

TANZANIA / JUDGMENT

dppls vs damiano stanslaus clement and others 2023 tzca 230 5 may 2023

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IN THE COURT OF APPEAL OF TANZANIA AT DODOMA (CORAM: KWARIKO, J.A.. LEVIRA. J.A.. And KENTE, J.A.) CRIMINAL APPEAL NO. 325 OF 2021 THE DIRECTOR OF PUBLIC PROSECUTIONS APPELLANT VERSUS DAMIANO STANSLAUS CLEMENT 1st RESPONDENT JOSEPH BARIE @ M U L D A 2nd RESPONDENT MEFUNYA DAUD KITAMBORO 3 rd RESPONDENT (Appeal from the Decision of the High Court of Tanzania at Dodoma) (Masaju, J .) dated the 21st day of May, 2020 in (DC) Criminal Appeal No. 130 of 2020 JUDGMENT OF THE COURT 25th April & 5th May, 2023 KWARIKO, J.A.: The Director of Public Prosecutions, the appellant herein was aggrieved by the decision of the High Court of Tanzania at Dodoma (the High Court) which declared the trial, proceedings, conviction and sentence against the respondents before the District Court of Manyoni (the trial court) illegal and thus a nullity. It therefore quashed the conviction against the respondents and set aside the sentence. Before the trial court, the respondents were charged with a total of four counts, two of them being unlawful possession of Government trophies contrary to sections 86 (1) (2) (c) (ii), (3) (b), 113 (1) and (2) of the Wildlife Conservation Act No. 5 of 2009 (henceforth the Act) as amended by section 59 (a) and (b) of the Written Laws (Miscellaneous Amendments) Act No. 2 of 2016 read together with paragraph 14 of the First Schedule to and sections 57 (1) and 60 (1) both of the Economic and Organized Crime Control Act [CAP 200 R.E. 2002] (the EOCCA) as amended by sections 13 (b) (2) (3) (4) and 16 (a) of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016. The other two offences were that of unlawful dealing in Government trophies contrary to sections 80 (1) and 84 (1) 113 (1) and (2) of the Act read together with paragraph 14 of the First Schedule to and sections 57(1) and 60 (1) both of the EOCCA as amended by sections 13 (b) (2) (3) (4) and 16 (a) of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016. It was alleged in the first count that, on 02nd November, 2017 at Manda bushes within Chamwino District in Dodoma Region, the respondents were found in unlawful possession of Government trophies to wit: one (1) complete elephant tusk and three (3) pieces of elephant tusks, from four elephants valued at USD 60,000 which is equivalent to Tshs. 132,000,000/=, the property of the United Republic of Tanzania. In the second count, it was alleged that, on the same date and place as stated in the first count, the appellants were found dealing in the Government trophies by selling the said elephant tusks. The allegations in the third count were that, on 03rd November, 2017 at Mpande bushes within Manyoni District in Singida Region, the appellants were found in unlawful possession of

Government trophies to wit: two (2) elephant tusks obtained from one elephant valued at USD 15,000 which is equivalent to Tshs. 33,000,000/=, the property of the United Republic of Tanzania. Lastly, the particulars in the fourth count were that, on the same date and place where the offence in the third count was committed, the appellants were found in unlawful possession of Government trophies, namely, two (2) elephant tusks obtained from one elephant valued at USD 15,000 which is equivalent to Tshs. 33,000,000/=, the property of the United Republic of Tanzania. The respondents did not admit the charge and thus they were fully tried. The prosecution built their case upon a total of four witnesses whereas the respondents were the only witnesses in defence. However, since the respondents' appeal in the High Court was not decided on merit, we do not find it necessary to reproduce the facts of the case from the evidence of those witnesses. 3 At the end of the trial, the respondents were convicted in all four counts and they were each sentenced to 20 years imprisonment in each count and the sentences were ordered to run consecutively. Dissatisfied, the respondents successfully appealed to the High Court. In its decision, the High Court found that the trial court had no jurisdiction to hear and determine the case against the respondents. It was of the opinion that since the respondents were arrested for economic offences in Chamwino District in Dodoma Region, the trial court ought to have been the District Court of Dodoma or the Court of Resident Magistrate of Dodoma but not the District Court of Manyoni. That finding was reached by invoking section 29 (1) of the EOCCA which requires that once a person is arrested in respect of an economic offence, he should be taken before the District Court or the Resident Magistrate Court within whose local limits the arrest was made. For that reason, the High Court invoked its revisionary powers under section 372 (1) of the Criminal Procedure Act [CAP 20 R.E. 2019; now CAP 20 R.E. 2022] (the CPA) and declared the whole trial, conviction and sentence illegal and accordingly quashed the same and set aside the sentence. In the result, the respondents were released from custody. The appellant was aggrieved by that decision, hence the present appeal before the Court upon the following two grounds:

