

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

(CORAM: MJASIRI, J.A., JUMA, J.A., And MUGASHA, J.A.)

CRIMINAL APPEAL NO. 479 OF 2015

HASSAN S/O KITUNDAAPPELLANT

VERSUS

THE REPUBLICRESPONDENT

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

(Kihwelo, J.)

Dated the 12th day of October, 2015

in

(DC) Criminal Appeal No. 13 of 2015

JUDGMENT OF THE COURT

2nd & 4th day of August, 2016

JUMA, J.A.:

Under the Wildlife Conservation Act No. 5 of 2009 (**WCA**), elephant meat is as much a Government Trophy as are elephant tusks. Yet, elephants are unlawfully killed more to sustain the ivory trade than for game meat. This appeal illustrates how the law easily caught up with a villager who was found in unlawful possession of elephant meat. But the elephant poachers who slaughtered the elephant, whose carcass was the source of meat, inexplicably remain at large, with the elephant tusks.

The appellant **Hassani s/o Kitunda** was in the District Court of Iringa charged with unlawful possession of elephant meat, which is a Government Trophy under the **WCA**. This possession was contrary to sections 86 (1), 2 (b) of the **WCA** read together with paragraph 14 (d) of the First Schedule to and section 60 (1) and (2) of the Economic and Organized Crimes Control Act (Cap 200 R.E. 2002). The particulars of the offence levelled against the appellant stated that on or about 17th September, 2012 at Isele village within the Ruaha National Park in the Rural District of Iringa Region, the appellant was found in unlawful possession of thirty (30) kilogrammes of elephant meat belonging to the Government of the United Republic of Tanzania. The meat was valued at Tanzanian Shillings 23,535,000/=.

It appears from the prosecution evidence that the arrest of the appellant followed confidential information which the Park Rangers working in the Ruaha National Park received from their confidential informers. It was in the night, around 22:00 hrs when Paul Shayo (PW1), a park ranger, received a call to inform him that the appellant and another Shabani Chalamila, had earlier on entered the national park to hunt. PW1 did not

waste much more time. In the company of other park rangers, he followed up on this information and immediately drove to Isele village.

Once at the village, the rangers went first to see the Village Executive Officer (VEO) who took them to appellant's house. Sometime around 3:00 a.m. they knocked at appellant's door. He did not open his doors immediately. It was three hours later around 6:00 a.m. when the appellant ventured outside his house. PW1 and his team asked him if he had any Government Trophy in the house. According to PW1, the appellant readily conceded that indeed he had elephant meat, which he showed them. The appellant then led PW1 inside the national park at Kibadaga River in Iloilo areas where he showed them the carcass of the dead elephant. PW1 inspected the carcass, it had bullet holes. After taking the coordinates of the scene of crime the rangers took the appellant first to the park headquarters, and later to Iringa Police Station.

A few days following the appellant's arrest, Musa Hassan Mugunda (PW4) who was a Game Warden Grade II from Anti-Poaching Unit visited Iringa Police Station. He explained that his official duties included patrols, valuation of Government Trophies and apprehending the poachers. At the police station he was shown the elephant meat which he was asked to

evaluate and prepare a Trophy Valuation Certificate in terms of section 86 (4) and 114 (1), (3) of the **WCA** and the Wildlife Conservation (Valuation of Trophies) Regulations 2012, GN No. 207 of 2012. His evaluation determined that the elephant meat that was found in the appellant's possession weighed 30 kilogrammes. He further determined that each kilogramme of elephant meat was valued at USD 15,000.00. At the exchange rate applicable at the time, PW4 determined that the elephant meat had the total value of Tanzanian Shillings 23,535,000/=. The Valuation Certificate which PW4 prepared was admitted as exhibit P3.

In his defence when he testified as DW1, the appellant offered a different version of account. He conceded that the rangers who were in the company of the local ten-cell leader, knocked at his door at 3:00 a.m. and he opened his door immediately. Whereupon the rangers pounced upon him, beat him while forcing him into their vehicle. They forced him to accept that they found him in possession of the elephant meat.

On 26th August, 2014, G.N. Issaya-RM delivered the trial court's judgment. He found the appellant guilty as charged. He was convicted and sentenced to serve 15 years imprisonment. The appellant preferred an

appeal to the High Court at Iringa. On 12th October, 2015 his first appeal was dismissed by Kihwelo, J.

In his second appeal before us the appellant has preferred the five grounds of appeal which boil down to the contention that the prosecution's case against him was not proved beyond reasonable doubt: **Firstly**, he faulted the High Court for according undue weight to the evidence of PW1 and PW2 without taking into account their contradicting evidence. **Secondly**, he contended that the High Court failed to consider the possibility that the elephant meat may have been planted in his house to implicate him in an offence he did not commit.

