

IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM
CRIMINAL APPEAL NO. 29 OF 2018

(Originating from Economic Case No. 12 of 2015 in the District Court
of Ulanga at Mahenge)

MATERINE s/c MYONGA APPELLANTS

VERSUS

THE REPUBLIC RESPONDENT

**(Appeal from the decision of Ulanga District Court at
Mahenge)**

RULING

18th June, 2018

A.Z.MGEYEKWA, J

In the District Court of Ulanga at Mahenge, in Morogoro Region, Materine Myonga (hereinafter referred as the appellant) was charged with unlawful possession of Government Trophies contrary to c/s 86(1), (2) (b) and (3) of the Wildlife Conservation Act No. 5 of 2009 Cap. 283 [R.E. 2002] read together with paragraph 14 (d) of the First Schedule to and section 57(1) and section 60(2) of the Economic and Organised Crime Control Act Cap. 200 [R.E. 2002]. Second offence of unlawful possession of firearm section 20(1) (a), (2) of the Firearm and Ammunitions Control Act, No.2 of 2011.

The charge sheet alleged that on the 17th day of June, 2015 at Usalala, Ulanga District in Morogoro Region the appellant was found in possession of Government Trophies; with one elephant tusk valued Tshs. 31,095,000/= the property of Tanzania Government without license or permit.

The appellant was convicted as charged and sentenced to twenty (20) years imprisonment in default to pay Tshs. 310,950,000/= for the first count and the second count to serve two years imprisonment in default to pay Tshs.500,000/= the imprisonment run concurrently. The appellant was aggrieved with both the conviction and sentences and therefore filed the present appeal to this court.

The appellant appeared in person, unrepresented, while Mr. Candid Nasua and Elias Athanas both learned State Attorneys represented the respondent.

At the commencement of the hearing of the appeal, Mr. Candid Nasua, the learned State Attorney, raised an issue of point of law. He stated that the trial court was required before commencing the prosecution to obtain the consent of the Director of Public Prosecution (DPP). In this case the consent of the DPP and the certificate of trial were not indorsed in the trial court proceedings. Thus, renders the trial being illegal because the court was not given the power to hear

the case. The State Attorney referred to section 3(1) of the Economic and Organised Crime Act Cap. 200 [R.E. 2002] provides that:-

"The jurisdiction to hear and determine cases involving economic offences under this Act is hereby vested in the High Court"

I coincide with the submission of the learned State Attorney that the trial District Court Magistrate erred in law in trying this case without following the proper procedures. Before commencing the prosecution of the appellant in the stated court, the trial lower court had to obtain consent of the Director of Public Prosecution in terms of section 26 (1) of the Economic and Organised Crime Act, Cap. 200 [R.E 2002] which provides:-

" 26 (1) Subject to the provisions of this section no trial in respect of the economic offence may be commenced under this Act save with the consent of the Director of Public Prosecutions."

The jurisdiction to try economic crimes is solely vested with the High Court, sitting as economic crone court as per section 3 of the Economic and Organised Crime Act Cap. 200 [R.E. 2002]. The subordinate court may try an economic case but before determination of the case the lower court must obtain a certificate of transfer, which will empower it to determine the economic, and organised crime

case. Reference is made to section 12 (3) of the Economic and Organised Crime Act Cap. 200 [R.E. 2002] which that:-

"The Director of Public Prosecutions or any State Attorney dully 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 court subordinate to the High Court as he may specify in the certificate."

It is undisputable that the District Court of Ulanga erred in law by determining the case of Materine Myonga v Republic since the District Court of Ulanga did not have jurisdiction to try economic offence case without obtaining the consent of the DPP and the certificate of transfer. Therefore, the proceedings from the District Court were a nullity given the fact that the trial commenced without the consent of the DPP and that the District had no power to hear the case in the absence of the certificate of transfer under the hand of the DPP. Reference is made to the recent case of **Adam Selemani Nyalamoto v R** Crim Appeal No.196 of 2016 it was hold that:-

" The triad District Magistrate of Ulanga had no jurisdiction to hear the case unless the Director of Public Prosecution issued a consent and certificate of transfer, which would vest the trial District Court with jurisdiction."

After complying with the above section the lower court could determine the case as per section 12 (5) which state that:-

" Where a certificate is issued under subsection (3) it shall be lodged in the court concerned, and shall constitute full authority for, and confer jurisdiction upon, the court in which it is lodged to try the case in question."

Consequently, I find that there is merit in the point of law raised and submitted by the learned State Attorneys for the main reason that the District Court of Ulanga had no jurisdiction to try the case.

I therefore nullify and quash the lower court proceedings and judgment. However, in view of the fact that the appellant faces a serious economic crime and has spent only 8 months out of 20 years imprisonment meted out on him. I order the appellant should be retried by a court with requisite jurisdiction. In case of another conviction, the period that the appellant has so far served in prison should be taken into account.

It is so ordered.

DATED at Dar es Salaam this 22nd day of June, 2018



A.Z Mgeyekwa

JUDGE

22.06.2018

Ruling delivered in Court Chambers in the presence of both parties
this date 22.06.2018.


A.Z Mgeyekwa

JUDGE

22.06.2018

