

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

**CONSOLIDATED CRIMINAL APPEALS NO. 103, 104 AND 105 OF 2020**

*(Arising from the decision of the District Court of Serengeti at Mugumu  
in Economic Case No. 128 of 2018)*

- 1. SILA S/O SILA @ CHACHA ..... 1<sup>ST</sup> APPELLANT**  
**2. JOHN S/O MUNIKO @ MANGO ..... 2<sup>ND</sup> APPELLANT**  
**3. PETER S/O MUNIKO @ MANGO ..... 3<sup>RD</sup> APPELLANT**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**

**JUDGMENT**

19<sup>th</sup> October and 18<sup>th</sup> December, 2020

**KISANYA, J.:**

The appellants, Sila Sila @ Chacha, John Muniko @ Mango and Peter Muniko @ Mango were arraigned before the District Court of Serengeti at Mugumu for four counts of offence as follows: The first count was unlawful entry into the National Park under sections 21(1)(a)(2) and 29(1) of the National Parks Act [Cap. 282, R.E 2002] as amended by the Written Laws (Miscellaneous Amendments) Act No. 11 of 2003. It was alleged that on 26/11/2018 at Bologonja area within Serengeti National Park, Sila Sila @ Chacha, John Muniko @ Mango and Peter Muniko @ Mango were found in the national park by the rangers without any permit.

The second count was unlawful possession of weapons in the National Park contrary to section 24(1)(b) and (2) of the National Parks Act [Cap. 282, R.E. 2002]. The prosecution alleged that on 26/11/2018 at Bologonja area within Serengeti National Park the appellants were found in possession of weapons



to wit; two knives, one panga, one spear, one bow , seven arrows and four animal trappings.

The third count was unlawful possession of government trophies contrary to section 86(1) and (2) (c) (iii) of the Wildlife Conservation Act No. 5 of 2009 as amended by the Written Laws (Miscellaneous Amendments Act No. 4 of 2016) read together with paragraph 14 of the first schedule and sections 57(1) and 60(2) of the Economic and Organized Crime Control Act [Cap. 200, R.E. 2002] as amended by the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016. It was alleged that on 26/11/2018 at Bologonja area within Serengeti National Park the appellants were found in possession of government trophies to wit: two legs of wildebeest valued at Tshs. 1,430,000 /= .

The fourth count was unlawful possession of government trophies contrary to section 86(1) and (2) (c) (iii) of the Wildlife Conservation Act No. 5 of 2009 as amended by the Written Laws (Miscellaneous Amendments Act No. 4 of 2016) read together with paragraph 14 of the first schedule and sections 57(1) and 60(2) of the Economic and Organized Crime Control Act [Cap. 200, R.E. 2002] (the EOCCA) as amended by the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016. It was alleged that on 26/11/2018 at Bologonja area within Serengeti National Park the appellants were found in possession of government trophies to wit: two hind legs of zebra valued at Tshs. 2,640,000/=

All appellants pleaded not guilty to each of the above counts of offence. Upon hearing the evidence adduced by each part, the trial court found all the appellants guilty. Consequently, they were sentenced to serve six months jail term for the first count, one year jail term for the second count and 20 years imprisonment for the third count and fourth count. It was ordered by the trial court that the sentence would run concurrently.



The appellants were aggrieved by the decision and orders of the trial court. Hence the current appeal. They filed separate appeals. An appeal by Sila Sila @ Chacha was Criminal Appeal No. 103 of 2020, Peter Mniko @ Mango filed Criminal Appeal No. 104 of 2020 and John Mniko @ Mango filed Criminal Appeal No. 105 of 2020. Since all appeal originates from Economic Case No. 128 of 2018 of the District Court of Serengeti at Mugumu, this Court found it necessary to consolidated them into one appeal titled Consolidated Criminal Appeal NO. 103, 104 and 105 of 2020. The file controlling the record is Criminal Appeal no. 103 of 2020. In terms of the petition of appeal, each appellant advanced the following grounds of appeal:-

1. The trial magistrate erred in law and fact in convicting and sentencing the appellants without the certificate from the Director of Public Prosecution (DPP) as required by the law.
2. The appellants were not given the right to be heard and call their witnesses.
3. That the trial magistrate erred in law and in fact in convicting and sentencing the appellant basing on wrong exhibits tendered before it.

During the hearing of this appeal the appellant were unrepresented and they fended for themselves while the respondent enjoyed the legal service of Ms. Monica Hokororo, Learned State Attorney.

