

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

CRIMINAL APPEAL NO. 21 OF 2020

(Originating from Criminal Case No. 56 of 2016 of the Bariadi District Court)

GAGA BUSALU.....1st APPELLANT
DOME GUENGA @NGUMILA2nd APPELLANT
VERSUS
THE REPUBLIC.....RESPONDENT

JUDGMENT

Date of the last Order: - 12th June, 2020

Date of the Judgement: -14th August, 2020

MKWIZU, J.:

This is an appeal arising from Criminal case No. 56 of 2016, by the Bariadi District Court, whereby the Appellants herein were charged with four counts of unlawful entry into a game reserve contrary to section 15 (1) and (i) of Wild Conservation Act No. 5 of 2009, Unlawful possession of weapons in the game reserve contrary to section 17(1) (2) of the Wildlife Conservation Act, Unlawful hunting the of the scheduled animals contrary to section 47 (a) of Wildlife Conservation Act No.5 of 2009 read together with paragraph 14 of the first scheduled to and section 57 (1) and 60 (2) (3) of the Economic and Organized Crime Control Act Cap 200 RE 2002 as amended by section 13

and section 16 Written Laws (Miscellaneous Amendments) Act No. 3 of 2006 and Unlawful possession of Government trophies contrary to section 86 (1), (2) and (6) of the Schedule and section 57 (1), 60 (2) and (3) of the Economic and Organized Crime control Act Cap 200 RE 2002 as amended by section 13 and 16 of the written laws (Miscellaneous Amendments) Act No.3 of 2016.

Brief facts are that, on 29th September, 2016 at Maswa Game Reserve within Simiyu Region, Game Reserve Officers arrested the accused persons hunting, in their possession they were found with weapons to wit one Machete, one knife ten trapping wires, and a fresh head, tail and four limbs of Zebra. Appellants pleaded guilty to all counts. They also admitted the facts narrated by the prosecution.

The trial court therefore entered conviction on their own plea of guilty and they were all sentenced to pay fine of 100,000/= in default or one-year imprisonment in the 1st Count and to serve 20 years imprisonment in the 2nd, 3rd and 4th counts. Appellants were aggrieved hence the present appeal on the following grounds of Appeal.

- (1) *That the learned trial Magistrate erred and in facts when he convicted and sentenced basing on the plea of guilty which was not properly procured.*
- (2) *That, the learned trial Magistrate erred both in law and in facts when he entered the plea of guilty while the facts were not explained to the appellants in the language which was well known to the appellants.*
- (3) *That, the learned trial Magistrate erred both in law and in facts when he convicted and sentenced appellants while the prosecution didn't produced the certificate of seizure for the Government Trophies alleged to have been found with the Appellants in the game reserve as well as a knife which was as well tendered as exhibit.*

The appeal was heard by way of written submissions, the respondent/Republic had the services of Ms. Immaculata Mapunda, learned State Attorney whereas Mr. Frank Samwel learned advocate represented the appellants.

Mr. Frank argued all three grounds of appeal together. He submitted on three major issues, **firstly** that, the appellants are Sukuma by tribe and therefore conversant with Sukuma language only. Mr. Frank submitted further that, the proceeding are not clear as to how the appellants were made to understand the charge and the gravity of the punishment facing them. He argued that the records is silent on whether there was an interpreter to translate the said charge to the appellants or not. In addition to that, Mr. Frank submitted that the record is also silent on whether facts of the case were explained to the appellants. The court records are in English Language therefore it was necessary for the Court to make the case known to the appellant before they plead thereto. This not done, suggested Mr. Frank the plea was equivocal plea of guilty.

Second, Mr. Frank submitted that, the prosecution side produced exhibits namely one knife, one machete, ten trapping wires, four limbs of zebra, one head of Zebra and, one tail of Zebra without the prosecution producing the certificate of seizure to prove that the said items were obtained from the appellants. He argued that, failure to produce the certificate of seizure brings doubt as to whether the said exhibits were taken from the appellants or not.

Lastly Mr. Frank submitted that the standard of proof in criminal case is beyond the reasonable doubt. The prosecution in this case failed to discharge its duty. He therefore prayed the appeal to be allowed and the judgment in Criminal case No. 56 of the Bariadi District Court be quashed and the appellant be released from prison.

