

**IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA**

(CORAM: KILEO, J.A., ORIYO J.A. And MMILLA J. A.)

CRIMINAL APPEAL NO.204 OF 2013

MATHEW GWANDU }
LEONS GWANDU }**APPELLANTS**

VERSUS

THE REPUBLIC.....RESPONDENT

(Appeal from the decision of the High Court of Tanzania at Arusha)

(Mwaimu, J.)

**dated the 1st day of August, 2013
in
Criminal Appeal No. 41 of 2012**

REASONS FOR JUDGMENT

17th & 25th September 2014

KILEO, J. A.:

On 17th September 2014 we allowed the appeal by Mathew Gwandu and Leons Gwandu, quashed their convictions and set aside their sentences. We ordered their immediate release from prison unless they were held therein for some other lawful cause. We reserved the reasons for our decision which we will now proceed to give.

The appellants along with a third person who was acquitted were arraigned in the District Court of Babati at Babati of unlawful possession of government trophy contrary to section 86 (1) and (2) (c) (ii) of the

Wildlife Conservation Act, No. 5 of 2009 read together with 1st Schedule of the same Act.

The appellants were alleged to have been found in the Tarangire National Park in unlawful possession of three swala pala meat valued at Tshs 1,813,500/-, three didik meat valued at Tshs 1,162,500/- and three reedbuck meat valued at Tshs 2,092,500/- all valued at Tsh 5,068,500/- the property of Tanzania Government. Upon conviction they were sentenced to pay a fine of two million shillings or to serve a prison term of twenty years. Their appeal to the High Court was unsuccessful hence this second appeal.

At the hearing of appeal the appellants appeared in person and had no legal representation. They had filed a five point memorandum of appeal in which their main complaint was that they were convicted on a case that was not sufficiently established against them. They did not have much to say when they were given an opportunity to address the Court at the hearing. This was understandable as they were laypersons.

The respondent Republic which was represented by Ms Angelina Chacha learned State Attorney supported the appeal.

The learned State Attorney submitted that the charge against the appellants was not maintainable, first because the case fell under the Economic and Organized Crimes Control Act, Cap 200 R. E. 2002 the

prosecution of which required the consent of the Director of Public Prosecutions (DPP) which had not been given. Ms Chacha also submitted that normally a charge such as the one the appellants were faced with is triable by the High Court unless the DPP has issued a certificate that it be tried by a subordinate court which was not the case here. Ms Chacha further pointed out that the charge sheet was defective in that it did not cite the Economic and Organized Crimes Control Act under which the case fell. In short, the learned State Attorney conceded to the appeal but for reasons as given above.

We need not spend much time on giving our reasons. The matter is straight forward. The learned Sate Attorney did rightly point out that the prosecution of the appellants required the consent of the DPP which was not provided. The offence is scheduled under paragraph 14 of the 1st Schedule to the Economic and Organized Crimes Control Act which made it an economic offence. The paragraph states:

14.

A person is guilty of an offence under this paragraph who—
(a) unlawfully captures, hunts or traps of animals in a game reserve or game-controlled area;
(b) unlawfully deals in trophies or in Government trophies;

(c) is found in unlawful possession of weapons in certain circumstances;

(d) is found in unlawful possession of a trophy, contrary to sections 13, 14, 17, 38, Part VI, sections 70 and 78 of the Wildlife Conservation Act, or contrary to section 16 of the National Parks Act.

As it appears above, the provision which is contained in the Economic and Organized Control Act, Cap 200 of the 2002 Revised Edition of our Laws made reference to section 70 of the 1989 Wildlife Conservation Act which was repealed. We hasten to admit that we have not so far been able to lay our hands on any amendments to the 1st Schedule to Cap 200. However there is a section corresponding to section 70 of the repealed 1989 Act in the 2009 Wildlife Conservation Act which is section 86, the section under which the appellants were charged. Both provisions deal with unlawful possession of government trophy.

Trial of a crime of unlawful possession of government trophy which is an economic crime is only with the consent of the DPP. Section 26 of the Economic and Organized Crimes Control Act 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'

Moreover, as rightly submitted by Ms Chacha, the District Court of Babati which tried the case was not vested with jurisdiction to try it. In terms of section 3 the jurisdiction to hear and determine cases involving economic offences under Cap 200 is vested in the High Court. Under section 12 (3) of Cap 200 where he deems it fit the DPP may issue a certificate that the case be tried by a subordinate court. The provision provides:

'(3) The Director of Public Prosecutions or any State Attorney duly authorised 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 Court under this Act be tried by such court subordinate to the High Court as he may specify in the certificate.'

In this case there was no such certificate issued by the DPP.

The case suffered from yet another flaw. The charge sheet did not make any reference to the Economic and Organized Crimes Control Act, Cap 200. This being an offence that fell both under the Wild life Conservation Act and Cap 200 the charge sheet ought to have cited Cap 200 as well.

It was in view of the above reasons that we allowed the appeals by Mathew Gwandu and Leons Gwandu, quashed their convictions, set aside their sentences and ordered their immediate release from prison unless they were held therein for some other lawful cause.

Dated at Arusha this 24th Day of September 2014

E. A. KILEO
JUSTICE OF APPEAL

K. K. ORIYO
JUSTICE OF APPEAL

B. M. MMILLA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

E. Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL