

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA
CRIMINAL APPEAL NO. 41 OF 2019**

GODE CLEOPHACE ----- APPELLANT

VERSUS

THE REPUBLIC ----- RESPONDENT

JUDGMENT

Date of last order 21/01/2020

Date of Judgment 07/02/2020

N.N. Kilekamajenga, J.

The appellant, Gode Cleoplace, was arraigned before the District Court of Biharamulo for the offence of unlawful possession of Government trophy contrary to **Section 86 (1) and 2 (b) of the Wildlife Conservation Act, No. 5/2009** read together with **Section 57 (1) paragraph 14 (d) of the first schedule of the Economic and Organized Crime Control, Cap. 200 RE 2002**. The appellant pleaded not guilty to the charge against her necessitating the prosecution to summon four witnesses to prove the case to the required standard.

PW1 informed the trial court that she was informed about the presence of a person who possessed wild animal meat at Majengo 'A' within Biharamulo town. She went to the appellant's house with other police officers, arrested the

appellant, searched the house and found the meat. She filled-in the certificate of seizure which was admitted in court as exhibit P1. However, she did not specify when she went to search the house. Also, PW1 did not recognize the kind of meat she seized. PW2, who was the Game Reserve Warden, told the trial court that he received the meat seized from the appellant's house on 02nd November 2016. He was requested to recognize the meat and value it. He recognized the meat to be that of a reedbuck; he valued the meat at US Dollar 450 equivalent to Tshs. 945,000/-. She filled-in the valuation report which was admitted in court as exhibit P2.

PW3 testified that he received an economic case file on 02nd November 2016 for investigation and he took the meat to Burigi Game Reserve for identification. He filled-in an inventory form and the meat was later destroyed because it had rotten. The inventory form was admitted in court and marked exhibit P3. PW4, who was also a police officer, testified that he accompanied his fellow police officer to the house of the appellant. They searched the appellant's house and found two (2) kilograms of wild animal meat. He did not know that it was wild animal meat until he was informed by the appellant. After the prosecution case, the defence relied on the testimony of the appellant/accused. In her defence, she denied to possess the wild animal meat.

The trial court was finally convinced that the prosecution's case was proved beyond reasonable doubt hence convicted and sentenced the appellant to pay a

fine of Tshs. 945,000/= or in default to serve twenty (20) years in prison. The appellant was aggrieved by the decision of the trial court hence this appeal. The appellant coached seven grounds of appeal thus:

- 1. That the economic case was baseless, no certificate of the director of public prosecution (ppp consent (sic)) was brought conferring jurisdiction on a trial Court involving economic matter bad in law.*
- 2. That the evidence by PW4 rely on mere assertion on that matter no caution statement tendered to support the same contrary of (sic) section 110 of the evidence (sic) Act (Cap 6 R.E 2002).*
- 3. That the said P1 exhibit was improperly admitted without chief government report to improve (sic) that the alleged meat was an actual party of the that reedbuck animal.*
- 4. That the said P1 was improper admitted contravened (sic) mandatory of Section 38 of the criminal procedures (sic) Act (Cap 20 R.E 2002).*
- 5. That no search warrant was tendered coincidentally with P1 Exhibit to support the same contravened of Section 38 of the Criminal Procedure Cap. 20 R.E 2002 Act.*
- 6. That the P3 exhibit was illegal in Court evidence by issued (sic) and brought by the person whom (sic) was not legal known maker.*
- 7. That the charge was defective not impeccably disclosing the matter in economic issues.*