Ms. Mapunda, opposed the first and second grounds of appeal. She said, the plea by the appellant were unequivocal. She was of the submission that the plea was taken in conformity with the requirements set in the case **Buhimila Mapembe Vs. The Republic**, (1998) TLR 175.

On the complaint that appellants did not understand the charge and the gravity of the punishment facing them, Ms. Immaculata, submitted that the proceedings were fully understood by the appellants that is why they pleaded on the facts at page 4 of the proceedings as they responded well and never protested.

On the last ground, where the accused challenged non tendering of the seizure certificate by the prosecution, Ms. Mapunda was of the view that, accused were arrested red handed in the Game Reserve by the officers who were in patrol and therefore there were no need to fill in the seizure certificate to prove that accused were found in the Game Reserve. She cited the case of **Tongora Wambura Vs Republic**, Criminal Appeal No. 212 of 2006 C.A at Arusha to support her position.

The learned State Attorney, however, faulted the proceedings for recording the plea of the 1st appellant in all counts while recording the 2nd appellant's plea on counts 3 and 4 only. On this ground alone, learned State Attorney prayed the court to order a retrial against the 2nd accused on the 1st and 2nd counts.

I have carefully and curiously gone through the records, the grounds of appeal and the parties' submissions .The main issue is whether the plea of guilty by the appellant was so unequivocal that section 360 (1) (a) of the Criminal Procedure Act, Cap. 20 (CPA) can be invoked to prohibit an appeal against the conviction that was entered following

that plea of guilty. Like the state attorney, I will first determine grounds 1 and 2 together as they relate. To put it in the appellants own words, in these two grounds the blame is thrown on the trial magistrate for convicting the appellants on a plea of guilty which was not properly procured. The original records bears the truth of the matter, I wish to reproduce the trial courts proceedings dated 22/9/2016:

"22.9.2016

CORUM: HON M.P MRIO-SRM

PP: SILAS-SP

C/C: S.M MSIKULA

ACCUSED: PRESENT

Public: Silas for the Republic I pray to tender a certificate and Consent for DPP and read a charge.

M.P. MRIO

22/9/2016

COURT: Prayer is granted

M.P MRIO-SRM

22/9/2016

Court: charge is hereby read over and explained fully to the accused persons who are required to plea thereto.

1st Count

1st Accused: It is true I entered to the Game reserve without permit.

2nd Accused: It is true I entered to the Game reserve without permit.

2nd Count:

1st Accused: it is true I was found in possession of weapons to wit one knife, one machete and ten trapping wires.

1st Accused: *it is true I was found in possession of weapons to wit one knife, one machete and ten trapping wires.*

3rd Count:

1st Accused: *It is true I was found hunting Zebra without permit.*

2nd Accused: *It is true I was found hunting Zebra at Maswa game reserve without permit.*

4th Count

1st Accused: *It is true I was found with four burchells of Zebra tail head and zebra tail without permit.*

2nd Accused: *It is true I was found in unlawful possession of four burchells of Zebra legs, head and tails of Zebra.*

Court: *Accused's PGE at all Court*

M.P MRIO-SRM

22/9/2016

FACTS

Accused's personal particulars and the offences are as per charge sheet. It was alleged that on 20/9/2016 around 18.00 hours accuseds were at Maswa game reserve area hunting. They were arrested by game reserve officers who were on Patrol. They were found in unlawful possession of weapons to wit one machete, one knife and ten trapping wires. They were also found in unlawful possession of fresh four limbs of zebra, one head of Zebra and one zebra's tail. They were interrogated on the permit allowing them to enter to the game reserve area and hunt thereto. They on traduced themselves to the officers as Gaga Busalu and Dome guenga @ Ngunila. They took them to poot. The next day they were taken to Police with exhibits. A case Bariadi IR 15/3/2016 was opened. They were interrogated and today they were

arraigned to court where they pleaded guilty. We pray to tender exhibits to wit one knife, one machete, ten trapping wires, four limbs of zebra, one head of zebra and one tail of zebra.

M.P MRIO-SRM

22/9/2016

1st accused: *I have no objection as I was arrested with them*

2nd accused: *I have no objection as I was arrested with them*

M.P MRIO-SRM

22/9/2016

Court: One machete, one knife, four legs (limbs) of zebra, one head of zebra and ten trapping wires are received as exhibit P1 collectively.

