

IN THE HIGH COURT OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

CRIMINAL APPEAL 116 OF 2020

JAMES s/o SILULI @ MWITA _____ APPELLANT

VERSUS

THE REPUBLIC _____ RESPONDENT

(Arising from the decision and orders of the district court of Serengeti at Mugumu, Hon. Ngaile RM in economic case no 55 of 2018 dated 25.07.2019)

JUDGEMENT

3rd & 20th November 2020

GALEBA, J.

Mr. James s/o Siluli @ Mwita together with **Yohana s/o John @ Mahende** who jumped bail and therefore was tried *in absentia*, were charged before the district court of Serengeti in economic case no 55 of 2018 and were both found guilty of having, on 08.07.2018, entered into the Serengeti National Park with one machete, one knife and two animal trapping wires without any permit to enter in the park or to possess the above mentioned weapons in the said protected area. They were also found guilty and convicted of being found in possession of two (2) pieces of dry meat and two dried skins; both the meat and the skins being of the animal Zebra. In respect of the 1st two counts, the accused were sentenced to one (1) year imprisonment on each count and on the 3rd, each of them was sentenced to twenty (20) years imprisonment. The appellant was

dissatisfied with both conviction and the corresponding sentences, hence this appeal in which he raised raising 5 grounds.

The appellant's grounds of appeal are, **first**, that the conviction and sentence imposed upon him was unlawful because there was no evidence to show that he was arrested with the alleged weapons and the government trophies, **second**, that the trial court tried him without jurisdiction because it did not have the consent and the certificate to vest jurisdiction in that court from the Director of Public Prosecutions, **third**, that the trial court erred when it relied on **EXHIBIT PE2**, the Trophy Valuation Certificate whereas the maker of the certificate did not sufficiently describe his qualifications to justify his ability to identify trophies **fourth**, that the trial court erred when it relied on the evidence of **PW1** and **PW2** to convict and sentence him without considering his defence and **fifthly** that the prosecution did not prove the case beyond reasonable doubt.

The broad issue in this appeal is whether the individual grounds raised to challenge the decision of the trial court have merits.

At the hearing of this appeal over video link, the appellant prayed that the court be pleased to adopt his grounds of appeal as his submissions so that Mr. Isihaka Ibrahim, learned state attorney for the respondent would submits first, in order that the appellant would rejoin if he desired.

Before Mr. Ibrahim started off, he moved the court to expunge the evidence of **PW4 G736 DC EGWAGE** because after he testified, the appellant was afforded no right to cross examine that witness. As the evidence of **PW4** included **EXHIBIT PE3**, this court hereby expunges not only the oral testimony of **PW4**, but also **EXHIBIT PE3**, the Inventory of Claimed Property is expunged as well. That leaves behind the evidence of **PW1 MANFRED MAPUNDA** who tendered the weapons, **PW2 HAMZA RAJAB MSUYA** and **PW3 WILBROD VICENT** who tendered **EXHIBIT PE2**, the Trophy Valuation Certificate which I also hasten to expunge because the same was not read in court see page 25 of the typed proceedings. After getting rid of the above evidence I now proceed to determine the merits of the grounds raised in view of the submissions made by parties.

In respect of the 1st ground of appeal Mr. Ibrahim submitted that the evidence of **PW1**, **PW2** and **PW3** proved that indeed the appellant was arrested in the National Park and he was arrested there with the weapons and the government trophies. He added that the evidence of those witnesses was acceptable to the appellant because he did not cross examine on any of them. He submitted that the witnesses were all eye witnesses hence their evidence was credible.

In this case **PW1 MANFRED MAPUNDA** and **PW2 HAMZA RAJAB MSUYA** both testified that on 08.07.2018 while at Grumeti river within the Serengeti National Park they spotted two people one of them being

the appellant with weapons and the government trophies mentioned in the charge sheet. They arrested them and presented them to the police and opened case file no **MUG/IR/2314/2018**. It is the view of this court that indeed, the appellant in company of another person were arrested in the National park with the weapons and also the government trophies. It is also the holding of this court that the appellant was not convicted based only on **EXHIBITS PE1** and **PE2**, as it seems to be put by the appellant at the 1st ground of appeal, there was a lot more evidence to incriminate him. For instance when **EXHIBIT PE1**, the weapons were tendered, the appellant had no objection to tendering them even when **PW1** was done with tendering the document the appellant had no question to pinch the prosecution evidence. The same was the case with the **PW2**, who was also not asked any question. In the circumstances, the 1st ground of appeal is devoid of merit and the same is dismissed.