Submitting in support of the appeal, Mr. Sila Sila (1st appellant) prayed the court to adopt his grounds of appeal as contained in his petition of appeal. He further contended that he was arrested while grazing his livestock in the village and not in the National Park. He went on to submit that the prosecution did not tender any exhibit to prove its case and that papers/ documents were tendered. On his part, Mr. Peter Mniko @ Mango (2nd appellant) submitted that he was arrested at Nyakasaga Hamlet which is at the border. He also contended that there was no exhibit to implicate them



with the offence as the prosecution did not tender any exhibits to prove its case. The second appellant submitted further that he was not accorded the right to call their witnesses. As to Mr. John Muniko @ Mango (3rd appellant), he prayed the court to adopt his petition of appeal. He also argued that the prosecution did not tender the government trophy alleged to have been found in their possession. In that regard, all accused prayed this court to allow their appeal and discharge them.

Responding on the first ground of appeal, Ms. Hokororo submitted that the consent and certificate of the DPP were issued and filed in the trial court as reflected on page 9 of the typed proceedings. Hence, she was of the view that the first ground of appeal is devoid of merit.

In regards to the second ground, the learned State Attorney submitted that section 231 of the Criminal Procedure Act, Cap. 20, R.E. 2019 (the CPA) was complied with. She pointed out that the appellants were given a right to call witnesses but informed the trial court that their witnesses were not available and went on to close their case. The learned State Attorney submitted further that, the appellants were not denied the right to be heard on the account that they were given the right to cross examine witnesses called by the prosecution and defend themselves.

On the third ground she acquiesced that the evidence adduced by PW1 and PW2 was to the effect that the appellants were arrested in the National Park, and found in possession of weapons and government trophies. The certificate of seizure was signed by the appellant and tendered in evidence without any objection from them. She further stated that PW4 testified how the government trophy was taken before a magistrate for an order to dispose of the said trophies. Citing the case of **Mohamed Juma @ Mpakama vs Republic**, Criminal Appeal no. 385 of 2017, CAT (unreported), Ms. Hokororo



argued that the required procedure for disposing of exhibit which is subject to a speed decay were complied with.

In view of the above, the learned State Attorney succumbed that the prosecution case was proved beyond reasonable doubts and prayed this Court to dismiss this appeal.

Rejoining, Mr. Sila Sila submitted that he was not arrested with other appellants. On the other hand, Mr. Peter Muniko Mango stated that he did cross examine PW2 who failed to state on how the appellant were arrested. He further stated that the prosecution failed to tender the exhibits found in their possession. Lastly, Mr. John Muniko Mango contended that he did not commit the offence.

In determining this appeal I wish to start with the first ground of appeal. The appellants' complaint is that they were tried, convicted and sentenced without a consent and certificate from the DPP conferring jurisdiction to the trial court to an economic offence. It is not disputed that the third and fourth counts are economic offence. In terms of sections 26(1) and 12(4) of the EOCCA, the consent and certificate are required to be issued for before the commencement of trial involving economic and not economic offences as in the case at hand. It is on record and reflected at page 9 of the typed proceedings that the consent of the DPP and certificate conferring jurisdiction to a subordinate court dated 1<sup>st</sup> February, 2019 were duly filed and admitted in the trial court on 9<sup>th</sup> May, 2019. Therefore, the first ground lacks merits and it is hereby dismissed.

The appellants' complaint in the second and fourth grounds is to the effect that their rights to be heard and call witnesses were violated. According to 231 of the CPA, the trial court is required to inform the accused person of the following rights: One, that he has the right to defend himself. Two, that he



has the right to call witnesses of his choice. It is on record that the appellants when addressed in terms of section 231 of the CPA. Each appellant opted to give his evidence on oath. As to the right to call witnesses, only the first appellant indicated that he would call one Bhoke w/o Sila to supplement his oral testimony. The second and third appellant decided to call no witness (es). Furthermore, the defence case was closed by each appellant. The first appellant informed the trial court that his witness was not reachable. In the circumstances, I am in agreement with Ms. Hokororo that the appellants were duly accorded the right to defend themselves and call witness. Therefore, this ground is also devoid of merits and the same is dismissed.

The third ground of appeal can be disposed of by considering whether the prosecution case was proved beyond all reasonable doubt.

In the respect of the first count, the appellants contends that they were not found in the National Park. As stated herein, the first appellant states that he was in the village grazing his livestock; the second accused person claimed he was arrested at Nyakasaga Hamlet which is a border and the third accused person claimed he was arrested while grazing cattle at Mto Mara. The evidence which implicated the appellants in this offence was adduced by Kapushi Bushi (PW1) and Endrew Nyange (PW2). These are park rangers who were on patrol at Borogonja area within Serengeti National Park. PW1 and PW2 testified in chief and during cross examination that the appellants were found and arrested within Serengeti National Park on 26/11/2018 at about 10.30 am. Their evidence was not challenged by any of the accused during cross examination. The appellants did not cross examine them in line with their defence that, they were not arrested in the village. It follows that their defence was an afterthought. I find no reasons to disbelieve evidence adduced by PW1 and PW2. Thus, the first count was proved.



