) of the EOCCA instead of only subsection (2), and **two**, that the certificate to confer jurisdiction did not specify offences and charging provisions of the law. This he argued was incurable defect and therefore the trial court acted without jurisdiction. He drew attention of the court to the case of **Chacha Chiwa Marangu vs Republic**, Criminal Appeal No. 364 of 2020 [2023] TZCA. He pressed for retrial on ground that plea of guilty of the appellants was unequivocal. Here the case of **Dilipkumar Magambai Patel vs Republic** Criminal Appeal No. 270 of 2019 [2022] TZCA 477 was cited.

On part of the 1<sup>st</sup> appellant had nothing useful on the issue of jurisdiction raised by state attorney. He submitted that he has been in custody since 2020 and he never confessed to the offence.

The 2<sup>nd</sup> appellant on his party submitted that he never pleaded guilty to the offence and retrial was not viable to them.

Having hear submission of the state attorney and the appellants, my judgment will only confine to the issue raised by

the state attorney which touches the issue of jurisdiction of the trial court to try an economic offence. I wish to begin by emphasizing that jurisdiction of the court is crucial and fundamental for it to try a case. In **Shyam Thanki and Others vs New Palace Hotel** [1971]1 EA 199 the court stated.

*'All the courts in Tanzania are created by statute and their jurisdiction is purely statutory.'*

In the case of **CRDB Bank PLC vs Lusekelo Mwakapala**, Civil Appeal No. 143 of 2021 [2023] TZCA 17637 (22 September 2023, TANZLII), it was held that:

*'It is worth noting that, the question of jurisdiction is crucial and must be determined by the court/tribunal at the earliest opportunity. Jurisdiction is everything without which a court has no power to determine the dispute before it. Where a Court has no jurisdiction there would be no basis for a continuation of proceedings. Generally, a court is barred to entertain a matter in which it has no jurisdiction.'*

In the present case, the appellants were facing the offence of unlawful possession of fire arms and ammunition under section 20 and 21 of the Fire Arms and Ammunition Control Act. In terms of the first schedule to the Economic and Organised Crime Act [Cap 200 R: E 202, item 31 makes them economic

offence. All economic offence per section 3(3) of the EOCCA its trial is within the exclusive jurisdiction of the High Court. Nevertheless, there is an exception to that statutory prescription that a certificate issued by the DPP or any State Attorney authorised by him, may confer jurisdiction on a subordinate court to try an economic offence case. Such a certificate may be issued pursuant to section 12(3) of the EOCCA where an accused person is charged with a pure economic offence as it happened here. Section 12(3) of EOCCA which reads;

*'The Director of Public Prosecution 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 subordinate to the High Court as he may specify in the certificate.'*

It is also the law that, for a trial to commence at the respective subordinate court, there must be a consent from the DPP or state attorney authorised by him issued under section 26(1)(2) respectively. It is noteworthy that the certificate and consent envisaged under sections 12(3) and 26(1)(2) of the EOCCA must be duly lodged, acknowledged by the trial court

and the offence for which the accused is to be tried must be specifically mention.

In the present case there is no qualm that the appellants were jointly charged with an offence of unlawful possession of fire arms and ammunition as hinted earlier at the beginning of this judgment. Further that consent to try the appellants and certificate of transfer to confer jurisdiction on the district court was issued by the regional prosecution officer and received by the court on 30/6/2022. The issue lies with the contents of the consent and certificate to confer jurisdiction to a district court of Mbeya.

The state attorney rightly so submitted that consent and certificate to confer jurisdiction do not specify the offence and provision of the law creating the offence. Stating with consent, it shows that it was issued under section 26(1)(2) of the EOCCA, it read as follows:

*I SARAJI R. IBORU, the regional prosecution officer do hereby in terms of section 26(1) and (2) of the Economic and Organised Crimes Control Act [Cap.200 R: E 2019] read together with Government Notice Number 496H of 2021 DO HEREBY CONSENT to the prosecution of JIDAI S/O NZENZE MASONGA and*

*ONESMO S/O NZILA who are charged for contravening the provisions of paragraph 31 of the first schedule to and section 57 (1) and (2) of the Economic and Organised Crimes Control Act [Cap. 200 R: E 2019] before the district court of Mbeya at Mbeya.*

On the other hand, the certificate of transfer to confer jurisdiction reads;

*I SARAJI R. IBORU, the regional prosecution officer do hereby in terms of section 12(3) of the Economic and Organised Crimes Control Act [Cap.200 R: E 2019] read together with Government Notice Number 496H of 2021 DO HEREBY CONSENT to the prosecution of JIDAI S/O NZENZE MASONGA and ONESMO S/O NZILA who are charged for contravening the provisions of paragraph 31 of the first schedule to and section 57 (1) and (2) of the Economic and Organised Crimes Control Act [Cap. 200 R: E 2019] BE TRIED by the district court of Mbeya at Mbeya.*

Looking at the offences cited at the beginning of this judgment and consent and certificate, there is no nexus between the two. Consent and certificate of transfer do not specify the economic offence of which the appellants were to be tried. While the charge indicated that the appellants were charged with unlawful possession of fire arms contrary to section 20(1) and (2) of Fire Arms and Ammunitions Control Act

No. 2 of 2015 read together with paragraph 31 of the first schedule to and section 57(1) and 60(2) of the Economic and Organised Crime Control Act [Cap 200 R: E 2019]. The consent and certificate of transfer do not mention the offence the appellants are to be charged and the provision of the law which has been contravened.

