

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

CRIMINAL APPEAL NO. 9 OF 2020

(Arising from Economic Case No2/2018 in the District Court of Hanang at
Katesh)

**JOHN S/O EMMANUEL @SIKUKUU S/O GADIYE APPELLANT
VERSUS
REPUBLIC RESPONDENT**

JUDGMENT

ROBERT, J:-

The Appellant John s/o Emmanuel "Sikukuu s/o Gadiye was charged with the offence of Unlawful possession of Government Trophy contrary to section 86(1)(2)(iii) of the Wildlife Conservation Act, No. 5 of 2009 as amended by section 59(a) of the Written Laws (Miscellaneous Amendments) (No.2) Act, 2016 read together with Paragraph 14 of the first Schedule to and Sections 57(1) and 60(2) of Economic and Organized Crime Control Act (Cap. 200 R.E.2002) as amended by sections 16(a) and 13(b) respectively of the Written Laws (Miscellaneous Amendments) (No. 3) Act, 2016. The prosecution alleged that on 27th day of April, 2018 at Gocho – Gitting village

within the District of Hanangin Manyara region, the Accused person was found unlawful possession of one Bushpig skinvalued at TZS 939,120/= and porcupine spines valuet at TZS 335,400/= all total valued at TZS 1,274,520/= the property of Tanzania Government without permit from the Director of Wildlife.

When the charge was read over and explained to the accused person at the trial court he entered a plea of Not Guilty. After a full trial, the trial court found the accused person guilty of the offence charged and convicted him to serve twenty years imprisonment or pay a fine of TZS 18,692,630/=. Aggrieved, the Appellant appealed to this court against conviction and sentence on the following grounds:

- 1. The presiding magistrate erred in law and facts by convicting and sentencing the Appellant 20 years imprisonment regardless of inconsistency or variation of facts in charge sheet, statement/facts of evidence so presented in the preliminary hearing and total evidence at full hearing as to what exactly kind of trophy that the appellant was found in possession.*
- 2. The presiding magistrate erred in law and facts by convicting and sentencing the appellant 20 years imprisonment regardless of*

inconsistence of procedure in search conducted by the officers or law enforcers (search was improperly conducted; great chance of the said informer was in scene of crime and pointed out the target and probably he planted the whole event).

- 3. The presiding magistrate erred in law and facts by convicting and sentencing the appellant 20 years imprisonment regardless of heavy doubts on possession of the trophies, on the fact that, on the face of it the appellant did not actually found possessing the said trophies.*
- 4. The presiding magistrate erred in law and facts by convicting and sentencing the appellant 20 years imprisonment regardless of failure of the expert to furnish to the court necessary scientific criteria for testing the accuracy of identification of the alleged skin of bush big, dikdik skin and porcupine spines.*
- 5. The presiding magistrate erred in law and facts by convicting and sentencing the appellant 20 years imprisonment regardless of failure of the prosecution to tender the certificate of seizure of the trophies so alleged to have found in possession of the appellant*

When the case came up for hearing on 24th September, 2020 the Appellant appeared in person unrepresented whereas the Respondent was represented by Mr. Ahmed Hatibu, learned State Attorney.

When the Appellant was given an opportunity to amplify on his grounds of appeal, he prayed that the court should adopt his grounds of appeal as they are.

Responding to the grounds of appeal, the learned State Attorney stated that he is supporting the appeal based on the weaknesses noted in the proceedings of the case.

Submitting on the first and fourth grounds of appeal jointly, he argued that it is true that in the charge sheet the Appellant was charged with one count of offence involving two Government Trophies. However, this was not fatal because the trophies fall in the same category of schedules of the law, that is, section 86(1)(2)(c)(iii) of the Wildlife Conservation Act, No. 5 of 2009 as amended. Despite what is stated in the charge sheet, prosecution witnesses testified on three different animals. PW5 testified about nguruwe pori, nungunungu and tandala while PW6 testified about nguruwe pori,

nungunungu and swala and PW8 testified about Tandala, Nguruwe pori, Nungunungu and swala (page 31 and 32 of the proceedings).

The inconsistencies of prosecution witnesses in mentioning the Government Trophies is not fatal because the trophies mentioned in the charge sheet have all been mentioned by the witnesses. However, evidence of PW9 at page 34 shows that he failed to evaluate the skin of Tandale because it was very destroyed. Further to that the witness did not explain how he identified that the exhibits were of Nungunungu and Nguruwe pori.

Based on the reasons stated he prayed that the court should find the first and fourth grounds of appeal to have merit because there was no proof that the said exhibits were Government trophies and how that conclusion was reached.

