IN THE HIGH COURT OF TANZANIA

AT TABORA

APPELLANT JURISDICTION

(Tabora Registry)

(DC) CRIMINAL APPEAL NO. 59 CF 60 CF 61 CF 62 OF 2012

ECC. CASE NO. 4 OF 2010

OF THE DISTRICT COURT OF BARIADI

BEFORE A. H. MWILAPWA ... RESIDENT MAGISTRATE

LUKOLI S/O LYAGALA & 3 OTHERS ... APPELLANTS

VERSUS

THE REPUBLIC ... ... RESPONDENT

5th August, 2013 - 26th August, 2013

JUDGMENT

HON. S. B. LUKELELWA, J.

The appellants 1. Lukoli s/o Lyagala 2. Mabela s/o Buluba 3. Masunga s/o Maneno and 4. Kanundo s/o Maneno were on 04/11/2010 convicted by Bariadi District Court at Bariadi on a charge of four counts:

1st Count.

Unlawful entry in to a National Park c/s 21 (1) and (2) of the National Parks Act Cap. 282 R.E 2002.

2nd Count:

Unlawful possession of Weapons in a National Park c/s 24 (1) (b) and (2) of the National Parks Act Cap. 282 R.E read together with paragraph 14 (c) of the first schedule to the Economic and organized Crime Control Act Cap. 200 [R.E. 2002]

3rd Count:

Unlawful hunting in a National Park, c/s 23 (1) of the National Parks Act, [CAP. 282 R.E. 2002] read together with Paragraph 14 (a) of the first schedule to the Economic and Organized Crime Control Act [Cap. 200 R.E. 200]

4th Count.

Unlawful Possession of Government Trophies c/s 86 (1) and (2) (b) of the Wildlife Conservation Act No. .05 of 2009 read together with Paragraph 14 (d) of the first schedule to the Economic and Organized Crime Control Act [Cap. 200 R.E 2002].

The appellants were each sentenced as follows:-

1st Count: Each a appellant to serve one year in jail.

2nd Count: Each appellant to serve one year in jail.

3rd Count: Each appellant to serve one year in jail.

4th Count: Each appellant to serve thirty (30) years in jail.

It was ordered that the sentences to fun concurrently.

The appellants were aggrieved by both the convictions and sentences imposed on each of them. Each appellant has preferred an appeal to this court. Their appeals have been consolidated.

Evidence from two Game Rangers working with Serengeti National Park testified that on 2nd October, 2010 at 11.20 hours they were on Patrol duties at Mount Nyaruboro within Serengeti National Park in Bariadi District. The Game Rangers are PW1 Elia s/o Mangarama and PW2 Mohamed Athumani, and one Adam Litarawe.

They saw people on the mountain having meat on stones. They saw a makeshift comp. They invaded the camp and managed to arrest four people. The arrested men were the appellants others managed to escape.

They searched the appellants and were found in possession of traditional weapons namely, 3 bows, six arrows, two knives, one small matchet and six trap wires.

The instruments were tendered in Court and admitted as exhibits, on protest from the appellant who denied that the instruments did not belong to them.

The game rangers also found dried buffalo meat, and one impala, two Zebra and two dried ears of elephant.

PW1 told the court that when the appellants were interrogated they said that they were strangers at the Camp having arrived there a week ago, and the dried elephant ears belonged to the people who had escaped. Further that the appellants had no permit to enter in the park to have weapon and kill animals in the park.

PW2 Mohamed Athuman insisted that they had arrested the appellant within Serengeti National Parks, and they did not arrest the appellants outside the park chasing the son of the fourth appellant.

PW3 Felix Rwezamla told the trial Court that he was a District Game officer of Bariadi District. On 04.10.2010 he identified game meat and issued a valuation report of Government trophies at Bariadi Police station.

Pw3 tendered a Certificate of valuation of trophies dated 04/10/2010 and an inventory bearing the same in Court which were admitted and marked exhibits PW2 and PW3 respectively.

Testifying for their Defence the appellant gave evidence having a central theme of the son of the fourth appellant Kanundo Msoza, who was said to have a mental disease.