It is noteworthy that paragraph 31 of the first schedule to and section 57(1) and 60(2) of the EOCCA cited in the consent and certificate does not create any offence for which a person can be charged. Paragraph 31 makes offences under the Arms and Ammunition Control Act, economic offence, whereas section 57(2) empowers the minister to make regulation and section 60(2) prescribes penalties for economic offences.

The issue of consent and certificate to confer jurisdiction not specifying the offence the accused was to be tried is not novel in our jurisdiction, the Court of Appeal had time to discuss it in the case of **Kulwa Kashiki vs Republic**, Criminal Appeal No. 208 of 2021 [2023] TZCA 17928 (12 December 2023; TANZLII) and it held that;

*'... the way the consent is drafted, there was no clarity on the specific offence the prosecution of the appellant*

*had been consented against, thus rendering it valueless. Essentially, this means that the appellant was prosecuted without the requisite consent. The same situation befell the certificate conferring jurisdiction to the District Court of Kahama to try the charge facing the appellant. In the absence of a proper description of the offence charged in the said certificate, it means the District Court of Kahama.'*

In another case of **Malegi Shenye @ Lusinga vs Republic**, Criminal Appeal No.152 of 2020 [2023] TZCA 17394 (11 July 2023; TANZLII) the court stated;

*'It is clear that all the economic offences with which the appellant was charged and convicted were not specified in the consent of the Prosecution Attorney In-Charge and therefore, we agree with the learned Senior State Attorney that the trial court did not have jurisdiction to try them. The proceedings were therefore, a nullity.*

[See also; **Peter Kongori Maliwa & Others vs Republic**, Criminal Appeal No. 252 of 2020 [2023] TZCA 17350 (14 June 2023; TANZLII)].

The above principles apply squares to the appeal at hand, statement of offence as stated in the charge is different from the statement in the consent and certificate of transfer for

which the appellants were to be tried. The difference in my view vitiates from the requirement of the law which require the consent and certificate to specify the offence(s) in respect of which consent is being issued and in the certificate of transfer for which the subordinate court mandated to try the accused. Short of that renders the said consent and certificate of transfer invalid and incapable of initiating trial of the accused.

Another shortfall in the consent as submitted by the state attorney is that it was issued under the authority of section 26(1)(2) of the EOCCA which provides;

*'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.'*

The above law presupposes that under section 26(1) it is only the DPP who is mandated to issue consent and is not delegable. Other authorised officers can only issue consent by invoking subsection 2 of section 26. By citing both sub-section it renders the consent defective.

Taking the two defects as discussed above, without mincing words, the consent to try the appellants issued by the regional prosecution officer was invalid for failure to specify the offences of which they were to be tried. Similarly, the certificate of transfer to confer jurisdiction in the subordinate court did not mention economic offence which the district court was called to try the appellants. Thus, the defects in the consent and certificate of transfer cannot be said the trial court had jurisdiction over the matter. Consequently, the whole proceedings are rendered a nullity.

As to the way forward, the appellants submitted that they did not plea guilty, on the other hand the state attorney was of the view that the plea was unequivocal thus prayed for retrial.

My perusal of the record has discovered that conviction and sentence of the appellants was a result of plea of guilty to the offences charged. Moreover, the records reveal that plea of guilty was a result of change of plea of the appellants from that of not guilty to guilty after one prosecution witness had testified. The appellants were convicted and sentenced on their own plea of guilty, that is the appellants did not stand trial, hence not much evidence the prosecution intended to produce in support of the charges was presented.

The appellants as consistently submitted that they did not plead guilty to the offence, however, after ruling that the consent and certificate of transfer were defective, it will not save any purpose to indulge into discussing their complaint.

Suffice to say, the district court acted without jurisdiction when it set and decided the fate of the appellants without warning itself if the consent and certificate of transfer of the case to it was in conformity with the law. In our jurisprudence instructs that any criminal proceedings commenced in violation of any of the aforesaid imperious provisions would be vitiated for want of jurisdiction, see **Director of Public Prosecutions vs Semeni Gwema Mswima**, Criminal Appeal No. 601 of 2022

[2024] TZCA 30 (13 February 2024; TANZLII). Without making myself repetitive, the consent and certificate of transfer was invalid for failure to specify the offence and the law for which the appellants were to be tried. The district court acted without jurisdiction as the resultant decision is rendered nullity.

Consequently, I allow the appeal and declare the proceedings of the district court from 30th June 2022 when the defective consent and certificate was introduced up to 8<sup>th</sup> November 2022 when the appellants were sentenced, a nullity.



I proceed to quash the judgment and set aside the conviction and sentence meted to the appellants. Meanwhile, the appellants will remain in custody pending compliance with the law by the DPP not later than fourteen days from the date of this judgment. Being a backlog case, the file be placed before another magistrate for immediate determination.

A handwritten signature in blue ink, appearing to read 'V.M. Nongwa', is written over a horizontal line.

**V.M. NONGWA**  
**JUDGE**  
**18/3/2024**

Dated and Delivered at Mbeya in presence of both sides this  
18<sup>th</sup> March, 2024.



**V.M. NONGWA**  
**JUDGE**  
**18/3/2024**