

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

APPELLATE JURISDICTION

(DC) CRIMINAL APPEAL NO 4 OF 2022

(Arising from Criminal Economic Case No. 5 of 2021 of the Kibondo District Court at Kibondo dated 11/01/2022 before Hon. M. Majula (RM))

JOSEPH S/O RICHARD.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

12/8/2022 & 19/8/2022

MANYANDA, J

Joseph Richard, the appellant, was charged with 9 counts of offences as follows:-

1. Unlawful entry into a game reserve, contrary to section 15(1) and (2) of the Wildlife Conservation Act, No. 5 of 2009.
2. Unlawful possession of weapon in game reserve, contrary to section 17(1) and (2) of the Wildlife conservation Act No. 05 of 2009 read together with paragraph 14 of the 1st schedule to and sections 57

(1) and 60(2) of the Economic and Organized Crime Control Act,
[Cap. 200 R.E. 2019].

3. Unlawful possession of firearms contrary to section 20 (1)(a) and
(b) of the firearm and Ammunition Control Act No. 2 of 2015 read
together with Paragraph 31 of the 1st schedule to and sections 57
(1) and 60 (2) of the Economic and organized Crime Control Act.

4. Unlawful possession of ammunition, contrary to section 21(1)(a)
and (b) of the Fire arm and Ammunition Control Act read together
with paragraph 31 of the 1st schedule to and section 57 (1) and 60
(2) of the Economic and Organized crime Control Act.

5. Unlawful possession of explosives substances, contrary to section
3(1) and 2 of the Explosives Act [Cap. 45 R.E. 2002].

6. Unlawful possession of government trophy, contrary to section 86
(1) and (2) © (iii) of the Wildlife Conservation Act No. 05 of 2009
read together with paragraph 14 of the 1st schedule to and sections
57 (1) and 60(2) of the Economic and Organized Crime Control Act.


7. Unlawful possession of government trophy contrary to section 86 (1) and (2) (b) of the Wildlife Conservation Act, No. 05 of 2009 read together with paragraph 14 of the 1st schedule to and sections 57 (1) and 60 (2) of the Economic and Organized Crime Control Act.

8. Unlawful possession of government trophy contrary to section 86 (1) and (2) (c) (ii) of the Wildlife Conservation Act, No. 05 of 2009 read together with paragraph 14 of the 1st schedule to and sections 57 (1) and 60(2) of the Economic and Organized Crime Control Act.

The particulars of offence are that on 16/07/2020 at Mihama Mitatu area within Moyowosi Game Reserve in Kibondo District, Kigoma Region was found in possession of all the items listed in the nine 9 counts namely one axe, one knife, one panga a hand mazle loading fire arm (gobore) four ammunition, gun powder, two heads of reedbuck, buffalo meet, one head of a dulkar and one head of a warthog.

After full trial, the District Court of Kibondo convicted the appellant with eight 8 counts and acquitted him with that of unlawful possession of explosives which was charged as count number five (5).

The appellant is aggrieved, hence this appeal, at the hearing of the appeal, the appellant prosecuted his appeal personally unrepresented



while Ms. Edna Makala, State Attorney, prosecuted the appeal on behalf of the Respondent, the Republic. The appellant raised a total of four (4) grounds of appeal which boil to one complaint that it was wrong for the trial to convict him on weak evidence.

The appellant been a layman only adopted his grounds of appeal and left it to the State Attorney to submit so that he could rejoin. The State Attorney did not oppose the appeal she submitted supporting it on grounds that the evidence at the trial was weak such that it didn't prove the offences beyond all reasonable doubts.

She elaborated her position to the grounds of appeal starting with the complaints in grounds two and three is that the evidence was weak. She observed that the 1st offence of entering into a game reserve was not proved because there was no proof of entry in a game reserve. That PW1, PW2 and PW4 simply stated that they found the appellant in a game reserve but didn't give the location by GPS code or sketch map she cited the case of **Mosi Chacha Ilanga and Another vs. Republic**, Criminal Appeal No. 508 of 2019 where the Court of Appeal said that it does not suffice for the prosecution witnesses to merely allege that the scouts stopped the appellant at a game reserve.

