

TANZANIA / JUDGMENT

MUSSA

COURT
TANZLII

DECIDED
29 October 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA BUKOBA SUB-REGISTRY AT
BUKOKA CRIMINAL APPEAL NO. 26017 OF 2024 (Originating from Economic Case No. 49 of 2024
District Court of Biharamuio) MUSSA KURUKUMBI.....
APPELLANT VERSUS THE REPUBLIC..... RESPONDENT

RULING

29th and 29th October, 2024 BANZL J.: Before the District Court of Biharamuio (the trial court) the appellant, Mussa Kurukumbi and five other persons namely, Wilson Bupilipili, Daudi Magulilo, Mzee Peter, Renatus Daniel and Majeshi Manamba, who are not parties to this appeal were jointly and severally charged with various offences of including unlawful disturbing the habitant of the component of biological diversity contrary to sections 188(c), 66, 67,68, and 193 (l)(a)(b), (2), (4) and (5) of the Environmental Management Act and unlawful possession of weapons into the National Park contrary to section 24(l)(b)(2) and 29(2) of the National Parks Act. The offences were alleged to be committed on 16th April, 2024 at Ichwankima area within Burigi Chato National Park. The appellant who was involved in the first count of unlawful disturbing the habitant of the component of biological diversity together with his Page 1 of 4 colleagues pleaded guilty to the said count and consequently, each one was default, to serve a term of five years imprisonment. The appellant being aggrieved with his conviction and sentence, has lodged this appeal but for the apparent reason to be disclosed shortly, I shall not reproduce the grounds of appeal. When the appeal was called for hearing, the appellant appeared in person unrepresented while Mr. Jamal Issa, learned State Attorney, appeared for the respondent Republic. As alluded above, before the trial court, the appellant was charged together with his colleagues, Wilson Bupilipili, Daudi Magulilo, Mzee Peter, Renatus Daniel and Majeshi Manamba who through Criminal Appeal No. 14282 of 2024, their convictions and sentences were quashed after the proceedings of the District Court of Biharamulo being nullified for want of jurisdiction. In that regard, and since this appeal traces its origin in the same case, parties were probed to address this Court on the issue of jurisdiction of the District Court of Biharamulo to try offences committed within Chato District in Geita Region. The appellant had nothing much to say. He admitted to be arrested in Chato District and urged this Court to transfer him to Chato District Court so that, he can be joined with his colleagues. On his side, Mr. Issa, learned State Attorney submitted that, the offences were committed at Ichwankima area within Chato District in Geita Region and thus, according to section 4 of Page 2 of 4 the Magistrates Courts Act [Cap. 11 R.E.

2019] (the MCA), the District Court of Biharamulo have no jurisdiction to try the case at hand. He therefore prayed for the appellant be sent to Chato District Court for his case to be tried afresh according to the law. It is common knowledge that, the question of jurisdiction is sd i fundamental and every court must be certain and assured of its jurisdictional position before commencement of the trial. Likewise, jurisdiction of courts is the creature of statute. Section 4 (1) (2) of the MCA provides that: There is hereby established in every district a district court which shall, subject to the provisions of any law for the time being in force, exercise jurisdiction within the district in which it is established.

(2) Subject to subsection (3), the designation of a district court shall be the district court of the district in which it is established." It is apparent from the provisions of the law above that, the jurisdiction of the district court is territorial in the sense that, it is limited to geographical location within which such district is designated, unless it has been conferred with concurrent jurisdiction over another district. In our case at hand, both parties are at agreement that, the offences were committed at Ichwankima area within Burigi Chato National Park which is found within Chato District in Geita Region. It goes without saying that, Chato District and Biharamulo District are two distinct districts and each has its own District Court; Page 3 of 4 established under section 4 of the MCA. In that regard, I am constrained to agree with both parties that, the District Court of Biharamulo has no jurisdiction to try on offences committed within Chato District. Since the proceedings of the lower court had already been nullified by this Court vide Criminal Appeal No. 14282 of 2024, I hereby quash the conviction of the appellant and set aside his sentence. I further order that, the appellant Mussa Kurukumbi should be expeditiously charged and tried at Chato District Court which is the court of competent territorial jurisdiction. The appellant shall remain in custody while awaiting to be transferred to Chato District Court for his fresh trial. It is accordingly ordered. I. K. BANZI JUDGE 29/10/2024 Delivered this 29th October, 2024 in the presence of the appellant, Mr. Jamali Issa, learned State Attorney for the respondent, Hon. Audax V. Kaizilege, Judge's Law Assistant and Ms. Mwashabani Bundala, RMA. I. K. BANZI JUDGE 29/10/2024 Page 4 of 4

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