

TANZANIA / JUDGMENT

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THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA MBEYA
SUB - REGISTRY AT MBEYA CRIMINAL APPEAL NO. 13429 OF 2024 (Originating from the District
Court of Mbarali at Rujewa in Economic case No. 24 of 2022) SAID
CHALAJI.....APPELLANT VERSUS THE
REPUBLIC.....RESPONDENT

JUDGMENT

Date: 21 August 2024 & 11 September 2024 SINDA, J.: The appellant at the District Court of Mbarali at Rujewa (the Trial Court) together with another person known as Exaud Mkwegwa were charged with four counts to wit; 1. Unlawful entry into the National Park contrary to section 21 (1) (a) (2) and 29 of the National Parks Act, Cap 282, R.E

2002. 2. Unlawful possession of ammunition contrary to section 21 (a) (b) of the Firearm and Ammunition Control Act, No. 2 of 2015 read together with Paragraph 31 of the First Schedule to and Sections 57 (1) and 60 (2) 1 both of the Economic and Organized Crime Control Act, Cap 200, R.E

2022. 3. Unlawful possession of firearm contrary to section 20 (1) (a) and

(b) of the Firearm and Ammunition Control Act No. 2 of 2015 read together with Paragraph 31 of the First Schedule to and sections 57 (1) and 60 (2) both of the Economic and Organized Crime Control Act, Cap 200, R.E 2022. 4. Unlawful possession of ammunition contrary to section 21 (a) (b) of the Firearm and Ammunition Control Act, No. 2 of 2015 read together with Paragraph 31 of the First Schedule to and Sections 57 (1) and 60 (2) both of the Economic and Organized Crime Control Act, Cap 200, R.E 2022. It was alleged that on 25 June 2022 at Ulanga Area in Ruaha National Park within Mbarali District in Mbeya Region, the appellant together with his co accused entered into Ruaha National Park without having a permit from the Director of National Parks. They were found in possession with ammunition to wit gun powder, one muzzle loading gun and ammunition to wit nineteen (19) local made pellets without permit or license. At the end of hearing, the Trial Court found that the first count was proved for both the accused persons. The second to fourth count was proved against the appellant. The appellant and his co accused were convicted and sentence to serve 12 months or to pay fine of 50, 000/= for the first count. 2 The

appellant was sentenced to 20 years imprisonment for each remaining count. Aggrieved with decision, the appellant filed petition of appeal which contain the following grounds;

1. That the trial court erred in law for determining the matter without jurisdiction.
2. That the trial court erred in law and facts to convict and sentence appellant in a case that was not proved to the required standard.
3. That the trial court erred in law and fact when it admitted the seizure note and cautioned statement that were made. At the hearing of appeal, the appellant was represented by advocate Nyasige Kajanja while respondent represented by Mr. Rajabu Msemu S.A. The appeal was argued orally. The appellant advocate prayed to abandon the second and third ground and remain with first ground. Ms. Kajanja submitted that the Trial Court erred in law and fact to determine the matter without jurisdiction. She argued that counts 2, 3 and 4 falls under the Economic and Organized Crime Control Act. Therefore, the Trial Court had no jurisdiction to entertain the matter. As shown at page 8 of the proceedings of the Trial Court (the Proceedings), the prosecutions informed the court that they have received consent and certificate from the DPP. She added that these are the instruments which give the jurisdiction to the Trial Court to entertain the matter on economic and organized crime. That, the prosecutor after informing the court that he has received the consent and the certificate, the records do not show if the same was endorsed and admitted by the Trial Court. At page 9 of the Proceedings of the Trial Court proceeded with the Preliminary Hearing. It was not shown if the documents were endorsed and admitted in court to be part of the proceedings. In that circumstances it means nothing was done in court because the Trial Court had no jurisdiction. She referred to the case of John Julius Martin & Another vs. Republic, Criminal Appeal No. 42 of 2020, CAT at Arusha which stated that the court lacks jurisdiction if the consent and the certificate are not admitted and in the records of the proceedings of the court. In reply, Mr. Rajabu Msemu argued that, it is true that in relation to economic and organized crimes, the Trial Court had no jurisdiction. The jurisdiction is with the High Court. However, the Trial Court can entertain the matter under section 12 of the Economic and Organized Crime Control Act where it requires the DPP or authorized personnel to give consent to the Trial Court to entertain economic and organized crimes. In this matter, at page 8 of the Proceedings the prosecution submitted the consent and certificate to the Trial Court and proceeded with the preliminary hearing. Ms. Kajanja stated that the consent and certificate are supposed to be endorsed and admitted in order to form part of the proceedings. He argued that the ground is outdated as the recent decision of Nassib Abubakar Mwaziyega @ Ras vs. Republic, Criminal Appeal No. 146 of 2021 states that the responsibility of the DPP or any subordinate acting under him ends when the DPP gives the consent and certificate. He added that there is no requirement to file the same in court. He stated that at page 18 to 25 of Nassib Abubakar Mwaziyega @ Ras (supra), the CAT discussed section 12 and 26 of the Economic and Organised Crime Act and concluded that not endorsing the certificate and the consent in the proceedings cannot vitiate the trial. He was of the view that this is the most recent decision compared to the case cited by Ms.

