

**IN THE HIGH COURT OF TANZANIA**

**MUSOMA DISTRICT REGISTRY**

**AT MUSOMA**

**CRIMINAL APPEAL 133 OF 2020**

**MORE s/o MARIJA @ MORE \_\_\_\_\_ APPELLANT**

**VERSUS**

**THE REPUBLIC \_\_\_\_\_ RESPONDENT**

*(Arising from the decision and orders of the district court of Serengeti at Mugumu, Hon. Mzalifu RM in economic case no 64 of 2019 dated 30.06.2020)*

**JUDGEMENT**

*24<sup>th</sup> November & 11<sup>th</sup> December 2020*

**GALEBA, J.**

In economic case no 64 of 2019 which was tried by the district court of Serengeti, **More Marija More** was charged, convicted and sentenced to 20 years imprisonment. He was so charged for having unlawfully entered in the Serengeti National Park with a knife, a spear, a machete and four (4) animal trapping wires without any permit from the Director of Wildlife. It was further the case of the prosecution that, together with the above unlawful weapons in the game park, he too, was found with a dried skin of an Impala, three dried pieces of meat and one tail both of a Wildebeest and one dried skin of Topi. The offences were alleged to have been committed at Grumeti River within the Serengeti National Park on

04.07.2019. In law the alleged acts and omissions in the charge sheet are outlawed and therefore punishable under the **Wildlife Conservation Act, no 5 of 2009** (the WCA) and the **National Parks Act [Cap 282 RE 2002]** (the NPA).

The appellant was aggrieved by the orders of conviction and sentence hence this appeal in which he raised 4 grounds.

The appellant's grounds of appeal are, *first*, that the conviction and sentence imposed upon him were unlawful because he was not permitted to call his key witnesses, *second*, that the trial court tried him without jurisdiction because it did not have the certificate from the Director of Public Prosecutions (the DPP) and *thirdly*, that the trial court convicted him based on **EXHIBITS** whose handling did not observe the chain of custody requirements. The *fourth*, ground of complaint was that the trial court erred because the appellant's conviction and sentence were based on wrong exhibits tendered by **PW1, PW2** and **PW3**.

At the hearing of the 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 submit in reply to the grounds, in order that the appellant would rejoin if he desired.

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

In respect of the 1<sup>st</sup> ground of appeal Mr. Ibrahim submitted that the court availed the appellant a right to call witnesses and at page 31 of the typed proceedings and he submitted that he would not call any witness. After he had testified himself he closed his case. Mr. Ibrahim submitted that in the circumstances, the appellant was given every opportunity to have his witnesses in court but he did not call them. I have perused the record; it is true that on 05.05.2020 after the appellant had been asked on how he would defend his case he said at page 31 of the typed proceedings;

***'I will defend under oath, I will not call any witness to defend my case.'***

The above demonstrates that the appellant was given an ample opportunity to call witnesses but he did not have any according to what he informed the court. In the circumstances, the 1<sup>st</sup> ground of appeal is dismissed.

In respect of 2<sup>nd</sup> ground of appeal, Mr. Ibrahim submitted that in trying the case the court had jurisdiction to try it because it is shown at page 11 of the proceedings that the certificate to vest jurisdiction in the trial court from the DPP was filed. I have reviewed the court record and it is true that there is on record the original certificate of the state attorney incharge vesting jurisdiction in the trial court to hear the case. In the circumstances, the 2<sup>nd</sup> ground of appeal is misconceived, the same is dismissed.

In reply to the 3<sup>rd</sup> ground of appeal, Mr. Ibrahim submitted that there was no breach of the chain of custody in respect of any **EXHIBIT**. In addition to that positive position of Mr. Ibrahim, he submitted that the appellant did not ask any question in respect of this area at the trial court, adding that the complaint is an afterthought. I will examine this aspect of the appeal by considering the movements and storage of the **EXHIBITS** as per the available record. In this case **PW1 Samson Njohome**, testified that after the appellant was arrested at Grumeti River on 04.07.2019 they prepared a certificate of seizure and together with other **EXHIBITS** that they found the appellant with, were taken to Mugumu where a file with

reference **no MUG/IR/2011/2019** was opened. This story was repeated by **PW2 Anthony Cleoplace Mwisemi**. On the same day **PW3 Wilbrod Vincent** was called to the police and according to his evidence, he identified and valued the same trophies that were referred to by **PW1** and **PW2** because they were on a file with reference **no MUG/IR/2011/2019**. The same day **PW4 G 5834 DC James** prepared the inventory of the trophies and according to his evidence he took the trophies and the witness to a magistrate who ordered destruction of the trophies. These same witnesses are the ones who tendered the said **EXHIBITS**. In the circumstances this court is of a firm view that the requirements of the chain of custody were observed and the chain was proved. Therefore the 3<sup>rd</sup> ground of appeal has no merit.


As for the 4<sup>th</sup> ground of appeal, Mr. Ibrahim submitted that all the **EXHIBITS** tendered were relevant to the case therefore the complaint that the **EXHIBITS** were wrong is misconceived. On my part I do not understand the idea of an appellant alleging that some exhibits are wrong. It needs clarification because the choice of evidence to prosecute one's case is in the sole discretion

of the prosecution or of the party tendering such **EXHIBITS**. So an argument that **EXHIBITS** of an adversary are wrong is vague and, it is the holding of this court that where an appellant complains that an **EXHIBIT** is wrong he must specify why is it that an **EXHIBIT** is said to be wrong. In this case all **EXHIBITS** were tendered without objection from the appellant, how then can he be heard complaining of the same **EXHIBITS** as being wrong on appeal? What I can understand in this ground, but which has no effect on its outcome, is that **EXHIBIT PE1**, the certificate of seizure was not read after admission. This court expunges that exhibit from the record and that said, the 4<sup>th</sup> ground of appeal is dismissed.

Finally, as all the four (4) grounds of appeal have been dismissed, this appeal has no merit, the same is dismissed too. The appellant has a right of appeal to the Court of Appeal of Tanzania.

DATED at MUSOMA this 11<sup>th</sup> December 2020



  
Z. N. Galeba  
**JUDGE**  
**11.12.2020**