In his **third** ground, the appellant complains that he was convicted more because of the weaknesses of his defence than on the strength of the prosecution's case. **Fourthly**, he faulted the High Court for placing reliance on Inventory Form (Exhibit P2) which was admitted in evidence without being read out in court. **Fifthly**, he faulted the High Court failing to demand a duly filled and signed certificate of search to prove that a search was conducted in the appellant's house.

At the hearing of this appeal the appellant appeared in person, unrepresented. The respondent/Republic was represented by Mr. Abel

Mwandalama, learned Senior State Attorney, who took an immediate stand not to support the appeal.

Because the appellant preferred him to submit first, Mr. Mwandalama disputed the appellant's contention that the evidence of PW1 and PW2 are conflicting in any way. He pointed out that these two important prosecution witnesses are unanimous that the appellant was found in possession of elephant meat. He referred us to the evidence of PW1 (on page 18 of the record) and that of PW2 (on page 21) where the appellant was asked whether he had Government Trophy in his house to which the appellant not only agreed, but in addition showed PW1 and others 30 kilogrammes of elephant meat and went ahead to show them where the carcass of the bullet riddled elephant carcass lay.

The learned Senior State Attorney also referred us to the evidence of the appellant in his defence (on page 31) where under cross examination, the appellant admitted that the elephant meat that was found in his house was taken there by the street chairman.

Moving on, Mr. Mwandalama submitted that with the overwhelming evidence of PW1, PW2 and that of the appellant himself that the appellant was found in possession of elephant meat, we should disregard his claim

that the meat was planted on him to fabricate him. All in all, in light of the appellant's own admission that he had 30 kilogrammes of elephant meat, the learned Senior State Attorney urged us to dismiss all the remaining grounds. Failure to use a search warrant and certificate of seizure did not diminish the probity of the evidence that the appellant was caught in possession of Government Trophy and he had no permit. He urged us to dismiss the appeal in its entirety.

In his brief reply, the appellant urged us to consider his grounds of appeal and allow his appeal.

On second appeal this Court is more concerned with issues of law and rarely interferes with concurrent finding of facts by two courts below. While citing its earlier decision in **Salum Mhando V R** [1993] T.L.R. 170, the Court in **Zabron Masunga and Dominic Matondo vs. R.**, Criminal Appeal No. 232 of 2011 (unreported) stated that on second appeal the Court can interfere with findings of facts by the courts below if in evaluating the evidence the courts below misdirected themselves and in so doing occasioned miscarriage of justice to the appellants.

From submissions on the grounds of appeal, the central question is whether on evidence on record, there is any justification for the Court to

interfere with the concurrent finding of facts by the two courts below to the effect that that the appellant was found in unlawful possession of Government Trophy.

We think, as correctly observed by the first appellate court, there is evidential basis for the learned trial magistrate to state the following:

*"...I have very carefully considered the evidence from both sides. **The fact that the accused concedes that the 30 kg was found in his house and under his control is enough to state that they were in his possession.....** In the present case, **the accused was well aware that he possessed the same illegally** and that is why he wilfully neglected to open the door when the street chairman and park rangers knocked at his door. It was unlawful possession. I have well examined exhibit P1, P2 and exhibit P3 together with the evidence of PW1, PW2, PW3 and PW4 they all give weighty evidence to prove that the accused did commit the offence.."[Emphasis added].*

On our part, after having revisited the evidence of PW1, PW2 and the appellant's own evidence confirming possession of the Government Trophy

(elephant meat), there is no cause for us to interfere with the decisions of the trial and first appellate courts.

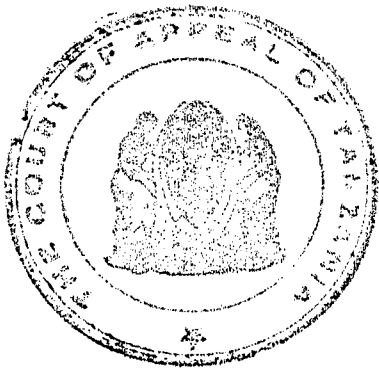
For all the above reasons, this appeal is devoid of merit. It is dismissed in its entirety.

DATED at IRINGA this 3rd day of August, 2016.

S. MJASIRI
JUSTICE OF APPEAL

I.H. JUMA
JUSTICE OF APPEAL

S.E.A.MUGASHA
JUSTICE OF APPEAL



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

A handwritten signature in black ink, appearing to read "B. R. Nyaki".

B. R. NYAKI
DEPUTY REGISTRAR
COURT OF APPEAL