

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

CRIMINAL APPEAL NO. 14313 OF 2024

*(Originating from Economic Case No. 04 of 2020 from Meatu District Court at
Mwanhuzi)*

MAGAKA ROZARIAAPPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

11th & 21st June, 2024.

MASSAM, J.

The appellant herein above was charged before the District Court of Meatu at Mwanhuzi with four counts, **first**, Unlawfully entry into a game reserve contrary to section 15 (1) and (2) of the Wildlife Conservation Act No, 5 of 2009, **second**, Unlawful Possession of the 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, Section 57 (1) and 60 (2) of the Economic and Organized Crime Control Act (CAP 200 R;E 2019), **third**, Unlawful Possession of the Government Trophies contrary to section 86 (1) and (2) (c) (iii) of the Wildlife Conservation Act

No. 5 of 2009, as Amended, 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 2019) and **fourth**, Unlawful Possession of the Government Trophy contrary to section 86 (1) and (2) (c) (iii) of the Wildlife Conservation Act No. 5 of 2009, as amended, read together with paragraph 14 of the first schedule to, section 57 (1) and 60 (2) of the Economic and Organized Crime Control Act (Cap 200 R;E 2019).

The particulars of the offences as per the charge sheet were that, on 22nd day of June, 2020 at Mwangusi area in Wildlife Management within Meatu District in Simiyu Region, the accused person did enter into the said area without the permission of the Director thereof previously sought and obtained, and on the same date and place the accused person was found in unlawful possession of Government trophies to wit, one head of buffalo, one Hind leg of Buffalo, one sacrum bone of buffalo, one liver of buffalo and one intestine of Buffalo equivalent to one buffalo killed valued at USD 1900 equivalent to Tshs. 4,402,300/=, one head of Warthog, equivalent to one Warthog killed valued at USD 450 equivalent to Tshs. 1,0412,650/= and one head of male Impala, one liver of Impala and one rib cage of Impala equivalent to one Impala unlawfully killed valued at USD 390 equivalent to

Tshs. 903,630/= the properties of the Government of the United Republic of Tanzania without a written permit of the Director of Wildlife Previously Sought and obtained.

At the trial, the Appellant was found guilty after the prosecution had proved their case beyond reasonable doubt, hence convicted and subsequently sentenced to serve one-year imprisonment for the 1st count, and 20 years imprisonment for the 2nd, 3rd and 4th counts and the sentences have to run concurrently.

Aggrieved therein, the appellant rightly lodged his appeal in this court with 5 (five) grounds, for convenient purposes all grounds clock within one ground that, ***the prosecution case was not proved beyond reasonable doubt,***

During the hearing of this appeal, the appellant appeared in person unrepresented, while the respondent was represented by Mr. Goodluck Saguye learned State Attorney.

In submitting his appeal, the appellant contended that, the trial court wrongly convicted him since he did not commit the offences, hence he prayed to be let free.

On the prosecution side, Mr. Goodluck, supported this appeal due to the illegalities found at the hearing of this case at the trial court and submitted that, according to section 3(3) of EOCCA and since this is an economic case, it was therefore supposed to be heard by the High court, including the cases shown at Paragraph 14 of the 1st Schedule to the EOCCA, nevertheless those offences can be determined by the subordinate court only after being issued with consent from the DPP, and the certificate thereto and as per the provision of Section 12 (3) of EOCCA .

The counsel went on arguing that, according to section 26(1), it is only the DPP who has power to give consent and certificate and his subordinates has powers under section 26(3), unfortunately consent in this matter was issued by RPO under section 26(1) of EOCCA Cap 200 R.E 2019 contrary to the law hence the case was heard without being issued with proper consent.

Further to that, the counsel contended that, the certificate issued to confer jurisdiction to the lower court was given under section 12(3) (4) of EOCCA while it was supposed to be given under section 12 (3) of EOCCA and thus the certificate was not properly issued.

Moreover, the counsel argued that, it is the requirement of the law that consent and certificate which had been given must make reference to the offences the accused is charged with, subsequently the certificate and consent did not make reference to the offences the accused was charged with and therefore they are defective which made the District Court of Meatu to lack jurisdiction to entertain the matter.

Mr. Goodluck added more that, the evidence tendered by the prosecution was also weak as there was no any exhibit tendered before the court to show that the accused was found within the game reserve hence the trial court erred to convict the appellant. The counsel referred this court to the case **of Dogo Marwa @ Sigana and another Versus Republic**, Criminal Appeal No. 512 of 2019, CAT at Musoma, Page 15 which insisted on the requirement of giving a sketch map to prove boundaries, and therefore he prayed to this court to acquit the appellant for the 1st count.

