

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
SUMBAWANGA DISTRICT REGISTRY
AT SUMBAWANGA**

**CONSOLIDATED CRIMINAL APPEAL NO. 26 AND NO. 27 OF
2021**

*(Originating from Mlele District Court at Mlele in Economic Case No. 26
of 2019)*

LEONARD ZEBIUS @ BUZAZI.....1ST APPELLANT

THOMAS NIKALOUS @ SHABANI.....2ND APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

Date of Last Order: 26th July, 2022

Date of Judgment: 29th July, 2022

NDUNGURU, J

This is a consolidated appeal whereas the two appellants above named were arraigned before the District Court of Mlele at Mlele (trial court) for four (4) counts. The 1st, 2nd & 3rd counts were being in unlawful possession of Government Trophies, whereas the 4th count was being in unlawful possession of weapon in a game reserve. The provision of the counts are as follows;

1st count-Being in unlawful possession of Government Trophies contrary to Section 86 (1) and (2) (b) of the Wildlife Conservation Act No. 5 of 2009 read together with paragraph 14 of the First Schedule to, and Section 57 (1) and 60 (2) of the Economic and Organized Crime Control Act, [CAP. 200 R. E 2002] as amended by Section 16 (a) and 13 (b) of the Written Laws (Miscellaneous Amendments) Act, No. 03 of 2016.

2nd and 3rd counts-Being in unlawful possession of Government Trophies contrary to Section 86 (1) and (2) (c) (ii) of the Wildlife Conservation Act No. 05 of 2009 as amended by Section 59 (a) of the Written Laws (Miscellaneous Amendments No. 2) Act, No. 4 of 2016 read together with paragraph 14 of the First Schedule to, and Section 57 (1) and 60 (2) of the Economic and Organized Crime Control Act, [CAP. 200 R.E 2002] as amended by Section 16 (a) and 13 (b) of the Written Laws (Miscellaneous Amendments) Act, No. 3 of 2016.

4th count-Being in unlawful possession of weapons in a game reserve contrary to Section 17 (1) and (2) of the Wildlife and Conservation Act, No. 05 of 2009 read together with Section 57 (1), 60 (2) and paragraph 14 of the First Schedule both of

Economic and Organized Crime Control Act, [Miscellaneous Amendments) Act, No. 03 of 2016.

It was the prosecution side's case that on the 3rd day of November, 2009 at Rungwa area in Rukwa/Lwafi Game Reserve within Mlele District in Katavi Region, the appellants were found in unlawful possession of Government trophies to wit; two pieces of leopard legs and two pieces of leopard mandibles valued at USD 3500 which is equivalent to TShs. 8,109,500/= only, eight pieces of bush pig legs valued at USD 840 which is equivalent to TShs. 1,946,280/= only and thirty-two pieces of bushbuck legs and one bushbuck skull valued at USD 4800 which is equivalent to Tshs. 11,121,600/= only, all being the property of the Government of Tanzania, without any written permit from the Director of Wildlife. Whereas, on the same date they were also found in unlawful possession of five (5) spears, one (1) machete, one (1) knife, one (1) axe and nine (9) animal traps in a game reserve without permit from the Director of Wildlife.

Despite of their protest of being innocent, at the end of a full trial, both appellants were convicted after being found guilty of all four counts, and they were sentenced to serve 20 years in prison for the 1st, 2nd and 3rd counts while on the 4th count, they were to serve 3 years in prison. All these sentences were ordered to run concurrently.

Aggrieved by both conviction and the sentences, both appellants herein flew to the base of this court holding their Petition of Appeal which consisted of five grounds which I find best to reproduce as herein under;

1. That, they did not commit the serious offence as established by the prosecution side.
2. That, the trial court erred in law and fact convicting and sentence the appellant for the case which the prosecution failed to prove on the standard required by law.
3. That, the trial court erred in law point and fact by convicting and sentence the appellant by admitting the caution statement while he failed to note out that the caution statement were recorded illegally and without proof affirmatively that it was voluntary made.
4. That, the trial Magistrate court erred in law point and fact to convict and sentence the appellant basing on the caution statement which shows that the appellant confessed through the caution statement, but he failed to take consideration that the confession on the caution statement were coming after being tortured something which is contrary to the law.

5. That, the trial court had massively and incurably lost site in law point and fact to convict the appellant relying on PW1, PW3 and PW4 who were wildlife officers only, while there was no any independent witness who appeared before the court to support and prove whether the said items in the certificate of seizure were prepared by PW3 and signed by the accused/appellants in to satisfy the court in all spheres.

As the date for hearing this appeal was scheduled, the appellants represented themselves, meaning they had no legal representation meanwhile the respondent was represented by Ms. Marietha Maguta, learned State Attorney.

As they were invited to submit in support of their ground of appeal, both appellants prayed for this court to adopt the grounds as part of their submissions, and prayed for this court to allow their appeal.