The fourth appellant's son was called Rubusi or Mbusi Kanundo from what could be gathered from the evidence of the appellants.

The forth appellant Kanundo Nsiza told the court that on the material date he had gone to build a school, when he returned home his wife told him that his son was ill. He informed his neighbors.

The first appellant Lukoli Lyagala is the brother in law of the fourth appellant. He told the Court hat he was called by his brother-in-law at his home as his son was mentally sick.

The second appellant mabela Buhuba is a neighbour of the appellant who testified that sometimes at around 8.00 hours, the fourth appellant told him that his son was running mental. He went to the home of the fourth appellant where he also found the third appellant Masunga Maneno.

The appellants told he trial court that while at the home of the appellant they saw the sick child who was aged about ten years, start to run towards the bush.

They pursued the boy when they reached the boundaries of Serengeti National Park they saw a motor-vehicle belonging to Game department. They told the game officers that they were

pursuing a sick child aged 10 years; they were arrested and taken to their office. They had no weapons. They were beaten up and taken to the game office, where the game officers took weapons and the trophies and took them to Bariadi District Police office.

The fourth appellant live near the National Park boundary.

The second appellant had indicated that he would call Mahusi Iwanga of Mwasina village as a defence while the fourth appellant intended to call Maduhu Nkinga of Mwana Sinasi village as a defence witness.

The appellants later withdrew the prayer of calling the said witnesses.

In convicting the appellants the learned trial Resident Magistrate found that PW1 and PW2 had proved the case beyond any reasonable doubt. He found hat the appellants had no previous grudges with the appellants, and further that the appellant had not complained to he police that the case had been fabricated on them. The learned trial Resident Magistrate observed that *"all accused were availed time to cross-examine PW1 and PW2 but they never questioned as to whether this case was planted to them as also the accused themselves denied to have grudges with the arresting officer, I am of the view that, no such case was planted to the accused by the arresting officers"*

The appellants have raised five grounds of appeal in the petition of appeal. Notably the second ground of appeal and the third ground of appeal in which it was averred, "That the learned trial this case because there have had no certificate from the Director of Public Prosecutions which transferred this ECONOMIC Case to be tried with the Learned District Resident Magistrate therefore the trial was a nullity.

That the learned trial Resident Magistrate erred on point of law to isolate and deal with the prosecution evidence without evaluating the whole evidence on record deeply. It was trite law that the failure to consider defence case was very fatal as was held in the case of Hussein Iddi vs. rep. [1986] TLR 166. Perusal of the trial District Court reveal that a Certificate to transfer the Economic and Organized Crime Court to Bariadi District Court was given by Mr. Itas him Ngole Acting State Attorney in charge on 4th day of October 2010.

The very date he gave a Consent to try the case.

While I do not agree all together with the appellants assertion that the learned trial Resident Magistrate did not consider the defence case I share their view that the learned trial Resident Magistrate could have done more, to the defence case, given the fact that the appellants were paddling their own co hoe. They were not represented by counsel.

The appellants had told the trial court that the fourth appellant was living near the border of Serengeti National Park.

He had a mentally sick child.

The appellants had all the time stated that they were pursuing the mentally sick child who had ran into the Serengeti National Park. The learned trial Resident was enjoined to find out whether the allegation had any substance. It was the duty of the prosecution to disprove the allegation of the appellants by bringing local leaders of the appellants to give evidence on the issue. The onus of proving the case against the appellants always remained on the prosecution, it could not shift to the appellants.

Failure by the prosecution to call local leaders of the appellants in particular local leader, like a Kitogonji Chairman, a ten cell leader of the fourth Appellant Kanundo Msoza, left reasonable doubts the appellants' claim of chasing a mentally sick child might be true.

I therefore resolve the doubt infavour of the appellants.

I find that the appellants were convicted on insufficient evidence and the conviction could not be left to stand.

I therefore quash he appellants convictions and set aside the sentence imposed on them. It is ordered that the appellants be released forthwith from prison unless held therein on other lawful charges.

Appeals allowed.

Order accordingly.

S. B. LUKELELWA,

JUDGE.

26th August, 2013