

TANZANIA / JUDGMENT

20190813 TZHC Mwanza

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13 August 2019

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IN THE HIGH COURT OF TANZANIA (IN THE DISTRICT REGISTRY) AT MWANZA HC: CRIMINAL APPEAL NO. 150 OF 2018 (Originating from the judgment of the District Court of Ilemela District in Economic Case No. 1 of 2017) Last Order: 13.08.201~ / . . ,,, Judgment dat~t13.082{119 \, >.,_- \ . " \ , . * ,) c, ... /; ; ~ - - . "" "" \ ' , / . /; . > , . " . * , < . ' . * , ' , \ , . .. A.Z.MGEYEKWA, "J~' , , \ \ \ . ' ~ , ' : \ (, \ ' In th. ~> : RJ\$ t: r'ict Court of Ilemela, in Mwanza Region, Simon S/O ' , , , , , i • (: ~ , : _ : ~ J , Katoke (hereinafter referred as the appellant) was charged with the offence of Disrupting and damaging property used for providing necessary service contrary to section 57(1) and paragraph 20 (1) and

- (2) (b) of the First Schedule to the Economic and Orga_nized Crime Control Act, Cap.200 [R.E. 2002]. 1 The charge sheet: alleged that on the lih.day of February, 2017 1 at around 01:30 hrs at Tan?ania Broadcasting Corporation Yard situated at Saba saba area within Ilemela District in the city of Mwanza disrupted and damagJd 480metres of copper wires valued Tshs. 1,920,000/= installed for 1the purpose of enhancing the quality of Radio broadcasting the properties of Tanzania Broadcasting Corporation. ~ . The appellant was convicted ~ha~d~tenced to fifteen (15) years imprisonmen{~.oe)-~')llan~£s aggrieved with r--_ I ~~~" \ both the conviction and sentences amd"the:t,~!~f filed the present appeal to this court. The~ell,~,~R~ed in person, unpresented, . I ' , , ~ while Ms. Flyere.gete, 't\rn~!;_ai:e~ttorneys represented the respondent. . ~~~ . <G~ The appellanr nad not~muc~ to say; he prayed for this court to ~\:'<~~v: allow .tlei,i~\~rti:-0 roll the ball. \$F1yetegete, the learned State Attorney, submitted that ~ I concerning the first and second grqunds of appeal, she stated that the consent of the OPP is a requirem~nt of the law. In accordance with 1 section 26(1) of the Economic and Organized Crime Control Act, I I Cap.200 [R.E. 2002]. Ms. Flyregete stated that the appellant was I charged under section 57 (10 and paragraph 20 (1) and (2)(b) of the First Schedule of the Economic ahd Organized Crime Control Act, Cap.200 [R.E. 2002], but the consent of the DPP was not issued either the c~rtificate was not ~tendered in court. Ms. Flyeregete supmitted further that subordinates courts are required to obtai~ the consent of the DPP. The learned State Attorney continued to submit that in the instant case, the consent of .the DPP and the'ertificate were not indorsed in the trial court proceedings. Th~end~~e proceeding a nullity because the District Court ~d no~,to ¥ n the matter. She prayed for this court to~ash tll{~dings and judgment of the trial court and, re~~~t~I by a competent court wMch.has jurisdicti(~ . I coincide w,tri~.t,h1ce((.bm1~of. the-.learned State Attorney and ~"- \ , . - \ \ v . the first and S€Gond g~unds~peal raised by the appellant that the trial Di~~rt

~g~teZrred in . law in trying this case without-i'ollow1Ag{~fli~":>consent of the Director of Public l~t. Prosec\,on. ~s~ ~ • th e prosecut\,on, t he t na~ 1 court had •eLGre"\~mmenc,ng t: " ~ to ob\iii\,cons~\of tf?e Director of Public Prosecution in terms of \: . . __ rl section 26"{~the Economic and Organised Crime Act, Cap. 200 [R.E 2002] which provides:- " 26 (1) Subject to the provisions 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 Prosecutions. ,√ The jurisdiction to try economic I , crimes is solely vested with the High Court, sitting as an economic~ crime court as per seq:ion 3 of the Economic and Organised Crime Act Cap.200 [R.E. 2002]. The subordinate court may try an economic case, but before hearing it I must obtain a certificate of trahsfer, which will empower it to determine the economic and orga~ized ~crime case. Section 12 (3) of 1 the Economic and Organised Crime Act Cap. 2001'~-.E. 2002] provides that:- . . . ~ ~ . . " The Director of Public Pros'ecutions ~ l a t e Attocney duly authorized by him may in eae.._/2~c~1kem~i;necessary or appropnate m the pub/Jc Interest~,certificate under his hand ~\ _ r~!~-.~ ~ ~ V order that any ca5;involving~an offence trial}le by the court under this Act be tried D;~ cau?t?;ub~)iate to the High Court as he mayspeci~in~ ~ ~ ~ ~ . It is i~ ~ {ia~!ilfrict Court of Ilemela erred in law by determinin~)i~sta~e sin~ it had no jurisdiction to try an econ~it~aining the consent of the OPP and the certificate of ~Asf~herefore, thJ proceeding of the District Court \~ \ \ f l of Ilemela'Z:~,~Jty given the fact hat the trial court had no power to hear the case~in the absence of the certificate of transfer under the I hand of the OPP. In the case of Adam Selemani Nyalamoto v R Crinii~al Appeal No.196 of 2016, it wJs held that:- . I I " The triad District Magistrate of Ulanga had no Jurisdiction to hear the case unless the DirJctor of Public Prosecution issued a 4 .. "); { , i consent and certificate of transfe0 which would vest the trial District Court with Jurisdiction. I/ Guided by the above authorities, I find that the appeal has merit. I, therefore, nullify and quash the District Court of Ilemela proceedings and judgment in respect to Economi~minal Case No. 1 of 2017. I order the appellant be retried by a c0u~with requisite jurisdiction. In case of another convict~ ~ ~ ~()hat the appellant has so far served in prison siWl,lld be)a~cc:Znt. It is so ordered. ~ ~ DATED at Mwanza this ~ y of'~gust,;~1019. . ~ ~ \ ~ ~ ? SJ .. . , " ~ -:~JUDGE ~08.2019 R u l i n ~ n Q~ day of August, 2019 in the presenCe of Ms: \\'-1.'Y'-1' '\ \ .v. Fyregete~State Attorney and the appellant. . ~ !l.. ,,,;tf{~:~it~t- 'Ii~r~r~r y..-;~;/ \ / / ('s,• 1~. JA~ ~, J<J;:- .11."""{ft. ~r. - , , ~, ~- r, >ti v,,,!~ l";!~l- . . \ ~, '• >~ , ~ ii A.Z g yekwa . :~jf ~t.~%~i t;,,,J "itJ •'1:(f!~.i:~:~:, \ ',,~.Iiif. JUDGE (,,,, \ , , /f::'\ . t~ ~ ~ ~ ~ ~ ~ ~ . :? :U . \ , ; ; ; ! { ril; ; , \ 1 :t~J/; ; j } J 13.08.2019 . \ 'r~ \ ' / ~ /J' \ \ ' (;, . , ~ ~ , - /l, _ * /; / . fl. ' ! ~ : ~ _ . i; . ~ : : r : ~ ? } ' ! } > j / 5

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Prepared on 14 October 2026 · Esheria