For the other counts that is 2nd, 3rd and 4th, the counsel also admitted that, the evidence tendered was weak to convict the appellant and if this court will order re trial the prosecution will have chances to fill in the gaps and will not serve the interest of justice. On his rejoinder, the appellant had nothing to add.

Having gone through the submissions by the parties, the centre issue for determination is ***whether the trial court was properly vested with jurisdiction to try these offences.***

To start with, it is clear from the provisions of section 3(3) of the EOCCA, that, all economic offences are to be tried within the jurisdiction of the Corruption and Economic Crimes Division of the High Court. However, under the provision of section 12(3) of the same Act, the same powers have been vested to the subordinate Court upon being given consent by DPP or any state attorney dully authorised by him. The provision of section 12(3) supra provides that,

"The Director of Public Prosecution or any state Attorney dully authorised 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"

Again, it is a matter of law that, before the subordinate court try such offences, it has to be availed with DPP consent under the provision of section 26(1) of the EOCCA, which states that,

"subject to the provision 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 Prosecution"

Back to our case, and as per the evidence testified by the prosecution to wit, the Respondent herein above, it is from his submission that, consent was issued by Regional Prosecution Officer/Attorney (RPO) instead of DPP under the provision of Section 26 (1) of EOCCA, where by in that section, it is only DPP who had been vested with powers to use such provision of law and it is not delegable. Surprisingly, the one who signed the said consent was a Regional Prosecution Attorney in Charge whose powers are enshrined under section 26 (2) of the Act.

Therefore, the consent submitted before the trial Court to try these offences was null ab initio and thus the trial court lacked perquisite jurisdiction to try the matter. The above position was

insisted by the Court of Appeal in numerous cases including the case of **Peter Kongori Maliwa Vs. Republic**, in Criminal Appeal No. 253 of 2020, at page no. 9 the Court of Appeal citing in approval with the case of **Dilipkumar Maganbai Patel v. Republic**, Criminal Appeal No. 270 of 2019 (unreported) where it was held inter alia that;

“ We have no doubt that in view of our deliberation above the consent and certificate conferring jurisdiction on the trial court were defective, though they were made under the appropriate provisions; section 12(3) and 26(1) of the EOCCA but referred to the provisions which the appellant was not charged with. The consent and certificate did not refer to section 86(1), (2) (ii) and (3) of the WCA which was clearly cited in the charge sheet. The certificate and consent were therefore incurably defective and the trial magistrate could not cure the anomaly in judgment as suggested by the learned State Attorney for the respondent. The defects rendered the consent of the DPP and the certificate transferring the

economic offence to be tried by the trial court invalid.

For that reason, we are constrained to find that the

trial and proceedings before the Resident Magistrate

Court of Dar es Salaam at Kisutu in Economic Case No.

58 of 2016 and the High Court in Criminal Appeal No.

146 of 2018 were nothing but a nullity"

Guided by the case law above, this court is agreed with the learned state attorney that their failure to cite the proper provisions of the law in the consent vitiates the trial proceedings and renders the whole proceedings and judgement of the trial court a nullity and consequently, the whole proceedings has to be nullified.

On the way forward, the learned State Attorney prayed to the court not to order a retrial, since the evidence tendered was weak to convict the appellant as the prosecution failed to tender a sketch map to show that the appellant was found in the game reserve by referring this court to the case of **Dogo Marwa @ Sigana and another Versus Republic (supra)**. Also, it was from his submission that even for the other counts, no enough evidence to prove it against the appellant and for the interest of justice the appellant has to be acquitted. From this, submissions this court is concur

with the counsel for the respondent the evidence presented was not strong enough for convicting the appellant and there is no need of ordering retrial. See also the former Eastern African Court of Appeal in **Fatehali Manji V. R [1966] 1 EA 343**

In light of all that have been submitted by the respondent and for the purpose of serving the best interests of justice for the appellants this court is therefore allowing the appeal, quash the convictions of the appellant, and set aside the sentences. The appellant shall be freed immediately, unless they are otherwise lawfully held.

It so ordered

DATED at **SHINYANGA** this 21st day of June, 2024.



A handwritten signature in blue ink, appearing to read "R.B. Massam".

R.B. Massam
JUDGE