IN THE COURT OF APPEAL OF TANZANIA
AT TABORA

(CORAM: MBAROUK, J.A., MANDIA, J.A. And MMILLA, J.A.)

CRIMINAL APPEAL NO. 38 OF 2009

ROMWARD S/O MICHAEL.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

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

(Kaduri, J.)

dated the 11th day of October, 2008
in
Criminal Appeal No. 87, 88 of 2007

JUDGMENT OF THE COURT

12th & 17th September, 2013

MBAROUK, J.A.:

The appellant, Romward s/o Michael and another not subject of this appeal were prosecuted in the District Court of Kasulu at Kasulu with two counts. **One**, armed robbery contrary to sections 285 and 286 of the Penal Code, Cap. 16 of the Laws as read together with Act No. 10 of 1989. **Two**,

Prohibition on the possession of fire arms contrary to sections 4(1) and 34(1) of the Arms and Ammunitions Act No. 2 of 1991 as read together with Government Notice No. 54 of 1994. Both, the appellant and another were convicted and sentenced each to serve thirty (30) years imprisonment. Aggrieved, the appellant lodged his first appeal before the High Court of Tanzania at Tabora (Kaduri, J.). His appeal was dismissed in its entirety, hence he preferred this second appeal.

Four grounds of appeal were preferred by the appellant. At the hearing, he appeared in person unrepresented. The respondent/Republic was represented by Ms. Jane Mandago, learned State Attorney. The appellant had nothing to argue in support of his appeal.

On her part, before proceeding to argue the appeal, the learned State Attorney brought to our attention the question of the competency and jurisdiction of the trial court to entertain

an economic offence case without the consent of the Director of Public Prosecutions, as one of the count against the appellant involved a charge under the Arms and Ammunition Act No. 2 of 1991. The learned State Attorney submitted that, in the instant case, the appellant was found in possession of a locally made gun known as "gobore" without licence on 10th February, 2000. She said, the law applicable was the Arms and Ammunition Act No. 2 of 1991, as by that time the Economic and Organised Crimes Control Act, Cap. 200 R.E. 2002 was not in existent yet.

Initially, the learned State Attorney was hesitant as to whether the offence of unlawful possession of firearms and ammunition was listed as an economic offence in the Act No. 2 of 1991. However, after looking at the provisions of the law more closely, the learned State Attorney satisfied herself and proceeded by submitting that Act No. 2 of 1991 did not de-list the offence of unlawful possession of firearm and ammunition

from the Economic and Organised Crimes Control Act No. 13 of 1984 as amended by Act No. 10 of 1989 (the former Act). Therefore, she submitted that the offence was triable by the High Court sitting as Economic Crimes Court and its prosecution has to acquire the consent of the Director of Public Prosecutions (DPP). She added that, the prosecutions of economic crimes may proceed to the subordinate court if transfer certificate and consent of the DPP is issued.

In the instant case, the record shows that neither transfer certificate nor the consent of the DPP was issued for the prosecution to proceed at the District Court. In support of her argument, she cited to us the decision of this Court in the case of **Amiri Ally @ Becha v. The Republic**, Criminal Appeal No. 151 of 2009 (unreported). For that defect, the learned State Attorney urged us to find that all the proceedings conducted by the trial District Court and the High Court were a nullity. She then urged us to issue a proper order thereafter.

In response, the appellant being a lay person had nothing to respond, as the issue submitted by the learned State Attorney was a technical and legal issue.

We are very much aware that, the two courts below failed to consider the point of competency and jurisdiction to entertain an Economic offence case without the consent of the DPP. Worse enough, the case started at the District Court and not at the High Court as the law requires, and no transfer certificate was issued by the DPP as per section 12(3) of the Economic and Organised Crimes Act (former Act), which states as follow: -

> *"The Director of Public Prosecutions or any State Attorney duly authorized 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 High Court under this Act be tried by such Court*

subordinate to the High Court as he may specify in the certificate".

Even if the courts below did not examine the said issue of competency and jurisdiction to entertain the case involving economic offence, but we are of the view that a point of jurisdiction may be raised at any stage even at the appeal stage — See, the decision of this Court in the case of **Rhobi Marwa Mgare and Two Others v. The Republic**, Criminal Appeal No. 192 of 2005 (unreported) where the case of **Mamdavia v. Rattan Singh** (1965) E.A. 118 at page 121 and **Charles Cecil Johnston v. Rex** (1951) EACA 278 at page 281 were cited. For that reason, we are confident that the issue of jurisdiction can safely be examined at this stage.

As it has already being established above, the former Act did also required a consent from the DPP to be issued before the prosecution of the offence of being in possession of firearms proceed and whereas section 4(1) of the Arms and

Ammunitions Act No. 2 of 1991 is as an economic crime, hence a consent of the DPP and a certificate of transfer in terms of section 12(3) of the former Act had to be issue before charging the appellant. Furthermore, section 26(1) of the former Act (Act No. 13 of 1984) mandatory directs that before a prosecution of an economic offence commences a consent of the DPP is required to be issued. The same states as follows: -

> *"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."*

In the instant case no such consent of the DPP and certificate of transfer in terms of section 12(3) of the former Act was issued, hence this leads the trial District Court to have had no jurisdiction to try the case. See – **Rhobi Marwa Mgare** *(supra)*.

For not having such jurisdiction, we are of the opinion that the appellant was improperly convicted and sentenced. Hence his trial at the District Court and the proceedings before the High Court were a nullity.

Apart from all that, we have found that the appellant was charged with two counts supposed to be charged in two different courts. **One**, he was charge with armed robbery, which we think he was correctly charged at the District Court. **Two**, he was charged with the offence of being in possession with fire arms in the same case. We think, it was wrong to combine those two counts (omnibus charges) in one case as the charge of armed robbery is dealt with in ordinary courts, whereas the charge of being in possession of fire arms was supposed to be delt with at the High Court sitting as an Economic Crimes Court or after transfer certificate from the DPP to the subordinate court. It would have been proper to combine them if from the outset, transfer certificate and

consent from the DPP were granted to the District Court. As far as no certificate of transfer and consent from the DPP was issued, it was not proper to combine them.

For that reason, we accordingly quash the all the proceedings in both courts below and set aside the conviction and sentence imposed on the appellant. Taking into consideration that, the appellant has already served eleven years of his imprisonment sentence, we leave it to the discretion of the Director of Public Prosecutions to decide whether to file a fresh charge or not.

In the event, we order the immediate release of the appellant from prison unless he is lawfully held. It is so ordered.

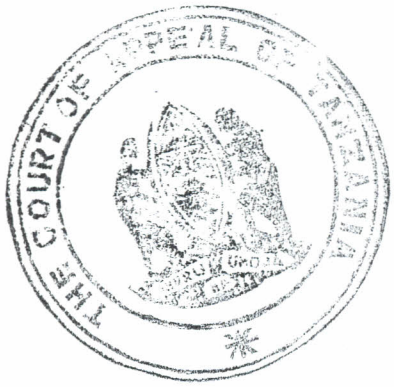
DATED at TABORA this 16th day of September, 2013.

M. S. MBAROUK
JUSTICE OF APPEAL

W. S. MANDIA
JUSTICE OF APPEAL

B. M. MMILLA
JUSTICE OF APPEAL

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



(Z. A. MARUMA)
DEPUTY REGISTRAR
COURT OF APPEAL