

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

CRIMINAL APPEAL NO. 21 OF 2020

*(Arising from the judgment of the District Court of Biharamulo in Economic Case
No. 6/2019)*

COSMAS BUKARAGE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

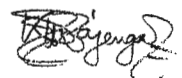
JUDGMENT

Date of last order 03/11/2020

Date of judgment 11/12/2020

Kilekamajenga, J.

The appellant was charged with the offence of unlawful possession of government trophy contrary to **section 86(1) and (2)(c)(ii) of the Wildlife Conservation Act, No. 5 of 2009** as amended by **section 9 of the Written Laws (Miscellaneous Amendment Act No.2) Act No. 4 of 2016** read together with **paragraph 14(d) of the First Schedule and section 57(1) of the Economic and Organised Crime Control Act, Cap. 200 RE 2002** as amended by **section 16 of the Written Laws (Miscellaneous Amendment) Act No. 3 of 2016**. At the end, the trial court was convinced that the appellant committed the offence charged; he was convicted and sentenced to serve 20



years in prison. Being aggrieved by the trial court's decision, the appellant preferred this appeal with five grounds coached thus:

- 1. That, the trial magistrate was erred to trial (sic) the economic case without the consent of the DPP neither any certificate of transfer from H/Court to the D/court (sic);*
- 2. That, the trial magistrate was erred (sic) to satisfy that the case of the prosecution was proved beyond reasonable doubt while the evidence was not cogent against the appellant;*
- 3. That, the conviction was mainly based on the confession evidence of co-accused of the appellant without to (sic) consider the defence evidence about conflicts of the accused;*
- 4. That, the case was planted by the appellant's wife of (sic) her interest to serve;*
- 5. That, the appellant was adduced (sic) on the possession which was not required to be proved against him.*

The appeal was finally fixed for hearing; the appellant appeared in person through virtual court from the High Court at Kigoma. The respondent was represented by the learned State Attorney, Ms. Masule. When the appellant was invited to argue the appeal, he merely urged the Court to adopt the grounds of appeal appearing in the petition of appeal.

On the other hand, the learned State Attorney responded on the grounds of appeal one after the other. On the first ground, the learned State Attorney stated that the case was tried after the DPP lodged the certificate and consent. The

consent and certificate were received by the trial court on 07th October 2019. Therefore, the argument that there was no consent and certificate from the DPP has no merit. On the second ground, she submitted that the case was proved to the required standard. The prosecution paraded five witnesses and tendered seven exhibits. PW1, PW3 and PW5 went to the appellant's house and they were informed that there was a wild animal meat. PW1 reported the matter at Biharamulo police station where he was given the police (PW5) for assistance. The appellant's house was searched in the presence of PW3. After the search, they found wild animal meat in a bag and some wires used as animal traps. The appellant's wife informed them that the appellant brought the said meat in the house. At that time, the appellant had gone to a *pombe* club. The appellant was arrested and taken to his house. The certificate of seizure was filled-in. PW2 went to the police station and identified seven pieces of wild animal meat which comprised of holves, head and the skin. The meat was identified to be that of reedbuck valued at Tshs. 1,035,000/=.

PW4 interrogated the appellant and his wife and recorded their statements. The appellant confessed to possess the meat and his wife stated that the appellant brought the meat in the house. The appellant's cautioned statement was tendered but objected by the appellant alleging that he was forced to confess. The trial court conducted an inquiry and finally admitted the appellant's cautioned statement. In the caution statement, the appellant admitted that he

was a hunter and that he went to hunt on 05/05/2019 in the Game Reserve of Burigi; he came back on 07/05/2019 with the seven pieces of wild animal meat. The appellant put the meat in the house together with the hunting wires. Ms. Masule argued further that the trial court was right to sentence the appellant because the prosecution case was proved beyond reasonable doubt. He invited the Court to consider the case of **R. v. Cameroon [2003] TLR 84**. The learned State Attorney further stated that every witness is worthy to be trusted unless there is contrary evidence.

On the third ground, Ms. Masule argued that the appellant's wife never lied and her evidence was corroborated with the appellant's confession. She further averred that the fourth ground has no merit because the appellant confessed to possess the meat. She insisted that the prosecution's case was proved beyond reasonable doubt.

When rejoining, the appellant did not say anything substantial than requesting the Court to do justice in this matter.

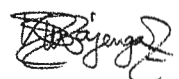
After considering the grounds of appeal and submissions made by the parties, it is apposite at this stage to determine the merits in the grounds of appeal lodged by the appellant. As earlier stated, the appellant urged the Court to adopt the grounds of appeal and he had nothing to add. It is my task therefore to consider

the merits of the grounds of appeal. On the first ground, the appellant argued that there was neither consent nor certificate from the DPP before the trial of the case. I think this matter should not detain this Court because the certificate and consent were given and they both appear in the Court file. Therefore, his argument that the case lacked consent and certificate from the DPP has no merit.

