

IN THE COURT OF APPEAL OF TANZANIA

AT MWANZA

(CORAM: MSOFFE, J.A., KIMARO, J.A., And JUMA, J.A.)

CRIMINAL APPEAL NO. 236 OF 2011

EBON STEPHEN CHANDIKA.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

(Appeal from the decision of the High Court

of Tanzania at Mwanza)

(Mwakipesile, J.)

Dated 7th day of September, 2011

in

Criminal Appeal No. 6 of 2011

JUDGMENT OF THE COURT

2nd August, 2013

MSOFFE, J.A.:

At today's date of hearing we invited Mr. Anesius Kainunura, learned State Attorney for the respondent Republic, to address us on the first ground of appeal. In this ground the basic complaint is that the consent of the Director of Public Prosecutions was not granted in terms of section 26(1) of the Economic and Organized Crime Control Act (CAP 200 R.E. 2002) before commencement of the trial against the appellant. Mr.

Kainunura was positive that in the absence of consent to the above effect the trial and the subsequent proceedings were a nullity.

With respect, we agree with Mr. Kainunura. Under paragraph 19 of the First Schedule to the above Act the charge against the appellant constituted an economic offence. In terms of section 26(1) of the said Act consent of the Director of Public Prosecutions was a necessary prerequisite before the commencement of the trial against the appellant. Indeed, the problem in this case is further compounded by the fact that the case was heard by the Resident Magistrate Court of Mwanza without the requisite certificate under section 12(3) of the Act.

As it is, it follows that the trial and the subsequent proceedings were a nullity. To this extent, we hereby allow the appeal solely on the basis of the complaint in the first ground of appeal. We quash the appellant's conviction and set aside the sentence of fifteen years imprisonment meted on him. He is to be released from prison unless he is held therein in connection with a lawful cause.

As for the way forward, we appreciate that Mr. Kainunura was of the view that we could order a trial *de novo*. With respect, we are not inclined

to go along with Mr. Kainunura in the above suggestion. We notice that under section 34(2) of the Arms and Ammunitions Act (Cap 223 R.E. 2002) the offence the appellant was charged with and convicted of attracts a sentence of fifteen years imprisonment. He was sentenced on 14/8/2003. This means that todate he has been in prison for around ten years. In the circumstances, we are of the view that it will be prudent that we leave upon the wisdom and discretion of Director of Public Prosecutions to determine and decide on how best to proceed against the appellant.

DATED at MWANZA this 2nd day of August, 2013.

J.H. MSOFFE
JUSTICE OF APPEAL

N.P. KIMARO
JUSTICE OF APPEAL

I.H. JUMA
JUSTICE OF APPEAL

I Certify that this is a true copy of the Original.

P.W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL