

IN THE HIGH COURT OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

CRIMINAL APPEAL NO 19 OF 2020

DANIEL MOHERE CHACHA_____ **APPELLANT**

VERSUS

THE REPUBLIC_____ **RESPONDENT**

(Arising from the decision and orders of the district court of Tarime at Tarime Hon. Siliti RM, in economic case no 45 of 2019 dated 29.10.2019)

JUDGEMENT

Date of last Order; 29.06.2020

Date of judgment; 07.08.2020

GALEBA, J.

This appeal arises from the decision and orders of the district court of Tarime in economic case number 45 of 2019 in which the appellant was charged on three counts of unlawful entry into the National Park contrary to sections **21(1)(a) and (2) and 29(1) of the National Parks Act [Cap 282 RE 2002]** as amended by **the Written Laws (Miscellaneous Amendments) Act No. 11 of 2003 (the NPA)**, unlawful possession of weapons in the National Park contrary to **section 24(1)(b) and (2) of the NPA** and unlawful possession of Government Trophies contrary to **section 86(1) and (2)(c)(iii) of the Wildlife Conservation Act no. 5 of 2009** as amended by the **Written Laws (Miscellaneous Amendments) Act No. 2 of 2016 (the WCA)** read together with paragraph 14 of the first schedule to and sections 57(1) and 60(2) of the **Economic and Organized Crime Control Act (Cap 200 RE 2002)** as amended (the EOCA).

The facts leading to the arrest and prosecution of the appellant was that on **02.08.2019**, without permission of the Director of Wildlife the appellant was found at Korongo la Ndege area within Serengeti district in Mara region which is a location within the Serengeti National Park. He was also found in unlawful possession of one spear and two animal trapping wires. The appellant too was found in unlawful possession of two fore limbs and two sided ribs fused with its diaphragm fresh meat of wildebeest, a Government Trophy valued at Tshs 1,494,000/=.

The appellant denied committing the offences; he was prosecuted and found with a case to answer. The appellant defended himself but all the same on 29.10.2019 he was found guilty and convicted on all three (3) counts. On the 1st, 2nd and 3rd counts he was sentenced to imprisonment for 1 year, 2 years and 20 years respectively.

The appellant was aggrieved by both the conviction and sentences and he filed the present appeal raising a total of five (5) grounds to challenge the judgment of the district court. The grounds are as follows;

- 1. THAT the trial magistrate failed to discover that prosecution witnesses adduced false and cooked evidence before the court against the appellant.***
- 2. THAT the trial magistrate erred on a point of law to find that PW1, PW2 and PW3 were credible witnesses.***
- 3. THAT this case is a planted one to the fact that (sic) the appellant arrested at Gibaso village at Tindiga making bricks.***

4. *THAT the trial magistrate failed to evaluate the entire evidence and fact before her.*
5. *THAT the prosecution side failed to prove the case beyond reasonable doubt.*

When this appeal came up for hearing on 29.06.2020, the appellant prayed to adopt his grounds of appeal as his submissions. I therefore permitted Mr. Frank Nchanila who was appearing for the respondent to reply on the grounds in which case the appellant would rejoin if he wished.

On the 1st ground of appeal in which the appellant was complaining that the prosecution witnesses adduced false and cooked evidence, Mr. Nchanila submitted that that ground is misconceived and then went into digesting the evidence of all witnesses from **PW1, PW2, PW3** through to **PW4**. As for **PW1 G6168 DC SELESIUS** he submitted that this witness tendered the weapons **EXHIBIT P1** and the trophies **EXHIBIT P2**. Mr. Nchanila submitted that this witness explained how he got these exhibits. He submitted that **PW2**, a park ranger explained how the accused was arrested and that the certificate of seizure was prepared and that the exhibit was admitted as **EXHIBIT P3**. As for **PW3** he submitted that his evidence was like that of **PW2** as contained at pages 11 and 12 of the typed proceedings. **PW4**, he submitted, was a trophy valuer and he explained how he valued the trophies and he tendered a certificate of trophy valuation as **EXHIBIT P4**. Mr. Nchanila submitted that the evidence of these witnesses was credible and that it was neither false nor cooked.

I have reviewed the evidence of all the prosecution witnesses, this court can confirm that the evidence was credible; every witness testified on what he saw. **JULIUS JOHN NYANGA PW2** and **OSCAR KAPANDE PW3** have their evidence on pages 8, 11 and 12. Their evidence is that they are both park rangers and on 02.08.2019 while on patrol at Korongo la Ndege area, they located the bush in which the appellant was hiding with the weapons and the trophies, they had him sign the seizure certificate and took the **EXHIBITS** and the appellant himself to Nyamwaga Police station. **PW1 G6168 DC SELESIUS** testified that **PW1** and **PW2** on 02.08.2019 presented to him the appellant and also the **EXHIBITS** which he labeled. These are the **EXHIBITS** that were tendered in court. **PW4** identified the trophies to be the flesh of a wildebeest. I have reviewed the proceedings and there is nothing suggesting that there was any evidence that was cooked or forged. In the circumstances, the 1st ground of appeal lacks merit and the same is dismissed.