M.P MRIO-SRM

22/9/2016

I pray to tender trophy evaluation forms and inventory forms as exhibits

M.P MRIO-SRM

22/9/2016

1st accused: *I have no objection*

M.P MRIO-SRM

22/9/2016

2nd accused: *I have no objection as I was arrested with them*

M.P MRIO-SRM

22/9/2016

At page 4 reads:

Court: *Trophy evaluation form and inventory form are received as exhibit P2 collectively.*

M.P MRIO-SRM

22/9/2016

That's all your honor

M.P MRIO-SRM

22/9/2016

1st Accused: *I do agree to the facts adduced to be true and correct.*

1st accused signature: sign

2nd Accused: *I do agree with facts adduced to be true and correct.*

2nd accused signature: *sign*

Court: *since the accused person has pleaded guilty to the charge and the facts adduced by the Public Prosecutor to be true and correct I convicts them accordingly."*

It should be noted here that, the typed proceedings omitted the plea of the 2nd accused on the 1st and 2nd counts, this led to the confusion by the learned State Attorney hence his prayer for retrial. However, having read the original records, it is clear that both appellants did plead guilty to all four counts and the facts of the case read out by the prosecutions. The facts which were read out to the appellants quoted above and which were admitted disclosed the essential ingredients of the offences with which appellants were charged with. The facts indicated how the appellants were found in the game reserve and the items they were found with. The weapons, government trophies plus the valuation reports and inventory forms were all tendered in court as exhibits without objection from the appellants. In **Mandisela**

Kunguru V. Republic, Criminal Appeal No 462 of 2017 at Mbeya (Unreported), the court citing with approval the case of **Aidan V. Republic [1973] E.A** established the procedure to be followed where an accused pleads guilty on the charge. It was stated thus:

"when a person is charged, the charge and the particulars should be read out to him, so far as possible in his own language, but if that is not possible, then a language which he can speak or understand.

The magistrate should then explain to the accused of all the essential elements, the magistrate should record what the accused has said, as nearly as possible in his own words, and then formally enter a plea of guilty.

The Magistrate should next ask the prosecutor to state the facts of the alleged offence and, when the statement is complete, should give the accused an opportunity to dispute or explain the facts or to add any relevant facts.

If the accused does not agree with the statement of the facts or asserts additional acts which, I true, might raise a question as to his guilt, the magistrate should record a charge to not guilty and proceed to hold a trial.

If he does not deny the alleged facts in any material respect, the magistrate should record a conviction and proceed to hear any further facts relevant to sentence. The statement of facts, and the accused's reply must, of course, be recorded"

The counsel for the appellant's claimed that appellants were not made to understand the charge, facts of the case and the gravity of the offence. There is nowhere in the entire proceedings, appellants were recorded to have informed the court that they are not conversant with the court language. What is evident from the records is that both appellant clearly followed up the proceedings that is why they were able to respond to whatever they were required to. I think, the complaint in the first and second grounds of appeal are an afterthought. Appellants had the opportunity before the trial court to raise this claim but they did not. I am therefore from what I have stated above satisfied that the appellants plea was nothing

but unequivocal plea of guilty recorded in compliance to the provisions of **section 228 (2) of the Cap 20 R.E 2019.**

In **Buhimila Mapembe Vs. The Republic**, (Supra) the court *inter alia* stated:

"ii) The words it is true when used by an accused person may not necessary amount to a plea of guilty particularly where the offence is technical one.

iv)Where the offence charged is rather technical and accused is unrepresented it is desirable that the technical words be adequately explained to the accused before he is asked to plea thereto "

There was nothing technical in our case that needed explanation beyond what was presented to the appellants.

On the third ground, Mr. Frank faults the trial court for convicting the appellants without a certificate of seizure tended in court as exhibit to establish that indeed the alleged Government Trophies were found with the appellants .The facts as they are, show that the appellant were arrested by the Game reserve officers who were on patrol. It therefore going without

saying that the arresting officers were "authorized officers" under the provisions of section 106 (1) of the Wildlife Conservation Act. The learned State Attorney correctly stated that by arresting the appellants, arresting officers in this case, were exercising their legitimate powers under the law. The seizure certificate was not necessary under the circumstances. See also the case of **Tongora Wambura Vs Republic** (supra).

For reasons outlined above, the appeal against conviction and sentence is hereby dismissed in its entirety.

It 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