On the second ground, the appellant argued that the prosecution's case was not proved to the required standard. It is an established principle of law that every criminal case must be proved beyond reasonable doubt. However, it is the duty of the prosecution to bring evidence in order to prove the case beyond reasonable doubt. The accused has no obligation to prove his innocence but to shade doubt on the prosecution's case. In the instant case, the prosecution paraded five witnesses and tendered seven exhibits to prove that the appellant committed the offence charged. PW1 who was the park ranger was informed that there was wild animal meat in the house of the appellant. He went to the police and was given a police officer to accompany him to the appellant's house. They searched the appellant's house at around 21 hours and found seven pieces of dried meat alleged to be wild animal meat. They also found wires used for hunting. At that time, the appellant had gone to a pombe club but his wife was around. The appellant's wife told them that the appellant brought the meat from the National Park. PW1 recognised the meat to be that of reedbuck. He then

prepared the certificate of seizure. PW2 who was the ranger at Burigi National Park identified the meat through its head and skin; the meat was of a reedbuck. PW3 was a neighbour who witnessed the search of the appellant's house. He also witnesses seven pieces of wild animal meat. The appellant's wife also informed him that her husband brought the meat after he went for hunting. PW4 was the police officer who investigated the case. He testified that one of the seven pieces of the meat was a head of a wild animal. He also interrogated the appellant who admitted to hunt wild animals. PW5 was the police officer who participated in the search of the appellant's house; he also witnessed that one of the pieces of the meat found in the appellant's house was a head of a wild animal meat. The above evidence does not leave any doubt that the pieces of wild animal meat were found in the house of the appellant. Upon interrogation, the appellant confessed to hunt wild animals; his confession was further coupled with the cautioned statement of the DW2 who was his co-accused. This evidence is sufficient to warrant a conviction. I have no hesitation to believe that the meat found in the appellant's house belonged to wild animal. Some parts of the meat found in the house were animal legs, head and skin which, in my view, are enough to show that the meat is of a wild animal.

However, I have gone through the proceedings of the trial court and found out that the exhibits such as the certificate of seizure and the appellant's cautioned statement were admitted but not read in court. Under the law, the appellant was



denied the right to know its contents and therefore he missed the right to understand the contents of the exhibits. Under the law such exhibits deserve to be expunged.

However, despite the fact that the certificate of seizure is hereby expunged for failure to be read in court, it does not vitiate the oral evidence adduced by the prosecution witnesses which, in my view, proved the case beyond reasonable doubt that the appellant was found in possession of wild animal meat. Therefore, this ground also has no merit.

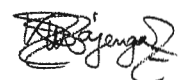
On the third ground, the appellant argued that he was convicted based on the evidence of the co-accused while there was a conflict between the appellant and the co-accused. I have gone through this ground and the evidence adduced before the trial court. What is evident is, the appellant's house was searched in absence of the appellant. During the search, the appellant was not in the house. However, the appellant's wife was content from the beginning that the appellant was a hunter and he went to hunt and came back with wild animal meat. In addition, when the appellant was interrogated, he confessed to hunt wild animals. Though I have expunged the appellant's cautioned statement but it does not do away the fact that the appellant confessed during the interrogation. On the other hand, during the trial, the appellant's wife insisted that the

appellant was a hunter; the wife warned him several times not to engage in illegal hunting but he never stopped until he was arrested.

In the defence, the appellant alleged that he had grudges with his wife. However, it should be understood that a person cannot be convicted based on his weak defence; what matters is whether the prosecution proved its case. It might be true that the appellant had a dispute with his wife but this fact does not affect the prosecution case where it is well founded. In this case, the prosecution's case was proved beyond reasonable doubt. I find no merit in this ground. The fourth ground is similar to the third ground and I do not see the need to address it. Also, as rightly argued by the learned State Attorney, the fifth ground is not clear and I also failed to comprehend it. Therefore, I will not address something which I do not understand. Generally, I find the appellant's grounds of appeal devoid of merit and I hereby dismiss the appeal. Order accordingly.

DATED at BUKOBA this 11th Day of December, 2020.



Ntemi N. Kilekamajenga.
JUDGE
11/12/2020



Court:

Judgment delivered this 11th December 2020 in the presence of the appellant who appeared via virtual court from Kigoma and the learned State Attorney, Ms. Masule. Right appeal explained to the parties.




Ntemi N. Kilekamajenga.
JUDGE
11/12/2020

