

TANZANIA / JUDGMENT

frank andrea lufunde vs republic

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TZHCDECIDED
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IN THE HIGH OF THE UNITED REPUBLIC OF TANZANIA (SUMBAWANGA DISTRICT REGISTRY)
AT SUMBAWANGA CRIMINAL APPEAL NO. 38 OF 2022 (Originating from Resident
Magistrates' Court of Katavi at Mpanda in Economic Case No. 34 of 2019) FRANK ANDREA @
LUFUNDE..... APPELLANT VERSUS THE
REPUBLIC..... RESPONDENT

JUDGMENT

04/12/2023 & 05/02/2024 MWENEMPAZI, J. The appellant herein was arraigned before the Resident Magistrates' Court of Katavi at Mpanda (trial court) for two counts, whereby the first count was unlawful possession of firearm contrary to Section 20(l)(b) and 2 of the Firearms and Ammunition Control Act, No. 02 of 2015 read together with paragraph 31 of the First Schedule to and Sections 57(1) and 60(2) of the Economic and Organized Control Act, [Cap 200 R.E. 2002] as amended by Section 16(b) and 13(b) of the Written Laws (Miscellaneous Amendments) Act, No.3 of 2016, and the Second count was unlawful possession of ammunitions contrary to Section 21(b) and (2) of the Firearms and Ammunition Control Act, No. 02 of 2015 read together with paragraph 31 of the First Schedule to and Sections 57(1) and 60(2) of the i Economic and Organized Crimes Control Act, [Cap 200 R. E. 2019] as amended by Section 16(b) and 13(b) of the Written Laws (Miscellaneous Amendments) Act, No.3 of 2016. At the trial, the prosecution side alleged that on the 29th day of September, 2019 at Mwese No.2 village within Tanganyika District in Katavi Region, the appellant herein was found in unlawful possession of one muzzle loading gun commonly known as "Gobore" and unlawful possession, of nine (9) ammunitions used in a muzzle loading gun and explosives without any licence or permit from an Authorised Officer. After the charges were read and explained to the appellant in the language best understood to him arid he denied all charges in which a full trial was inevitable. Nevertheless, at the end of the trial, the appellant was found guilty Of the first count and in turn he was convicted and sentenced to serve the term of twenty years in prison whereas he was found not guilty on the second count arid he was acquitted. Being aggrieved by the decision of the trial court of finding him being guilty on the first count, the appellant filed his appeal to this court which consisted of five (5) grounds of appeal whereas they all suggest that he was convicted and sentenced over the charges which were not proved to the required standards of the law. 2 On the hearing date, the appellant

appeared for himself as he had no legal representation while the respondent, Republic was represented by Mr. Ladislaus Michael and Ms, Neema Nyagawa, both learned State Attorneys, but the submission was made by the latter. Before the appellant started to submit in support of his grounds of appeal, the learned State Attorney submitted first that her side has concerns over this matter which could dispose of this case. That, after going through the proceedings of the trial court they noticed legal faults and she prayed to address them before this court in which her prayer was granted. She then addressed this court that, this is an appeal emanating from Economic Case No. 34 of 2019 in the Resident Magistrate's Court Katavi at Mpanda. That, according to Section 3 of the Penal Code, [Cap 200 R.E 2019] the jurisdiction to hear this case is rested on the High Court, but Section 12(3) of Economic and Organized Crimes Control Act (EOCCA) has empowered the Director of Public Prosecution to issue the Certificate to confer jurisdiction to subordinate court and Section 26(1) to give Consent the prosecution of the suspects for the economic offences. Ms. Nyagawa added further that, the proceedings shows that the documents were issued by the Director of Public Prosecution, but they are missing the charging sections. 3 The learned counsel insisted further by referring to the case of Dilip Kumar Maganbai Patel vs Republic, Criminal Appeal No. 270 of 2019. CAT ta Dar es Salaam at page 10-11, where the court had a similar situation and declared that the trial Court heard a case without having jurisdiction. Again, she referred to the case of Hashim Nassoro @ Almas vs Director of Public Prosecution, Criminal Appeal No. 312 of 2019 CAT at Sumbawanga, where the court continued with the same stance, and at page 11 it held that the trial court proceedings are a nullity. Ms. Nyagawa then concluded that, it is their submission that the documents were defective, and she prays for the proceedings and the decision/judgment to be quashed, and as to the way forward she prays that this court issues an order for retrial, and that she believes that there is enough evidence where they can prosecute the case without prejudicing the appellant. The appellant had nothing to rejoin, but reiterated that he be set at liberty. After hearing the submissions made by both sides but particularly the one made by the learned State Attorney as she supported this appeal, I am relieved that my onus of determining this appeal has been reduced and 4 the only issue to be belt with is whether the support made by the respondent's counsel is valid. In that respect, there are plethora of decisions of the Court of Appeal of Tanzania where it has emphasized the compliance with the provisions of section 12 (3), 12 (4) and 26 (1) of the of Economic and Organized Crimes Control Act, Cap 200 R. E. 2019, and held that the consent of the DPP must be given before the commencement of a trial involving an economic offence. See, Rhobi Marwa Mgare & 2 Others vs The Republic, Criminal Appeal No. 192 of 2005, Elias Vitus Ndimbo & Another vs The Republic, Criminal Appeal No. 272 of 2007, Nico Mhando & 2 Others vs The Republic, Criminal Appeal No. 332 of 2008 (all unreported). As hinted earlier by the learned State Attorney, I did peruse the documents conferring jurisdiction to the trial court, and indeed they fall short of the requirements of the law as they lack the charging sections in terms of Section 20(1)(b) & (2) of the Firearms and Ammunition Control Act, No. 02 of 2015, for the first count and Section 21(b) & (2) of the same Act for the second count. 5 It was the holding of the Court in the famous case of DHipkumar Maganbai Patel vs Republic (supra) that "We have no doubt that in view of our deliberations 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)(c)(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 the Judgment..." The cited case above reflects the situation in the case at hand, and considering the holding of the Court, that the Consent and certificate were incurably defective there could not have been any valid proceedings before the trial court resulting in the conviction and sentence handed out to the appellant, and consequently, the proceedings thereto was thus nullified, conviction was quashed and sentence was set aside. To that extent, I do join hands with the learned counsel and declare that her support of this appeal is valid as the documents conferring jurisdiction to the trial court were incurably defective, and there would have not been any valid proceedings, conviction and sentence emanating from a trial court which lacked jurisdiction to entertain this matter. As the matter of fact, I proceed to nullify the proceedings of the trial court, quash the judgement. The conviction and the sentence thereof are hereby set aside. The file is remitted back to the trial Court for hearing denovo subject to legal requirement. In meantime the appellant shall remain in custody awaiting hearing. Hearing should commence as soon as possible for the interest of justice. Ordered accordingly. Dated at Sumbawanga this 05th day of February, 2024. T. M. MWENEMPAZI JUDGE Judgment delivered this 05th day of February, 2024 in judge's chamber in the presence of Appellant in person and Mr. Jackson Komba, State Attorney for the Respondent. T. M. MWENEMPAZI JUDGE 05/02/2024 7

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