In response to their submission, Ms. Maguta submitted that her side supports the appeal but not because of their grounds of appeal, instead it is because of the irregularity therein. She added that, on 13/11/2019, the consent and certificate of the DPP were not issued thus the trial court had jurisdiction to hear the case. She exclaimed, the record shows that the prosecutor tendered the exhibits which were the trophies the appellants were charged with. She submitted that, the said

exhibits were tendered and admitted as exhibit P1, and that furtherly the trial court ordered them to be destroyed.

The learned state attorney continued that, at that time the trial court had no jurisdiction to admit and order for them to be destroyed. She said, the irregularity vitiates the whole proceedings thus this appeal should be allowed. In conclusion, Ms. Maguta added that her side hesitates to pray for a retrial because by so doing they will be filling in the gaps they initially had in prosecuting the appellants and that they pray the appellants' appeal be allowed, conviction be quashed and sentence be set aside.

The submission by the learned State Attorney made me keenly peruse the proceedings of the trial court, and in doing so, I should remark that the issue for consideration here is the jurisdiction of the trial court in entertaining this matter before it.

It is needless to restate that jurisdiction is the threshold, and it touches the courts' competence to seize the matter presented before them. In other words, courts in Tanzania cannot try cases if they do not have jurisdiction. Section 57(1) of the Economic and Organized Crime Control Act, (Cap 200 R.E. 2002) (EOCCA) is a jurisdictional provision. Under Section 12 (3) of the EOCCA empowers the Director of Public Prosecutions (DPP) or any State Attorney he duly authorizes, to confer

jurisdiction to subordinate courts over economic offences he specifies under certificates. The relevant jurisdiction-conferring subsection (3) states:

*(3) The Director of Public Prosecutions 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 court subordinate to the High Court as he may specify in the certificate.***

[Emphasis added].

The economic offences cannot be validly tried by the court without obtaining the consent of the DPP as required under section 26(1) of the EOCCA which states as follows:

"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."

In this appeal at hand, at the 1st page of the trial court's proceedings, the exhibits which were charged to the appellants were tendered and admitted by the trial court which meant that the trial against the appellants has commenced without the certificate and

consent being issued by the DPP to confer jurisdiction to the trial court to entertain the matter.

To that effect, the District Court of Mlele was not vested with jurisdiction to try the case which is a subject of this appeal and as such, the trial proceedings were a nullity as well as the conviction and sentences. There are plenty of authorities with similar situation, to mention a few, See the cases of **Ebon Stephen Chandika vs Republic, Criminal Appeal No.236 of 2011** and **Abdulswamadu Azizi vs Republic, Criminal Appeal No.180 of 2011**(unreported).

In such circumstance, a retrial seems to be inevitable. But I did warn myself over this as I was guided by the decision in the case of **Dogo Marwa @ Sigana & Another vs Republic, Criminal Appeal No. 512 of 2019** (unreported), which quoted with approval the former Eastern African Court of Appeal in **Fatehali Manji vs Republic [1966] 1 EA 343**, in which it has provided a helpful guide to courts in Tanzania when considering whether to order a retrial. It was held that;

"...In general a retrial will be ordered only when the original trial was "illegal or defective; it will not be ordered when the conviction is set aside because of insufficiency of evidence or for the purpose of enabling the prosecution to fill up gaps in its evidence at the first trial; even where a conviction is

vitiated by a mistake of the trial court for which the prosecution is not to blame, it does not necessarily follow that a retrial should be ordered; each case must depend on its own facts and circumstances and an order for a retrial should only be made where the interests of justice require it."

At this juncture, a new trial will not serve the best interest of justice for the appellants, and therefore I proceed to allow the appeal, quash the convictions of the two appellants, and set aside their respective sentences. The appellants shall be freed immediately, unless they are otherwise lawfully held.

Order accordingly.



A handwritten signature in blue ink, appearing to read 'D. B. Ndunguru'.

D. B. NDUNGURU


JUDGE

29/07/2022

Date - 29/7/2022
Coram - Hon. K.M. Saguda – Ag, DR
1st Appellant - Present
2nd Appellant - Present
Respondent - Present
B/C - J.J. Kabata

Ms. Maguta - State Attorney: The matter is coming for judgment, we are ready for it.



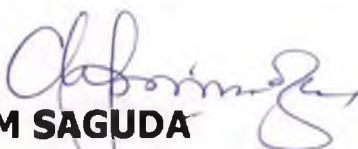

K.M SAGUDA

Ag, DEPUTY REGISTRAR

29/07/2022

Court: The judgment is delivered this on 29//07/2022 in the presence of State Attorney Ms. Maguta for Respondent and the appellants.




K.M SAGUDA

Ag, DEPUTY REGISTRAR

29/07/2022