

IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM
CRIMINAL APPEAL NO. 56 OF 2017

YAMUNGU KABURU MOSHI.....APPELLANT

VERSUS

THE REPUBLICRESPONDENT

JUDGMENT

MURUKE, J.

Yamungu Kaburu Moshi was charged and found in possession of government trophies contrary to Section 86(1)(2) and (3) of Wildlife Conservation Act, No 5 of 2009, together with paragraph 14(d) of the first schedule and section 57(i) and section 60 (2) of Economic and Organized Crimes Control Act, [Cap 200, R.E. 2002. In the end was convicted and sentenced to serve five (5) years in prison, for all courts however the sentence were to run concurrently. Being aggrieved by the decision of the district court, appealed to this court advancing six grounds as listed in the petition of appeal.

On the hearing date, the appellant requested the court to adopt his grounds of appeal as his submission. There was no objection from respondent counsel, thus, court granted the prayer.

The Learned State Attorney, Debora Mushi for the respondent, did not support conviction on the following grounds.

- (1) There was contradiction as to the place of arrest of the accused person by four prosecution witness.
- (2) During search, appellant refused to sign certificated of seizure. Thus, village chairman who witnessed search should have been called, to testify but he did not.

According to the grounds of appeal, ground, 1, 2, 4, 5 and 6 they all based on uncorroborated evidence to ground conviction. According to the proceedings **PW1 evidence DC Yasini**, from Police Kichangani, read as follows:

"I left with young person to the accused person. Went to scene of crime and managed to find Government trophy and decided to arrest him. Inspector Mchone called the village chairman to witness what was happening".

On the same issue of place and manner of the arrest PW2 Sadina Mohamed Game ranger of Mikumi National Park at page 24 last paragraph she said.

"The police officer was phoned by the accused. When reached near to the scene of crime, he

stopped so as he could not knew he came with other police office. He went to the place where the meat was hidden”.

Again PW2 said at page 25 after confirming the meat was there while the accused wanted to enter the meat to the car, they arrested him with two box of meat.

PW3 Idd Ndabagada, Game officer at page 28 is quoted to have said I hereby quote.

I went to the police station Morogoro at 8.30am. I was directed to the place where the meat was kept. I found 2 boxes which contained those meat. I was able to identify the meat which look like Giraffe and Impala meat.

On the other hand PW4, Daniel of Kihonda Police on the same issue of arrest said,

“accused informed them he was at Melela Colola. The accused was called with DC Yasin who pretended to buy the meat”.

Looking at the evidence of PW1 – PW4, it breaks the chain of the where about of the arrest of the accused person, whether he was arrested **(i) on the road, or (ii) while putting the meat in**

the car, or (iii) on the dwelling house where search was conducted or (iv) at the village where it was alleged that meat was sold. All these questions bring doubts to any reasonable mind whether the investigation was properly conducted and reveals the offence that appellant committed and found with impala and giraffe meat.

There was neither expert report to show what kind of meat appellant suspected to have been found with. At page 28, Idd Ndabaga Game office said, "he was able to identify the meat because it was un skinned". Although there was trophy valuation certificate, but the way it was identified, it was not proper. Identification by colour is not enough unless there is other evidence to corroborate. In the case at hand, there is none.

Search and seizure, the law requires independent witness to testify as per section 38(3) of the Criminal Procedure Act, Cap. 20, R.E. 2002. In the case at hand search was done in front of village Chairman, but he was not called to testify at the trial bearing in mind the accused refused to sign. So, independent witness who witnessed the Seizure was important to be called. It was not said in evidence what was searched. In defence accused, now appellant, said the house searched was not his

house. It is difficult to know whether the meat seized belong to the owner of the house or the accused. At page 22, PW1 said, they managed to find the meat but did not found the owner of the house in which they made search. They also don't know, the property that they found whether belong to accused or the owner of the house. Although the accused might have such kind of behavior but evidence at hand does not connect him with the current offence.

Before I pen off, I wish to say something by passing. This matter was technically well investigated but poorly prosecuted. In the present case the appellant was being charged. with the offences of unlawfully possession of government trophies contrary to section 86(1) and (2)(b)(ii) and (3) of the Wildlife Conservation Act, No 5 of 2009 read together with paragraph 14 (d) of the 1st Schedule and Section 57 (1) and 60 (2) both Economic and Organized Crime Act, Cap 200 R.E 2002). It is a serious offence in that the appellant was facing the offence of endangering country seriously protected natural resources. The statement is evidenced by our father of nation wisdom in famous **JULIAS NYERERE ARUSHA MARIFESTO 1961** that reads as follows:-

The survival of our Wildlife is a matter of grave concern to all of us in Africa. These wild creatures and the wild places are not only important as a source of wonder and inspiration but are an integral part of our natural resources and our future livelihood and well being.

In accepting the trusteeship of our Wildlife, we solemnly declare that we will do everything in our power to make sure that our children's grand children will be able to enjoy this rich and precious inheritance.

The conservation of wildlife and wild places calls for specialist knowledge, trained manpower and money and we look to other nations to co-operate with us in the important task, the success or failure of which not only affects the continent of Africa but the rest of the world as well.

It is worth noting that *Wild animals in the National Parks and reserve areas, are a national treasure and an iconic species that people come to see from all over the world. According to the **paper titled Tackling the Elephant Poaching Crisis in Tanzania, presented to the parliamentary Committee on Land, Natural resources and Environment on 23rd April, 2013, at page nine,** Wildlife tourism accounts for 17% of Tanzania GDP. By not protecting the wildlife, not only country national heritage will be lost but also loss in economy. Court of law has to protect not only the Wild animals in the National Park*

and reserved areas but this country natural resources in general. Otherwise they will be nothing for National heritage. In **Civil Appeal No. 27 of 2011 Tenende S/O Budotela and Salamba S/O Ntinginya Vs The Attorney General** Hon. Munuo J, Kimaro, J., and Mjasiri J. Justice of Appeal held that:

We take judicial notice of the fact that forests must be protected by law to prevent environmental destruction, deforestation and drought which, if left unchecked would endanger and threaten the survival of mankind, fauna, flora, birds, insects and other creatures and turn our country into a desert. For this reason, the courts of law would; not support trespass into forests be it Ilomero Hill forest Reserve or elsewhere.

Thus, there is a need of prosecution being equipped with knowledge and be serious on issues of National Heritage. In the end, appeal is allowed, conviction is quashed, part of un served sentence set aside. Appellant be released, unless withheld with other offences.



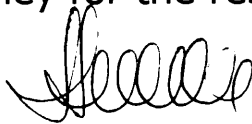

Z. G. Muruke

JUDGE

03/04/2018

Judgment delivered in the presence of appellant in person, and
Honorable Munishi State Attorney for the respondent.




Z. G. Muruke
JUDGE
03/4/2018