

TANZANIA / JUDGMENT

republic vs mohamed bushiri computer and another 2015 tzhc 2114 29 june 2015

COURT
TZHCDECIDED
29 June 2015

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IN THE HIGH COURT OF TANZANIA CRIMINAL REVISION NO. 2 OF 2015 (Original Economic Criminal Case No. 2 of 2011 Nanyumbu District Court) THE
REPUBLIC..... APPELLANT VERSUS

1. MOHAMED BUSHIRI @COMPUTER..... 1st RESPONDENT
2. HASSAN HASSANI 2nd RESPONDENT ORDER IN REVISION 24/6/2015 & 29/6/2015 M. G. MZUNA, J. The accused persons/respondents Mohamed Bushiri @Computer and Hassan Hassan were charged before the District Court of Nanyumbu in Economic Criminal case No. 2 of 2011 with four counts among them being Unlawful Possession of Government trophies c/s 70 (1), 2 (b) and 3 of the Wildlife Conservation Act, Cap 283 R.E 2002 as read together with Section 57 (1) and paragraph 14 (d) of the first schedule both of the Economic and Organized Crime Control Act, Cap 200 R.E 2002. They were alleged to have been found in unlawful possession of 31 pieces of elephant tusks weighing 240.08 kgs valued Tshs. 17,891,962/- the property of the Government of the United Republic of Tanzania. The offence was committed on 31st January 2010 at Lukula Village in Nanyumbu District, Mtwara Region. On 11/2/2011 the court purported to withdraw the charge under Section 225 of the Criminal Procedure Act, cap 20 R.E 2002. The case file came to my notice during the inspection. I invited parties to address court on the legality of the order. The Republic had chance to be represented by Mr. Kimweri, the learned Senior State Attorney while the respondents failed to enter appearance. Submitting to court, Mr. Kimweri argued that there was no consent from the DPP under S. 26 (1) of The Economic and Organized Crime Control Act Cap 200 R.E 2002. Similarly there was no certificate giving power to the court to hear the case under S. 12 (3) of the said Act as it had not been filed in court. Due to the above shortfalls, he was of the view that the trial court had no power to entertain it as it was still under the Preliminary investigations. The court power purportedly made under S. 225 of the CPA was illegal as it was not vested with such powers. He said that though S. 225 (4) of the CPA does not exclude such cases within the purview of the section however for lack of jurisdiction it could not have done so. He therefore prayed for this court to set aside that order and proceed to order for a retrial under S. 388 of CPA Cap 20 R.E. 2002. I have carefully read the entire record and the arguments advanced by the learned State

Attorney. I am of the same view that the Magistrate assumed powers he did not have. The matter was subject to other legal procedure like the consent from the DPP under S. 26 (1) and certificate giving power to the court to hear the case under S. 12 (3) of The Economic and Organized Crime Control Act Cap 200 R.E. 2002. The Magistrate acted ultra vires and therefore the Order was void. It cannot be allowed to stand. It is accordingly set aside. The case to start denovo. M. G. Mzuna, Judge 29/6/2015 Court: Revisional Order delivered this 29th day of June 2015 in the presence of Mr. Kimweri Senior State Attorney and absence of the respondent.

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