As regard to the second count the position is as per the first count, failure to prove the location, then the second count does not stand also.

In respect of the counts three and found of been found in unlawful possession of firearm and ammunition, the State Attorney argued that there is only one witness PW1 who purports to have found the appellant with a firearm and ammunition. PW2 and PW4 don't speak about finding the appellant with any weapon. PW7, the exhibit keeper also didn't identify the fire arm and ammunition. The State Attorney was of the view that PW1 testimony is unreliable.

The rest of counts, that is, counts 6 to 9 concern with an offence of unlawful possession of government trophies been a head of a duiker, a head of a warthog, two heads of reedbuck and one kilogram of buffalo meat. The State Attorney submitted that the evidence is full of contradictions hence making it unreliable. She pointed out that PW6 testified about the appellant been found with one horn, but PW1, PW2 PW3 PW4 and PW5 don't talk about existence of a horn. PW6's inventory report does not contain a "horn".

The State Attorney also submitted that the appellant was not involved in the inventory exercise hence was not given opportunity to be heard. She insisted that such irregularity occasioned injustice to the appellant. She



cited the case **Amos Chacha Ilanga** (supra) and that of **Mohamed Juma Mpakama vs. Republic** Criminal Appeal No. 385 of 2017 (unreported) where the right to be heard in inventory exercises was insisted.

Moreover, the State Attorney argued that PW5 the trophy valuer didn't give explanations on how he identified the trophies, he just mentioned heads of animals without giving the basis of his finding.

Then, she concluded that on those evidential weaknesses, the conviction of the appellant was not backed by enough evidence. She proposed the appeal to be allowed and the sentences set aside.

In rejoinder the appellant had nothing to say other than joining the State Attorney.

I am alive that the submissions are based on the opinion of the State Attorney which don't bind this court. Whereas this being a 1st appellate court has a duty of re-hearing the case. Therefore, I will examine the evidence.

In this case, as explained above in the summary of the facts, the appellants charges may be grouped into three categories. The first

category is based on the allegations of being found with weapons in a game reserve.

This groups of offences depend on evidence proving the existence of the appellant in a game reserve. The reason is that possession of the weapons outside the game reserve it self is not an offence. Hence if the first count is proved that the appellant was in a game reserve, then the offence in count two that he was found with the weapons namely knife, axe, panga will also be proved.

As stated by the State Attorney, it was imperative for the prosecution to prove the location of the area in a game reserve. My perusal of the evidence, does not show that the appellant was located in a game reserve. In the case of **Mosi Chacha @ Iranga and Another** (supra) the Court of Appeal of Tanzania stated at page 15 as follows:-

"For an offence of illegal entry to stand, the evidence must prove that the game scouts arrested the appellants strictly within the statutory boundaries of this game reserve. It will not suffice, for the prosecution witnesses to merely allege that the scouts stopped the appellants at mto Rubanda area into Ikorongo Game Reserve. The trial court must evaluate competing evidence and be satisfied that the mto Rubanda area is within the Ikorongo Game Reserve"

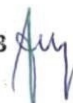


In the current appeal, there was no evidence other than mention of the "Mihama Mitatu Area" as been within Moyowose Game Reserve. The prosecution ought to have ascertained evidence such evidence of GPS or google map evidencing location; this was very important. I agree the 1st and 2nd counts were not proved.

As regard the second category of offences, they concern with unlawful possession of fire arm and ammunition in counts three and four. The allegations were that the appellant was found in possession of a hand loading mozle gun commonly known as "gobore" and its ammunition. My perusal of the evidence on record shows that none of the said gun or ammunition were identified in court. Even PW7 the exhibit keeper did not say anything about existence of these items. This makes the evidence speculative, which can not be a basis of finding a conviction. Hence the offences in counts number three and four were also not proved.

The third category of the offences the appellant was charged with concern allegations of been found in unlawful possession of government trophies without permit from the Director of Wildlife.