Coming to the second ground of appeal, the learned State Attorney submitted that there is no merit in this ground because it explains how the procedure of search was conducted. The procedure was lawful, witnesses were present and they signed the documents. The Appellant was not present during the search as the search took place at PW2's house.

Submitting on the third ground of appeal, the learned counsel stated that he supports this ground of appeal because the evidence on record indicates that the trophies were found in a polythene bag behind the toilet of one PW2. The testimony of PW3 and PW4 who claimed to have set the trophies on instructions of the Appellant. PW3 said he was sent on 22/4/2018 and he didn't know what was inside the bag. Evidence shows that the trophies were found on 27/4/2018. He submitted further that, given the interval of days, the chain of handling of the said trophies was broken. The Appellant was linked to the crime based on suspicion that the bag found behind PW2's house is the one the Appellant allegedly gave to PW3 and PW4.

He referred the court to the case of MT 60330 PTE Nassoro Mohamed Ally vs. Republic, Appeal No. 73/2002, CAT (unreported) where the court held that suspicion however strong grave does not support conviction.

On the fifth ground of appeal, the learned counsel submitted that there is no merit in this ground of appeal. He argued that page 27 of the proceedings indicates clearly that search was properly conducted and the search certificate was admitted by the trial court as exhibit P2.

Submitting in respect of the sentence, he stated that the Appellant was ordered to pay a fine of TZS 18,000,000/= or imprisonment for twenty years. The law cited does not give option for fine it provides that the custodial sentence under the Economic and Organised Crimes Control Act would be given together with the fine under the Wildlife Conservation Act.

The learned State Attorney argued that based on the reasons given in the first, third and fourth grounds of appeal as well as the submissions on the sentence given by the trial court, he prayed that the appeal be allowed and the sentence set aside.

Having considered the grounds of appeal raised by the Appellant and the submissions made by the learned State Attorney, I have to pose here and deliberate on the merit of this appeal.

Starting with the first and fourth grounds of appeal, the Appellant is faulting the trial court for failure to observe the inconsistencies in the details supplied in the charge sheet and evidence on record in respect of the Government trophy which the Appellant was found in possession of and the lack of scientific criteria used in testing the accuracy of the trophy alleged to have been found in the possession of the Appellant. I am in agreement with the

submission made by the learned counsel for the Republic that there was no evidence to establish that the exhibits alleged to be Government trophies were in fact Government trophies and how that conclusion was reached. In spite of the variations, the testimony PW5, PW6 and PW8 mentioned a list of Government trophies they allegedly saw. However, evidence of PW9 at page 34 shows that he failed to examine or provide explanation on how he identified that the exhibits were Government trophies. Therefore, this court finds merit to this ground of appeal.

Coming to the second ground of appeal, the Appellant is faulting the searching procedure saying it was improperly conducted. Having looked at the records of this matter, there is no evidence in support of any irregularity in respect of the alleged search. As submitted by the learned state Attorney, the alleged search was witnessed by witnesses who signed the required documents. The Appellant was not present during the search as the search took place at PW2's house. Consequently, I find no merit in this ground of appeal.

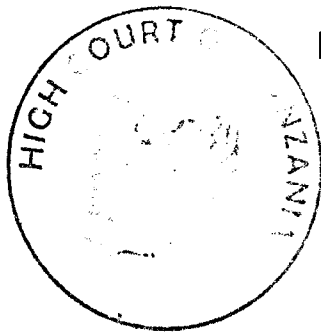
This court finds merit in the third ground of appeal. Evidence on record indicates that the appellant was not found in physical possession of the alleged trophies, the trophies were found behind the toilet of PW2. Although

PW3 and PW4 testified that they were instructed by the Appellant to place a bag where the alleged trophies were found on 22/4/2018, but PW3 indicated that he didn't know what was inside the bag. It is unsafe to assume that what was inside the bag was the alleged Government trophy which was found at the said place on 27/4/2018.

Coming to the last ground of appeal, the Appellant faulted the trial court for convicting him while the prosecution failed to tender the certificate of seizure of the trophies alleged to have been in possession of the Appellant. The court finds no substance in this ground as the records indicate at page 27 of the proceedings that search was conducted properly and the search certificate was admitted at the trial court as exhibit P2.

In light the findings of this court on the first, third and fourth grounds, the court finds merit in the said grounds and allows this appeal for the reasons given, quash the conviction and set aside the sentence and orders of the trial court. The appellant should be released forthwith from prison unless he is otherwise lawfully held.

It is so ordered.




K.N. ROBERT

JUDGE

20.11.2020