1. That, the first appellate court erred in law and facts by holding that the trial court lacked jurisdiction to try economic case against the respondents.
2. That, the first appellate court erred in law and facts by holding that the trial court's conviction and sentence were illegal. During the hearing of the appeal, the appellant was represented by Ms. Pamela Shinyambala, learned Senior State Attorney assisted by Ms. Sabina Silayo and Mr. Henry Chaula, both learned State Attorneys. On the other hand, the respondents did not appear though they were duly served through publication in the Habari Leo Newspaper of 12th April, 2023. Therefore, hearing of the appeal proceeded in the absence of the respondents in terms of rule 80 (6) of the Tanzania Court of Appeal Rules, 2009. It was Mr. Chaula who took the stand to prosecute the appeal. He argued the two grounds together as follows. It was his contention that section 113(2) of the Act confers jurisdiction to try the offences committed outside the local limits where the arrest was made. In the alternative, he argued that, even if there was omission in respect of the place of the trial, section 387 of the CPA bars the courts to set aside conviction where the case is tried outside the local limit where the arrest was made. To lend credence to his contention, the learned counsel referred us to the Court's earlier decision in the case of Makoye Masanya

& Three Others v. Republic, Criminal Appeal No. 29 of 2014 (unreported). Following this decision, Mr. Chaula argued that no injustice was occasioned when the respondents were charged and tried in the District Court of Manyoni. Basing on his submission, the learned State Attorney urged us to allow the appeal, quash the decision of the High Court and give direction that the respondents' appeal be heard afresh before the High Court. Having considered the grounds of appeal and the submission by the appellant's counsel, the germane issue to decide is whether the trial court had jurisdiction to try the alleged offences. District Courts are established under section 4 of the Magistrates' Courts Act [CAP 11 R.E. 2019]. Section 4 (1) thereof provides that a district court shall exercise jurisdiction within the district it is established. However, ordinarily, every offence should be inquired and tried by a court within the local limits where it was committed. Section 180 of the CPA in that regard provides thus: "Subject to the provisions of section 178 and to the powers of transfer conferred by sections 189\ 6 190 and 191, every offence shall be inquired into and tried, as the case may be, by a court within the local limits of whose jurisdiction it was committed or within the local limits of whose jurisdiction the accused person was apprehended, or is in custody on a charge for the offence, or has appeared in answer to a summons lawfully issued charging him with the offence." Notably, in the instant case the respondents were charged with the offences under the Act which also provides jurisdiction of the trial court. Section 113 (2) of the Act provides thus: "Notwithstanding the provisions of other written law, a court established for a district or area of Mainland Tanzania may try, convict and punish or acquit a person charged with an offence committed in any other district or area of Mainland Tanzania. " According to this provision, the offences under the Act committed in any district or area, may be tried and determined in any other district of the Mainland Tanzania. In the case at hand, according to the particulars of offences, the offences were committed in two different districts, namely Chamwino and Manyoni contrary to what the High Court said that the offences were committed in Chamwino District only. That notwithstanding, since the quoted provision permits such offences to be tried in any other 7 district in the Mainland Tanzania, it is our considered view that when the respondents were tried in Manyoni District Court, no law was contravened. The High Court cited section 29 (1) of the EOCCA which provides that upon arrest of a person of an economic offence, he is supposed to be charged in the District Court or the Court of Resident Magistrate within whose local limits the arrest was made. While we agree with the interpretation of that provision of the law, we are of the view that it applies in offences of economic nature. In the instant case, the respondents were charged with offences of economic nature but arising from the Act. Section 113 (2) of the Act quoted above contains a non obstante clause which means its enforceability overrides any provisions contained in any other written law. That means, the offences under the Act may be tried in any other district in the Mainland Tanzania regardless of the place of arrest. From the foregoing analysis, we have no hesitation to state that the trial against the respondents in the trial court was proper and therefore the conviction and sentence were not illegal. However, if we may go a step further, assuming that the case was instituted in a wrong court, by virtue of section 387 of the CPA, the finding, sentence or order should not be set aside unless it

appears that such an error has occasioned a failure of justice. This provision states thus: "No finding, sentence or order of any criminal court shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or passed, took place in a wrong region, district or other local area, unless it appears that such error has in fact occasioned a failure of justice." When the Court was faced with a like scenario in the case cited to us by the learned State Attorney of Makoye Masanya (supra), the Court interpreted the said provision and observed that: "So, even if there was a district court in Meatu, the offence was committed in Meatu, and the appellants were arrested there, their trial in the District Court of Bariadi is not necessarily an incurable irregularity unless they can show that by so doing some injustice has been occasioned to them. The appellants have not suggested so in their grounds of appeal or in their oral submissions in Court. We therefore reject that ground of appeal." In the event, we are satisfied that no law was contravened when the respondents were tried in the District Court of Manyoni despite their arrest being made in Chamwino and Manyoni Districts. 9 Finally, we find this appeal meritorious and thus proceed to set aside the decision of the High Court which declared the trial, conviction and sentence against the respondents illegal. We hereby remit the case file to the High Court with a direction that the respondents' appeal be heard afresh by another Judge. DATED at DODOMA this 5th day of May, 2023. M. A. KWARIKO JUSTICE OF APPEAL M. C. LEVIRA JUSTICE OF APPEAL P. M. KENTE JUSTICE OF APPEAL The Judgment delivered on 5th day of May, 2023 in the presence of the Mr. Henry Chaula, State Attorney for the appellant and in absence of both respondents is hereby certified as a true copy of the original. 10

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