I have perused the evidence on record and found as truly argued by the State Attorney, that, the appellant though was present at the inventory exercise, it is silent if he was asked anything during the exercise. The



Court of Appeal said in the case of **Mosi Chacha @ Iranga and Another** (supra) that;

*"We agree as we said in **Mohamed Juma @ Mpakama v.R**, Criminal Appeal No. 385 of 2017 (TANZLII) emphasizes the mandatory right of accused persons to not only be present before the magistrate but also be heard before the magistrate issues any order for destruction of perishable government trophies".*

The court went on stating that;

"In our present appeal, the need for the presence of the appellants becomes more poignant because while the second count charges the appellant with illegal possession of four pieces of dried zebra meat, the inventory (Exhibit PE2) includes four pieces of Wildbeest meat. The prosecution denied the appellant the opportunity to question the belated addition of dried wildbeest meat".

In the present appeal however, the situation is different from that one in **Mosi Chacha @ Iranga and Another (supra)**. I say so because in that case, the inventory had added items which were prejudicial to the appellant because he was not given opportunity to say anything about the added items in the inventory which was in variance with the charge. In



the instant case, the items in the inventory are exactly the same as in the seizure certificate (Exhibit PE4) and valuation certificate (Exhibit PE5). The appellant was not prejudiced.

The State Attorney also submitted that the officer who evaluated the trophies PW5 one Daudi Samweli Mnyapwani didn't explain the grounds of his findings that the trophies were of the animal types concerned my perusal of exhibit PE5, the valuation report shows value of the trophies it does not identify types. In his testimony PW5 stated that he identified the trophies from his expertise he acquired from his training at Mweka Wildlife College. As it can be seen, the main complaint by the appellant in this case is that the evidence was weak to warrant conviction with the offences he was charged with. My perusal of the evidence as explained above found that the evidence was weak in respect of counts one, two, three, and four. However, regarding the offences of been found in unlawful possession of government trophy, the evidence is water tight.

The evidence by PW1, PW2 and PW4 is to the effect that they arrested the appellant red-handed in possession of the trophies. That the witnesses were in their normal patrol when they saw a trail of bicycle which lead to a place where the appellant was arrested. He had two heads of reedbuck, one head of a dulkar, one head of a warthog and one



kilogram of buffalo meat. The witnesses explained how they took the appellant to police station at Kibondo and handed to PW6 the investigator. That the trophies were identified by PW5 who also assigned value to them. After that exercise, inventory was made by PW3 Hon. Haman John Kayandabila. As I have said above the appellant was present at the inventory exercise and signed on it. Moreover, the same was admitted without objection as Exhibit PE4.

In his defence, the appellant gave a long story that he was arrested herding cattle in an open space then taken into a game reserve where he was framed up with the case. The trial court disbelieved this story and believed the testimonies of the prosecution witnesses especially PW1. At page 45 of 82 the trial court proceedings recorded as follows:-

"I have watched PW1 testify before this court, he seemed confident, he had told his story in a pectoral manner, with calmness as a person who is sure of what he is talking"

The above remarks tell it that PW1 demeanour was observed positive hence a reliable witness.

In law demeanor of a witness is in a domain of the trial court witnesses testifying before it. An appellate court can only interfere with the trial



court's findings on credibility of the witness where there are cogent reasons to do so. In the instant matter I don't find such reasons.

It is this finding that I differ with the State Attorney who submitted that the prosecution evidence is contradictory and weak. I didn't see such contradictions, as such I find the proved counts are those in respect of the offences of unlawful possession of government trophies in counts six, seven, eight and nine. The sentences in these counts is proper in law.

In the up shot for reasons stated above the appeal partly succeeds and partly fails.

Consequently I make the following orders:-

1. The appeal in respect of conviction and sentence in counts one, two three and four is allowed.
2. The conviction in respect of the offences charged in counts one, two three and four is quashed and sentences thereof set aside.
3. The appeal in respect of conviction and sentence in counts six, seven, eight and nine is dismissed.

4. The appellant will continue serving the sentences in conviction of offences in counts six, seven, eight and nine namely.

- a) Count six to serve twenty (20) years imprisonment
- b) Count seven to serve twenty (20) years imprisonment
- c) Count eight to serve twenty (20) years imprisonment
- d) Count nine to serve twenty (20) years imprisonment

It is so ordered.

Dated at Kigoma this 19th August, 2022.




MANYANDA

JUDGE