The appeal was finally called for hearing. The appellant appeared in person under the legal representation of the learned advocate, Mr. Mswadick, while the learned State Attorney, Mr. Emmanuel Kahigi (SA) appeared for the Republic, the respondent. During the oral submission, the counsel for the appellant decided to

argue all the grounds of appeal simultaneously. The gist of his argument was centered on the point that the prosecution failed to prove the case to the required standard. He argued that there is no direct evidence linking the appellant with the offence charged. The trial court based on assumptions to convict and finally sentence the appellant. The applicant's house was searched but the search warrant was not tendered in Court. The certificate of seizure was filled-in in the presence of several persons who were supposed to be summoned but they were not called to testify in Court. Failure to summon key witnesses by the prosecution creates doubt on the case and draws an inference against the prosecution. The counsel referred the Court to the case of **Peter Mabara v. Republic Criminal Appeal No. 242 of 2016, CAT at Bukoba** (unreported). The counsel for the appellant also hinted on the contradiction on the prosecution's evidence and that such contradiction was supposed to be decided in favour of the appellant. He cemented his argument with the case of **Jimmy Runangaza v. Republic, Criminal Appeal No. 159 "B" of 2017, CAT** at Bukoba (unreported). He finally urged the Court to quash the conviction and set aside the sentence and set the appellant at liberty.

The counsel for the respondent had a brief submission. He supported the appeal based on one legal point that, the prosecution had three exhibits namely, certificate of seizure, certificate of inventory of trophies and valuation certificate of trophies. Such exhibits were admitted as exhibits P1, P2 and P3. However, the

exhibits were admitted but were not read in court to know their contents contrary to the principles of the law as stated in the case of **Robison Mwanjisi and others v. Republic [2003] TLR 218**. Under the established principles of the law, such exhibits should be expunged. After expunging such exhibits then the prosecution's case has no legs to stand.

When rejoining, the counsel for the appellant supported the submission by the counsel for the respondent.

In this appeal, there is one apparent issue that I wish to address. As rightly pointed out by the learned State Attorney, the prosecution's case entirely depends on the evidence of PW1 and PW4 who went to search the appellant's house. According to the evidence of PW4 the appellant was found with 2 kg of wild animal meat in his house. The certificate of seizure was filed-in and signed by the accused and the two police officers who went to search the house. Later, the said meat was taken to the officers of Burigi Game reserve for identification/recognition and valuation. It later became apparent that the said meat is that of a wild animal. The valuation report was filled-in and tendered in court.

Apart from the prosecution witnesses who testified in court, there were three exhibits which were tended before the trial court and admitted namely, the certificate of seizure, valuation form and inventory form. However, all these

documents were tendered but not read in court to allow the appellant to know the contents and challenge them. This procedural error is contrary to the agreed principles of laws which have been stated by the higher court i.e the Court of Appeal of Tanzania in a number of cases. For instance, in the case of **Kurubone Bagirigwa and 3 others v. The republic, Criminal appeal No. 132 of 2015**, Court of Appeal of Tanzania at Bukoba at Mwanza, the court stated that:

'Failure to read the contents of the caution statement of accused persons after being admitted is fatal'

Also, in the case of **Mbaga Julius v. the Republic, Criminal Appeal No. 131 of 2015**, Court of Appeal of Tanzania at Mwanza, the Court of appeal had the following to say:


'The procedure for admission of a confession is regulated by the Evidence Act and case law. Therefore, like any other documentary evidence whenever it is intended to be introduced in evidence, it must be initially cleared for admission and then actually admitted before it can be read out...failure to read the contents of the caution statement after it is admitted in the evidence is a fatal irregularity.'

The remedy to this defect is to expunge the said exhibits from the records of the court. In the instant case, when the three exhibits are expunged, as rightly argued by the learned state Attorney, the prosecution's case has no leg to stand. I view of the defect pointed above, I find the appellant's appeal has merit and it is hereby allowed. I hereby quash and set aside the sentence imposed against

the appellant, Gode Cleoplace. She should be set free forthwith unless held for other lawful reasons. Order accordingly.

Dated at Bukoba this 14th February 2020.




N.N. Kilekamajenga
Judge
14/02/2020

Court:

Judgment delivered in the presence of the learned State Attorney, Mr. Emmanuel Kahigi, counsel for the appellant Mr. Mswadick and the appellant. Right of appeal explained to the parties.




N.N. Kilekamajenga
Judge
14/02/2020