The 2nd ground of appeal was a complaint that the appellant was tried illegally by the trial court without jurisdiction as it did not have a certificate from the Director of Public Prosecutions (the DPP) conferring jurisdiction to that court. Mr. Ibrahim for the respondent submitted that the ground is misconceived because at page 11 of the proceedings, the certificate of the DPP was filed in court and the court tried the case with full mandate of the law. I have reviewed the record of the trial court and have confirmed that indeed the certificate issued under section 12(4) of the **Economic and**

Organized Crime Control Act [Cap 200 RE 2002] (the EOCA) to confer jurisdiction on the subordinate court to try the case from which this appeal emanates was filed with court. In the circumstances, the complaint of the appellant in the 2nd ground has no merit.

In addressing the 3rd ground of appeal Mr. Ibrahim submitted that, **EXHIBIT PE2** ought to be expunged and I instantly expunge it because the same was not read in court after the same was tendered. However he added that, *first*, **PW3 WILBROD VICENT** detailed his qualifications when tendering his evidence and *secondly* when the witness was through with giving his evidence, the appellant did not cross examine him. It was the submission of Mr. Ibrahim that the complaint of the appellant in 3rd ground is an afterthought.

I must also state that, it is not true that the appellant was convicted or even punished base only on **EXHIBIT PE2**, the Trophy Valuation Certificate. There was abundant more evidence, in addition and even without it, especially the evidence of **PW1, PW2** and the oral evidence of **PW3**, who were not cross examined. In law, where one does not cross examine his adversary's witness, on a crucial matter, that party abstaining to cross examine the witness, is taken as admitting the facts raised in the evidence, see **Martin Misara v the Republic**, Criminal Appeal no 428 of 2016. In view of what this court has already decided in the 1st ground of appeal, this court is of a firm

view that the 3rd ground of appeal has no merit and the same is dismissed.

Other than matters which have been decided upon when resolving the 1st ground of appeal, the complaint in the 4th ground was that the trial court did not consider the appellant's defence. In that respect Mr. Ibrahim submitted that the defence of the appellant was considered in the challenged judgment but he hastened to add that if that analysis is not sufficient, this court has mandate to evaluate the evidence and see if it can tilt the trial court's position. I note, as complained at ground 4, that the evidence of the appellant was not dealt with, actually the magistrate's reference to section 231(3) of the **Criminal Procedure Act [Cap 20 RE 2019] (the CPA)** shows that he did not at all consider that any evidence was tendered from the defence. So as held in **Hassan Mzee Mfaume v R [1981] TLR 167**, this court has mandate to re-evaluate the evidence and make its own judgment in respect of a particular aspect where it so considers to do. The evidence of the appellant was this;

"I remember it was on 08.07.2018. my grandmother one Rhobi Chacha Ghati Chacha who resides at Mbilikiri village near the boundary of the National Park asked me to help her to build a house using trees and grasses, I was arrested there."

This defence, does not seem to be directional, not only that it raises an **alibi**, for which the appellant did not give any notice under section 194 of the CPA, but it does not relate to the offence

charged. When I asked the appellant why he did not call witnesses to support his defence, he submitted that the court refused to call his witnesses and that the magistrate was not writing his questions. **First**, it is not the duty of the court to call any party's witnesses and **secondly**, this court being an appellate court it cannot consider unwritten lamentations, like complaints that the magistrate was refusing to write a party's questions. In any event the defense does not say anything on the trophies and the weapons. Throughout the evidence, other than denying the charge, which is not part of the evidence, there is no reference in the evidence where the appellant says anything on the trophies or the weapons other than agreeing with the evidence that was tendered against him. His evidence did not raise any doubt to the prosecution evidence. In the circumstances, even if the trial court would have analyzed the above evidence, the court would have come up with the same decision. In the circumstances, the 4th ground of appeal is dismissed.

The final ground was that the case was not proved beyond reasonable doubt. In respect of the 5th ground Mr. Ibrahim submitted that the evidence of **PW1**, **PW2** and **PW3** the case was proved to hilt. I am at one with Mr. Ibrahim that indeed as held when discussing the 1st ground of appeal the case was proved beyond reasonable doubt.

As all grounds of appeal have been dismissed, this appeal has no merit and the same is hereby dismissed. The appellant has a right of appeal to the Court of Appeal of Tanzania in 30 days.

DATED at MUSOMA this 20th November 2020



Z. N. Galeba
JUDGE
20.11.2020