

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

CRIMINAL APPEAL NO 19 OF 2020

(Arising from Criminal Case No. 77 of 2017 of the District Court of Bariadi at Simiyu)

MAGUMBA S/O NYANGATI @NGARA..... APPELLANT

VERSUS

THE REPUBLICRESPONDENT

JUDGEMENT

Date of the last Order: 25th June, 2020

Date of the Judgement: 14th August, 2020

MKWIZU, J.

The appellant Magumba Nyangati @ Ngara was charged with eight counts under the Wildlife Conservation Act No.5/2009 read together with GN No. 275 of 1974 and paragraph 14 of the First schedule, section 57 (1) and 60 (2) and (3) of the Economic and organized Crimes control Act Cap 200 R.E2002 as amended by section 13 and 16 of the Written Laws (Misc. Amendment) Act No 3 of 2016.

The case at the trial was simple and straight forward. While on a normal game reserve patrol, on 3/8/2017, PW1, PW2 and another Game Reserve

officer found the appellant inside the game reserve without a permit. With him, the following items were found, four limbs of Buffalo, leopard skull, one carcass black backed jackal, local weapons namely one bow, thirteen arrows, one knife, one Panga and 26 trapping wires. On evaluation, the Government trophies were found worth 12,644,700/=.PW3 who conducted the valuation, tendered the valuation report plus the inventory form as exhibit P2 and P3.

Appellant denied the accusations, he said he was arrested while taking care of his Cotton Farm and he did not know what he was accused of. After a full trial, magistrate found the appellant guilty in all 8 counts. Conviction was entered followed by a sentence of payment of 200, 000 fine in the first two counts and 20 years imprisonment in the 3-8 counts. Discontented, appellant has come to this court challenging both conviction and sentence. He filed 3 grounds of appeal to the effect that prosecution's case was not proved to the required standards.

The appeal was heard in the absence of the appellant who requested to have his appeal so proceed. By the order of the court, Ms. Immaculate Mapunda

learned State Attorney for the respondent/ Republic filed a written submission in support of the appeal.

In her written submissions, Ms. Mapunda stated that, prosecution evidence was weak to ground conviction. She pointed out what she considered major defects in the evidence. One, that the evidence of PW1 and PW2 who were all arresting officers contradicted each other on the time when the appellant was arrested. While PW1 alleged that appellant was arrested at 4.00 hours on 4/8/2017, PW2 who was at the scene with PW1 said they arrested the appellant at 20.00 the time featuring in the charge sheet. She said the inconsistency pointed out goes to the root of the matter and that for that reason the charge sheet was not proved. Ms. Mapunda cited the case of **Rajabu Shabani @ Sanuka v Republic**, Criminal appeal No. 461 of 2015.

Secondly, it was Ms. Mapunda's contention that, PW1 and PW2's evidence did not come clearly on how they arrested the appellant with the alleged items. She said, both PW1 and PW2 had testified that appellant was arrested when he was heading to the hiding bush. They interviewed the appellant and searched the bush where the alleged weapons and the government

trophies were found. The prosecution evidence is silent whether at the arrest, appellant had in possession anything. In other words, prosecution failed to associate the item found at the hiding bush and the hiding bush itself with the appellant. The learned State Attorney was of the view that, the prosecution's evidence left gaps which creates doubt.

Another reasons why the prosecution supported the appeal is the evidence of PW3 who tendered in evidence an inventory form exhibiting disposition of easily decaying trophies which was done in contravention to section 101 of the Wildlife Conservation Act. Ms. Mapunda's contention was that, the evidence is not certain whether the appellant was involved in that exercise. She prayed to have the conviction quashed, sentence set aside and the appellant set at liberty

I have given the appeal a thorough scrutiny. The issue is whether the offence against the appellant were proved or not. I will begin with the last issue raised by the learned State Attorney in relation to the irregularity of the procedure adopted by PW3 in destroying the decaying Trophies. I have time to go through exhibit P3, an Inventory Form. On 7/8/2017, Senior

Resident Magistrate of Bariadi ordered the disposition of the government trophies allegedly found with the appellant. Though the exhibit itself do not show whether the appellant was involved, the records are clear on that issue. As indicated in the said exhibit the disposition was done on 7 /8/2017, on that day the appellant was before the resident magistrate court at Bariadi. After the charge was read and explained to the appellant, at page 2 of the trial courts proceedings, Ms. Grace, the then learned State Attorney conducting the prosecution on behalf of the respondent, moved the court for the disposal of the trophies. The court moved outside the court premised with the accused, the learned State Attorney, DC Kalson, interns and the police (Edward) where it was showed the prophies and ordered them to be disposed of. This was in line with the provisions of section 101 which states:

101 (1)-Subject to section 99 (2), at any stage of the proceedings under this Act, the court may on its own motion or on an application made by the prosecution in that behalf order that any enlmst, trophy, weapon, vehicle, vessel or other article which has been tendered or put in evidence before it and which is subject to speedy decay, destruction or depreciation be placed at the disposal of the Director.

Going by the above position, the State Attorney's argument is not supported by the records. The disposition of the Government trophies followed the procedure stipulated under the provisions of section 101.

On whether the prosecution proved its case or not, the evidence on the record is very clear. The appellant was arrested by three persons, two of whom testified as PW1 and PW2. While PW1 testified that they arrested the appellant at 4.00 hrs on 4/8/2017, PW2 said appellant was arrested at 20.00 on 4/8/2017. This, said the learned State Attorney, is a major contradiction. The charge sheet mentioned 20.00 hours as the time the appellant was arrested, taking into account that both PW1 and PW2 were present at the point, time and place of the arrest, I think, the contradiction mentioned is of essence to their credibility. As argued by the learned State Attorney, it is a trite law that when a specific date, time and place is mentioned in the charge sheet, the prosecution is bound to prove to that effect and not otherwise. See the cited case of **Rajabu Shabani** (Supra). Being the arresting officers, I think they are the person who put this matter into motion by reporting to the police, giving details of what happened, when, where

and how the appellant was arrested. I think, this contradiction is a major one as suggested and goes to the root of the matter.

I agree with the learned State Attorney that the prosecution's evidence is wanting. Their evidence is to the effect that while on their normal duties as Game reserve wardens, they found in the game reserve what they called a hiding Bush. They decided to surround the area, while there, the appellant came towards the hiding bush. They arrested him, interviewed him and searched the hiding bush to find the items mentioned in the charge sheet. PW1 and PW2 did not disclose as to why they connected the appellant with the said hiding bush and the items that is government trophies found therein. Being found outside the hiding bush, prosecution ought to have led evidence as to why they believed that it is the appellant who kept the alleged trophies in that bush or at least how he was involved or connected to the bush and the items therein. This is lacking in the records. It is a trite law that where there is a doubt in a criminal case, it always goes to benefit the appellant.

In the end result, I agree with the learned State Attorney for the respondent/ Republic that the conviction against the appellant is unsustainable and

cannot be allowed to stand. I allow the appeal, quash the conviction, set aside the sentences imposed upon the appellant and I order his immediate release from prison, unless is held for other lawful cause.

It is so ordered.

DATED at **SHINYANGA** this 14th day of **AUGUST**, 2020,


E.Y.MKWIZU
JUDGE
14/08/2020

COURT: Right of appeal explained.




E.Y.MKWIZU
JUDGE
14/08/2020