As regards the second count on unlawfully possession of weapons in the national park, PW1 and PW2 stated on oath that upon arresting the appellants in the game reserve, they searched and found them in possession of one panga, two knives, one spear, one bow, seven arrows and four trapping wires. PW1 tendered the certificate of seizure (Exhibit PE1) which was signed by the appellants to show that they were found in possession of the said weapons. Furthermore, the said weapons were tendered in evidence as Exhibit PE2. The appellant did not object admission of Exhibit PE1 and PE2. They did challenge PW1 and PW2 on the fact that they were found in possession of the said weapons. As stated herein, I have no reasons to discredit PW1 and PW2. Having examined their evidence, I am of the view that the second offence was duly proved.

I now move to consider the third and fourth counts on unlawful possession of government trophies. It was the appellants' complaints that the trophies were not tendered in evidence and that the prosecution tendered documents. According to PW1 and PW2, the appellants were found in possession of two fore limb of wildebeest and two fore hind limb legs of zebra. The same were filed in the certificate of seizure (Exhibit PE1) which was signed by the appellant. The said two fore limb of wildebeest and two fore hind limb legs of zebra together with the accused person were taken to Mugumu Police Station and file No. MUG/IR/4084/2018 was opened. They were identified and valued by Wilbroad Vicent (PW1) on the next day 27/11/2018. He testified as follows:

*"I identified the 1<sup>st</sup> government trophy, two legs of wildebeest contains (sic) skin which was grey to dark brown and for the second government trophy was black to white stripes, this is zebra."*

It is my considered opinion that such evidence was sufficient to prove that what were found in possession of the appellant was government trophies. In relation to valuation, PW3 adduced that wildebeest and zebra were valued at



Tshs. 1,450,000 and Tshs. 2,640,000 respectively. The certification of identification and valuation was tendered in evidence as Exhibit PE3. The appellant had no objection to its admission. Again the substance of his evidence was not challenged by the defence/appellants during cross examination.

It is not disputed that the said two fore limb of wildebeest and two fore hind limb legs of zebra were not tendered during trial. G. 4209 DC Stephen (PW4) who investigated this case deposed that the said government were disposed of by an order of the court. He tendered the Inventory Form to prove that fact. The same was admitted in evidence as Exhibit PE4.

It is clear that the disposal of the said government trophies was not made under section 101 of the Wildlife Conservation Act, 2009 as amended by the Written Laws (Miscellaneous Amendments) Act, 2017 which requires the prosecution to make an application to such effect. The procedure adopted in the case at hand is prescribed by paragraph 25 of the Police General Orders (PGO) which provides:-

*"Perishable exhibits which cannot easily be preserved until the case is heard, shall be brought before the Magistrate, together with the prisoner if any so that the Magistrate may note the exhibits and order immediate disposal. Where possible, such exhibits should be photographed before disposal."*

In view of the decision of the Court of Appeal in **Mohamed Juma @ Mpakama vs R** (*supra*), the accused person is entitled to be present at the time of disposal of exhibit under the above cited provision. The Court of Appeal held:-

*"While the police investigator, Detective Corporal Saimon (PW4), was fully entitled to seek the disposal order from the primary court magistrate, the resulting Inventory Form (exhibit PE3) cannot be proved against the appellant because he was*



*not given the opportunity to be heard by the primary court Magistrate.*

In the present case, PW4 testified that the appellants were taken before the Court with exhibit found in their possession to seek the order for disposal. He went on to state that the magistrate signed the inventory order (Exhibit PE4). Again, the appellant did not challenge evidence adduced by PW4 that they were taken before the court where the order for disposal of government trophies was sought and granted. Exhibit PE4 shows that the said government trophies were subject to a speed decay. Therefore, the prosecution was justified in seeking the order for disposal. The said order having been obtained in accordance with the law was a sufficient proof to prove the trophies were found in possession of the appellant. Thus, although the trophies were not tendered in evidence, I find that oral testimony by PW4 which was supplemented by Exhibit PE4 together with evidence of PW1, PW2, and PW3 proved the third and fourth counts. It follows that the third ground of appeal is meritless as well.

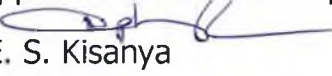
In the upshot, the Court finds no merit in the instant appeal. It is accordingly dismissed in its entirety.

Dated at MUSOMA this 18<sup>th</sup> day of December, 2020.

  
E. S. Kisanya  
JUDGE

COURT: Judgment delivered this 18<sup>th</sup> December, 2020 in the absence of the parties due to technical problem in virtualcourt system. B/C M. Kimweri-RMA present.

Order: Copies of judgement be supplied to the parties without delay. An aggrieved party has the right to appeal to the Court of Appeal.

  
E. S. Kisanya  
JUDGE  
18/12/2020