

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE SUB- REGISTRY OF MANYARA)

AT BABATI

CRIMINAL APPEAL NO. 93 OF 2023

(Appeal from the decision of the District Court of Simanjiro in Economic Case No. 36 of 2022 Hon. O. I. Nicodemo, SRM)

RASHID ALLY.....APPELLANT

VERSUS

REPUBLICRESPONDENT

Date of last order: 7/11/2023

Date of Judgment: 10/11/2023

JUDGMENT

MAGOIGA, J.

The appellant, **RASHID ALLY** was arraigned before Simanjiro District Court (the trial court) for two counts of unlawful possession of firearm contrary to section 20(1)(b) of the Firearm and Ammunition Control Act No. 2 of 2015 (hereafter referred to as the Act) read together with paragraph 31 of the first schedule to and section 57(1) and 60(2) of the economic and Organized Crime Control Act [CAP 200 RE 2019], (hereinafter referred to as the 'EOCCA.)



It was alleged that on 11th day of April 2021 at Kitwai-Handeni game controlled area within Simanjiro District the appellant was found in possession of two locally made gun namely Gobore without license or permit.

On the second count the appellant was charged with unlawfully possession of ammunitions contrary to section 21(b) of the Act read together with paragraph 31 of the First schedule to and sections 57(1) and 60(2) of EOCCA.

It was alleged that on 11th day of April at Kitwai-Handeni game controlled are within Simanjiro District in Manyara region the appellant was found in possession of 159 locally made bullets without license or permit.

The appellant was convicted on his own plea of guilty and was sentenced to twenty years imprisonment.

Being aggrieved with the conviction and sentence meted out against him, the appellant filed the instant appeal with six grounds of appeal which I will not reproduce them for the reason to be apparent shortly.


When the appeal was called on for hearing the appellant appeared in person while the respondent was represented by Mr. Benedict Kapela, learned state attorney.



When availed chance to expound his grounds of appeal, the appellant opted to let the learned State Attorney to respond first to the grounds of appeal and if needs be, he will rejoin.

Responding to the grounds of appeal, Mr. Kapela supported the appeal but for a different reason. According to Mr. Kapela, the trial court lacked jurisdiction to entertain the matter because the consent and certificate conferring jurisdiction upon the trial court were incurably defective. The learned Attorney argued that there was no citation of the provisions of the law which created the economic offence on both the certificate and consent. He therefore urged the court to nullify the proceedings of the trial court for it acted without jurisdiction.

To buttress his arguments, the learned state attorney referred to the case of **Peter Kongori Maliwa & 4 others v Republic** Criminal Appeal No. 253 of 2020 Court of Appeal of Tanzania at Musoma (unreported) in which the consent and certificate conferring jurisdiction had no the provision of the law creating the economic offence. The court, therefore, proceeded to nullify the whole proceedings.



As to the way forward, the learned State Attorney pointed out that this court have options to make an order for trial de novo or to acquit the appellant if there is no enough evidence. Guided by the above, Mr. Kapela urged the court to order retrial because there is enough evidence on record against the appellant.

This being a point of law, the appellant being a layperson had nothing of substance to respond.

Havin gone through the trial court's record, it is obvious, consent and certificate conferring jurisdiction were issued by the Director of Public Prosecutions to the trial court to try the matter. But the provisions of the law creating the economic offence were not cited in the said documents. Such omission was fatal as it was succinctly held out in the case of **Peter Kongori Maliwa & 4 others v Republic** (supra).

Since the consent and certificate were incurably defective, the trial court had no jurisdiction to determine the matter. It embarked on nullity. In the case of **Ramadhani Omary Mtiula vs The Republic**, Criminal Appeal No. 62 of 2019 (unreported) when referring to the decision in **Fanuel Mantiri**



Ng'unda vs Herman Mantiri Ng'unda and 20 Others, Civil Appeal No.

8 of 1995 (unreported) the Court of Appeal observed thus: -

*" The question of jurisdiction for any court is basic, it goes to the very root of the authority of the court to adjudicate upon cases of different nature **The question of jurisdiction is so fundamental that courts must as a matter of practice on the face of it be certain and assured of their jurisdictional position at the commencement of the trial....** It is risky and unsafe for the court to proceed with the trial of a case on the assumption that the court has jurisdiction to adjudicate upon the case. [Emphasis added]*

Further in the case of **Jumanne Leonard Nagana @ Azori Leonard Nagana & another v The Republic**, Criminal Appeal No. 515 of 2019 Court of Appeal of Tanzania at Musoma (unreported) it was observed thus;

"The fate which befalls the proceedings and a decision made without jurisdiction is a nullity. Even where a court decides to exercise a jurisdiction



which it does not possess, its decision amounts to nothing.

From the above discussions and guided by the decisions of the Court of Appeal, the consequences of trial done without jurisdiction is a nullity. This court, hereby, therefore, invokes its powers vested to it by the provisions of section 43(1) of the Magistrates' Courts Act, [Cap 11 R.E.2019] doth revise and declare the proceedings, judgement, conviction and sentence of the appellant was a nullity, hence, the proceedings are nullified, judgement, conviction and sentence meted out against the appellant are equally set aside.

As to the way forward, the learned State Attorney urged the court to order retrial because there is ample evidence on record against the appellant.

There are two alternative orders that a court can make after nullifying proceedings like in the instant matter. Those orders are either to order trial *de novo* or to release and set the appellant free. The principle guiding the court on whether to order trial *de novo* or to release the appellant was expounded in the case of **Fatehali Manji v The Republic** [1966] E.A, 343, in which the court observed that for the court to order a retrial, it should



ensure that the prosecution is not going to utilize the opportunity of a rehearing to amount a better prosecution case by filling in the gaps, all to the detriment of the appellant.

In the instant matter the appellant was convicted on his own plea of guilty, hence there is no room to determine whether there is enough evidence against him or to gauge the possibility of the prosecution to fill in gaps.

In the circumstances, I order the matter be remitted to the trial court for retrial against the appellant before another competent Resident Magistrate after the office of the Director of Public Prosecutions complied with the law in giving consent and certificate.

This case file be immediately remitted to Simanjiro for smooth determination of the matter.

It is so ordered.

Dated at Babati this 10th November 2023



S. M. MAGOIGA

JUDGE

10/11/2023