Kajanja. In rejoinder, the appellant reiterated her submission in chief. I have considered the court records, grounds of appeal and submission made by the parties. There is no dispute that the appellant at the Trial 5 Court was charged with an economic offence. Now, the issue for determination is whether the trial court had jurisdiction to entertain this case. According to section 3 (1) (3) (a) and (b) of the Economic and Organised Crime Act, the court vested with jurisdiction to try economic offences is the High Court. However, section 12 (3) of the Economic and Organised Crime Act authorizes the DPP or an officer authorized by him to direct such cases to be tried by a subordinate court. It provides that: "12 (3) The Director of Public Prosecutions or any other 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 High Court under this Act be tried by such court subordinate to the High Court as he may specify in the Certificate." Further, section 26 (1) and (2) of the Economic and Organised Crime Act, provides for a requirement of the consent to prosecute from the DPP or an officer authorized by him before such an offence is tried by the subordinate court. The section provides: "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. 6

- (2) The Director of Public Prosecutions, shall establish and maintain a system whereby the process of seeking and obtaining of his consent for prosecutions may be expedited and may, for that purpose, by notice published in the Gazette, specify economic offences the prosecutions of which shall require the consent of the Director of Public Prosecutions in person and those the power consenting to the prosecution of officers subordinate to him as he may specify acting in accordance with his general or special instructions." In this case at hand as submitted by Ms. Kajanja the records reveal that the certificate conferring jurisdiction and the consent did not form part of the trial court's proceedings. The proceedings do not indicate that the certificate and consent were formally filed, admitted and endorsed by the Trial Court before the preliminary hearing. The proceedings reveal that the prosecutor only stated that he received a consent from the prosecuting attorney in charge and the certificate conferring jurisdiction to subordinate court to try economic case. Then, he prayed to read the charge and the court granted the prayer. I wish to reproduce the same as follows: 22/03/2023 Coram: E.S Mwambapa-SRM P/P: Boaz 7 Accused: Both present C/c Naomi Pros: This case is due for hearing, investigation complete, I have received a consent from the Prosecuting Attorney In charge and certificate conferring jurisdiction to subordinate court to try an economic crime case, I pray to read charge to the accused person. Court: prayer granted, charge read over and explained to the accused person who are asked to plead thereto Mr. Msemo was of the view that non-endorsement and not admitting the consent and the certificate conferring jurisdiction of the trial court was not fatal. He referred to the recent case of Nassibu Abubakar Mwaziyenga @ Ras vs. Republic (supra). I have read that case and find that the same was distinguishable with the case at hand. In the case of Nassibu Abubakar Mwaziyenga @ Ras vs. Republic (supra) before hearing the State Attorney informed the trial court that the certificate conferring

jurisdiction to subordinate court on economic crime case and consent has been prepared and filed in that court. Also, the documents were found in the case file stamped with trial court seal. In this case at hand the prosecutor only stated that they received the certificate conferring jurisdiction to subordinate court on economic crime case and the consent. 8 Upon perusal of the documents I find that the documents are in case file but were not stamped by Trial Court and records are silent on how the documents arrived in the case file. In the case of Aloyce Joseph vs. 6 Republic (Criminal Appeal 35 of 2020) [2022] TZCA 771 (5 December 2022, TANZLII) it was held that: "Since in the case at hand, the consent and the certificate were not formally received by the trial court; the trial cannot be said to have been lawfully conducted. The trial court's proceedings were therefore a nullity. As a result, we hereby nullify them and quash the resultant judgment" See also the case of Salumu s/o Andrew Kamande vs. Republic (Criminal Appeal No. 513 of 2020) [2023] TZCA 133 (22 March 2023, TANZLII) and Sefu Abdallah Chombo @ Baba Fatina & Five Others vs. Republic, Criminal Appeal No. 628 of 2022 (CAT at Songea). Therefore, I find that non-endorsement and not admitting the consent and the certificate conferring jurisdiction of the Trial Court is fatal. In the case of CRDB Bank PLC vs. Lusekelo Mwakapala, (Civil Appeal No. 143 of 2021) [2023] TZCA 17637 (22 September 2023, TANZLII), it was held that: "It is worth noting that; the question of jurisdiction is crucial and must be determined by the court/tribunal at the earliest opportunity. Jurisdiction is everything without which a court has no power to determine the dispute before it Where a Court has no jurisdiction there would be no basis for a continuation of proceeding. Generally, a court is barred to entertain a matter in which it has no jurisdiction " As this case was tried without the trial court being vested with jurisdiction to try it, I proceed to nullify both the Proceedings and judgment of the Trial Court. I order the record be remitted to the Trial Court for retrial before another magistrate. The appellant shall remain in custody. Right to appeal is explained. DATED at MBEYA on this 11 day of September 2024. A. A. SINDA JUDGE 10

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