

IN THE HIGH COURT OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

CRIMINAL APPEAL 135 OF 2020

SABAYI s/o MNGOSI @ MARWA_____ **APPELLANT**

VERSUS

THE REPUBLIC _____ **RESPONDENT**

(Arising from the decision and orders of the district court of Serengeti at Mugumu, Hon. Semkiwa RM in economic case no 155 of 2019 dated 27.07.2020)

JUDGEMENT

24th November & 11th December 2020

GALEBA, J.

In economic case no 155 of 2019 which was tried at the district court of Serengeti, **Sabayi Mngosi Marwa** was on 29.11.2019, charged, convicted and sentenced to 20 years imprisonment. He was so punished on grounds that, while at Nyamakendo village within Serengeti district in Mara region, was found in unlawful possession of one fore limb and a neck of the animal called Topi, which items were government trophies in terms of the law. The appellant was aggrieved by the orders of conviction and sentence hence this appeal in which he raised raising 6 grounds.

The appellant's grounds of appeal are, ***first***, that the conviction and sentence imposed upon him was unlawful because he was not permitted to

call his key witnesses, *second*, that the trial court convicted him based on wrong **EXHIBITS** and *thirdly*, that the trial court tried him without jurisdiction because it did not have the certificate to vest jurisdiction in that court from the Director of Public Prosecutions (the DPP). The *fourth*, ground of complaint was that the trial court erred when it convicted and sentenced him without considering his defence, *fifthly* that he was convicted based on exhibits not mentioned in the charge *finally* that his conviction and sentence were based on wrong **EXHIBITS** tendered by **PW1** and **PW2**.

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 individual grounds raised to challenge the decision of the trial court have merits.

In respect of the 1st ground of appeal Mr. Ibrahim submitted that the court availed the appellant a right to call witnesses and at page 29 of the typed

proceedings he indicated that he would call two witnesses but at page 31 he submitted before the trial court that he did not have any witnesses and prayed to close his case. That is indeed the position because when the appellant was found with a case to answer and asked on how he would want to defend it he said that he would do it on oath and would call **Rhobi Sabai Mng'osi** and **Chacha Mwita** as witnesses and on 17.06.2020 he was permitted to summon them. However two days later on 19.06.2020 he prayed to close his defence without calling any of the two witnesses. It is therefore the holding of this court that the 1st ground of appeal has no merit and the same is dismissed.

In reply to the 2nd and 6th grounds of appeal, Mr. Ibrahim submitted that the **EXHIBITS** which were tendered were not wrong because they were directly related to the charge facing the appellant. He argued that the **EXHIBITS** tendered were the Trophy Valuation Certificate (**PE1**), the search warrant (**PE2**) and the inventory (**PE3**). He added that all those exhibits were tendered without the appellant's objection and even in his defence he did not say anything to challenge them. I have reviewed the grounds of complaint, the **EXHIBITS** and the evidence challenged and I

agree with Mr. Ibrahim that the appellant's complaints in the two grounds of appeal is an afterthought. In any event, which evidence should be tendered and which witnesses should be called is wholly in the discretion of the party seeking to tender such **EXHIBITS** or intending to call such witnesses. The **EXHIBITS** challenged now in this appeal were not challenged in the trial court and the documents have a direct relation with the charge that was leveled against the appellant. In the circumstances, the 2nd and 6th grounds of appeal are hereby dismissed.

In respect of 3rd ground of appeal, Mr. Ibrahim submitted that in trying the case the court had jurisdiction because it is shown at page 4 of the proceedings that the certificate to vest jurisdiction in the trial court from the state attorney in charge was filed. I have reviewed the court record, and indeed, it is true that there is on record the original of the instrument vesting jurisdiction in the trial court. Based on that reason, the 3rd ground of appeal is misconceived and the same is dismissed.

As for the 4th ground of appeal Mr. Ibrahim submitted that the appellant's defence was considered in the judgment and that if this court will find that the trial court did not consider the defence, then the court be pleased to

consider the same and give its independent decision. I have reviewed the judgment challenged in this court and it is evident that, the defence was considered at page 5 of the judgment especially at the 2nd paragraph and it was found to have no merit. In the circumstances, the 4th ground of appeal has no merit.

This court had to inquire from the appellant as to what was the appellant's actual complaint in the 5th ground, and he informed the court that his complaint was that the actual trophies were not brought to court; what he saw there were papers. After that clarification, in reply Mr. Ibrahim argued that when the appellant was arrested according to the evidence on record, he was taken to the police with the trophies and the inventory was prepared in his presence because he signed it. He referred the court to the evidence of **PW5, H 90 DC Faraja** who testified on the above aspect and answered questions relating to the issue of the inventory. What this court came to noted is that the appellant thought that what was supposed to be tendered at his trial was the actual animal meat that is why he was complaining of being convicted based on only paper **EXHIBITS** while the charge is of being found with actual animal parts. In

this ground this court wishes to state that under the **Police General Orders no 229** particularly paragraph **25** and **section 101(2) of the Wildlife Conservation Act, no 5 of 2009**, where the exhibit involved is of a perishable nature and cannot be easily preserved until the date of hearing of the case, such **EXHIBIT** may be destroyed and evidence of destruction which is the inventory shall suffice as evidence of possession of the trophy. That said, the 5th ground of appeal is dismissed.

As all the six (6) 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.

DATED at MUSOMA this 11th December 2020



Z. N. Galeba
JUDGE
11.12.2020