

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF SHINYANGA

AT SHINYANGA

CRIMINAL APPEAL NO. 69 OF 2019

*(Arising from Economic Case No. 10 of 2010 in the District Court of
Bariadi at Bariadi).*

NHANDI NYAMBERE @ NYANDA.....1ST APPELLANT

SHARI NKWANI @ MASUKE.....2ND APPELLANT

Versus

THE REPUBLIC.....RESPONDENT

Date of Last Order: 18/02/2020

Date of Ruling: 28/02/2020

RULING

C. P. MKEHA, J

When the present appeal was on 18/02/2020 called up for hearing, the learned Senior State Attorney rose to submit that, documents conferring jurisdiction to the trial court were not properly endorsed by the authorized official at the trial court. The learned Senior State Attorney submitted therefore that, the trial court had no jurisdiction in trying the appellants for

economic offences, in the absence of necessary endorsements on the documents giving consent and jurisdiction to the trial court to hear economic cases.

The case of **Adam Seleman Njalamoto Vs The Republic, Criminal Appeal No.196 of 2016** was cited. The learned Senior State Attorney urged the court to order retrial of the appellants.

Being mindful of the fact that the appellants had already served substantial parts of their respective sentences, the learned State Attorney submitted that, the said fact ought to be considered by the trial court upon finding the appellants guilty for the second time.

The appellants, who were both unrepresented, asked the court to consider the fact that they had been in prison since when they were arraigned, in 2010.

It is true that, documents conferring jurisdiction to the trial court to try the appellants with economic offences, were not properly endorsed. As such, as per the decision in the case of **Adam Seleman Njalamoto (supra)**, the trial court had no jurisdiction to try the appellants with economic offences. While the learned Senior State Attorney pressed for a retrial

order, the appellants urged the court to consider the time spent in serving illegal sentences. They asked for release.


In the case of Adam Selema Njalamoto (supra) the Court of Appeal observed that where the trial court fails to direct itself on an essential step in the course of proceedings, it does not automatically follow that a re-trial should be ordered, even if the prosecution is not to blame for the fault. The Court held that, each case ought to be decided depending on its particular facts and circumstances.

In Pascal Clement Braganza Vs The Republic (1957) EA 152 and **Fatehali Manji Vs The Republic (1966) EA 343**, the Court held that an order for retrial should only be made where the interests of justice require it.

The appellants have already spent nearly ten (10) years in prison, as prisoners. Do the interests of justice require that a retrial should be ordered in the circumstances of this case? I respond to the above posed question in the negative. Ten years' term of imprisonment is a substantial period of time already spent by the appellants serving illegal sentences.

For the foregoing reasons, the appellants' conviction is held to be a nullity and the same is quashed in respect of all counts. Sentences and orders earlier imposed upon the appellants are all set aside. The court orders immediate release of both appellants unless they are held in prison for other lawful cause.

Dated at **SHINYANGA** this **28th day of February, 2020.**


C. P. MKEHA
JUDGE
28/02/2020

Court: Ruling is delivered in the presence of the appellants in person and Mr. Kigoryo learned State Attorney for the Republic



C. P. MKEHA
JUDGE
28/02/2020