IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF ARUSHA)

AT ARUSHA

CRIMINAL APPEAL NO. 86 OF 2017

(Originating from District Court of Karatu at Karatu, Economic Case No. 2/2016)

VITALIS KALIST ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

JUDGMENT ON APPEAL.

S.M. MAGHIMBI,J:

At the trial court, the Karatu District Court, vide Economic Case No. 02/2016, the appellant herein along with another person not a party to this appeal were charged with the offence of unlawful possession of Government Trophy contrary to Section 86(1) (2) (c) (ii) of the Wildlife Conservation Act, Cap 283 read together with Paragraph 14(d) of the 1st Schedule to and Section 57(1) and 60(2) of the Economic and Organised Crimes Control Act, Cap. 200 R.E 2002.It was alleged by the respondent that on 13th August, 2016 at Kitete village within Karatu District, Vitalis Kalist and Emanuel Herman alleged hunt and kill two dikdiki and they were

found in possession of the two killed dikdik. The second accused Emanuel Herman was acquitted while the appellants herein was convicted and sentenced to serve an imprisonment term of twenty years. Aggrieved by both the sentence and conviction, he lodged this appeal raising 7 grounds of appeal that:

1. That, the learned trial Magistrate grossly erred both in law and fact in convicting the appellant with a charge that was not proved at all.
2. That, the learned trial Magistrate erred both in law and fact when he relied on unreliable inconsistence and uncredible evidence as a basis of convicting the Appellant.
3. That, the learned trial Magistrate grossly erred both in law and fact when he failed his legal duty to critically evaluate the whole evidence to an objective scrutiny as a result he failed to consider at all the defence of the appellant.
4. That, the learned trial Magistrate erred in law and in fact in failing to comply with Section 231(1) of the Criminal Procedure Act (Cap. 20 R.E. 2002) since when the case is made against accused sufficiently to make a defence, the court must inform the accused of this rights to give evidence whether on oath and to call witnesses in his defence.
5. That, the learned trial Magistrate grossly erred both in law and fact when he applied a double standard principal in acquitting the 2nd accused person and convicting the 1st accused person with an evidence of a similar nature.

6. That, the learned trial Magistrate grossly erred both in law and fact in failing to note that the evidence of PW3 was adduced under the aid of an interpreter yet, he was not sworn nor his qualifications established before the court.
7. That, the learned trial Magistrate erred in law and in fact by failing to scrutinize the certificate of seizer (Exhibit P1) according to the law.

He prayed that this Appeal is allowed by quashing the conviction, setting aside the sentence and letting him at Liberty. The appeal was heard orally and before this court the appellant was unrepresented while the respondent was represented by Mr. Diaz Makule, learned State Attorney.

On the day of the hearing, the appellant prayed that his grounds of appeal are adopted in their totality and that he did not have any more submissions to make. He further prayed that his appeal is allowed and he is set free.

My determination of this appeal shall begin with the 6th ground of appeal that the learned trial Magistrate grossly erred both in law and fact in failing to note that the evidence of PW3 was adduced under the aid of an interpreter yet, he was not sworn nor his qualifications established before the court. In his brief reply Mr. Makule simply said that the interpreter was not sworn.

I have gone through the records of appeal and confirmed that 19/01/2017, the PW3 was about to testify the prosecutor informed the court that:

It is for third witness and her interpreter"

Having heard the prosecutor, the trial court recorded:

"Interpreter: Amos Dawi

PW3, Yohana Tluway, 65 yrs, rel. Christian sworn and state that;

XD BY THE PROSECUTOR."

Thereafter the Court proceeded to record the evidence of PW3 without first swearing the interpreter. It is a requirement of procedure, that whenever a court conducts trial with the aid of an interpreter, the interpretation which usually takes place simultaneously with the testimony being given by the witnesses, must be a sworn interpretation. If that is so, it follows therefore that the court must administer oath to the interpreter so that the evidence so given and interpreted are given under oath, However, for the current appeal, the trial court records show that this was never done. The effect? It is fatal, we are in a position as good as no evidence of PW3 was recorded. The appellants were not afforded a reliable interpretation of the evidence adduced which would have enabled them to defend their case. The remedy to that situation which I adopt is to nullify the proceedings of the trial court from the 19/01/2017 when the court started recording the evidence of PW3 AND NOT BEFORE PW3. Consequently, the judgment, conviction and sentence passed are hereby set aside. The file is remitted back to the trial court to proceed with re-hearing of the witnesses beginning with PW3 and his interpreter must be sworn in before the evidence of PW3 is received. Should there be a subsequent conviction, the period that the appellant has spent in custody shall be taken into consideration and shall be excluded from the new sentence that may be

passed. I further order that the hearing shall proceed before another Magistrate and not Hon. Mbonamasabo who first heard the case.

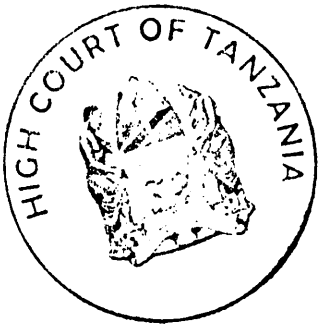
It is so ordered.

Appeal Partly Allowed

Dated at Arusha this 09th day of April, 2018

SGD: S. M. MAGHIMBI
JUDGE
09/04/2018

I hereby certify this to be a true copy of the original.



DEPUTY REGISTRAR
HIGH COURT - ARUSHA