The complaint of the appellant in the 2nd ground was that the trial magistrate erred on a point of law to find that **PW1, PW2** and **PW3** were credible witnesses. In respect of this ground Mr. Nchanila submitted that all witnesses gave consistent evidence and the evidence was credible and it proved the charge. Mr. Nchanila submitted that the trial court was the court that was in position to assess the credibility which it did. I have considered submissions of Mr. Nchanila and the whole evidence as tendered in general, and I have not noted any area where the witnesses' credibility

would be challenged. In the circumstances, the 2nd ground of appeal is dismissed for want of merit.

The 3rd ground of appeal was that the case was planted against the appellant because he was arrested at Gibaso village while making building bricks. In relation to this complaint, Mr. Nchanila submitted that according to the evidence of **PW2** and **PW3** the appellant was arrested at Korongo la Ndege in Serengeti National Park and that fact is supported by the certificate of seizure **EXHIBIT P3**.

I have considered the complaint in this ground and also the submissions of Mr. Nchanila. When the appellant was arrested in the bush, **PW2** prepared a certificate of seizure. That document, **EXHIBIT P3** was signed not only by those witnesses who arrested the appellant but also the appellant signed it and affixed one of his thumbprints on that **EXHIBIT**. That exhibit reads in part that the appellant was arrested at a place called Korongo la Ndege in the protected area. The oral evidence of the appellant was that he was arrested at Gibaso village while making bricks, but this evidence as indicated above, is contradicted by the appellant's own evidence in writing in **EXHIBIT P3**, which evidence was tendered by the prosecution without him raising any objection, see the proceedings of the trial court at page 9, immediately before the **EXHIBIT** was to be tendered. In any event oral evidence is generally subordinate to written evidence of the same person on the same matter taking inspiration from **sections 100 and 101 of the Evidence Act [Cap 6 RE 2019]**. In the

circumstances, the 3rd ground of appeal is dismissed for want of merit.

The appellant's complaint in the 4th ground of appeal is that the trial magistrate failed to evaluate the entire evidence and facts before her. Mr. Nchanila submitted in respect of this ground that the evidence was properly analyzed and in case the same was not analyzed to the extent necessary, then this court be pleased to step in the shoes of the trial court and analyze the evidence and reach at its own decision under the provisions of **section 366(1)(a)(i) of the Criminal Procedure Act [Cap 20 RE 2019] (the CPA)**. I have gone through the judgment of the district court and I am satisfied that the trial magistrate analyzed the evidence from both parties as appropriate. For instance the evidence of the defense is evaluated at pages 6 and 7, so I am not in agreement with Mr. Nchanila that this court should sit in reevaluation of the evidence of the case. In the circumstances, the 4th ground of appeal is dismissed.

The complaint in the 5th ground was that the prosecution side failed to prove the case beyond reasonable doubt. In respect of this ground Mr. Nchanila submitted that the prosecution proved the case to the required standards. He submitted that the appellant did not object that the animal was not a wildebeest and no cross examination was raised on that aspect. He referred this court to **CRIMINAL APPEAL NO 129 OF 2017 BETWEEN ISSA HASSAN UKI VERSUS THE REPUBLIC** at page 16 on the principle that where a party does not cross examine on a particular matter of

importance, he admits its truthfulness and he is subsequently estopped from denying its authenticity.

This case is based on three counts; **the first** is that of being found illegally in the National Park. In this aspect the certificate of seizure shows that the appellant was arrested in the Serengeti National Park at a place called Korongo la Ndege. When this document was tendered the same was not objected to by the appellant, had the appellant any issues with the location of where he was arrested he would not permit the document to get to the record just as easily. **The second** aspect of the case is being found in unlawful possession of weapons in the Nation Park contrary to law. To prove this, the prosecution, together with oral evidence tendered one spear and 2 animal trapping wires. Those weapons which were tendered collectively as **EXHIBIT P1** were tendered without any objection from the appellant; see the appellant's "no objection" at page 5 of the typed proceedings. **The third** count was being found in possession of the government trophies. This count of the charge was proved by tendering the trophies themselves. The trophies were as **EXHIBIT P2**, again the two limbs of the wildebeest fused with ribs and the diaphragm were tendered with clearance by the appellant at page 6 of the proceedings. I am of a considered opinion that the appellant raised no doubt on any count and therefore it cannot be said that the prosecution failed to prove the case beyond reasonable doubt. For the above reasons, this court holds that the prosecution proved their case to the hilt and the 5th ground of appeal is hereby dismissed.

In the circumstances, this court hereby upholds the decision of the trial court and dismisses the appeal for want of merit.

DATED at MUSOMA this 7th August 2020



Z. N. Galeba
JUDGE
07.08.2020

Court; This judgment has been delivered today the 7th August 2020 in the absence of parties but with leave not to enter appearance.



Z. N. Galeba
JUDGE
07.08.2020