

IN THE HIGH COURT OF TANZANIA
MUSOMA DISTRICT REGISTRY
AT MUSOMA
CRIMINAL APPEAL NO 130 OF 2020

1. CHACHA s/o WAMBURA @ MACHOMBA _____ **1st APPELLANT**
2. BASHIRU s/o GERVAZI @ KIIZA _____ **2nd APPELLANT**
3. JOSEPH s/o IKWABE @ MWITA _____ **3rd APPELLANT**
4. WANKURU s/o NYAMHANGA _____ **4th 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 33 of 2019 dated 29.07.2020)*

JUDGEMENT

1st December 2020 & 15th January 2021

GALEBA, J.

In the district court of Serengeti, the appellants were charged on three (3) counts. The 1st count was unlawful entry into the national park and the 2nd was unlawful possession of one (1) machete, one (1) knife and four (4) animal trapping wires in the national park without any permission from the Director of Wildlife. The 3rd count was unlawful possession of two (2) fore limbs, two (2) hind limbs and one fresh head of a hartebeest all being government trophies. According to the prosecution, the offences were committed by the appellants on 24.04.2019 at Nyabehu area in the Serengeti national park within Serengeti district in Mara region, thereby violating various laws established to conserve wildlife.

The appellants denied the charge but the district court of Serengeti convicted them on all three (3) counts and sentenced them to 1 (one) year imprisonment in respect of each of the 1st and 2nd counts and twenty (20) years imprisonment in respect of the 3rd.

The appellants were aggrieved by the orders of the district court hence the present appeal in which they raised five (5) grounds of appeal complaining, **first** that they were wrongly tried by a subordinate court without a certificate vesting jurisdiction unto it, to try them and **secondly** that they were not fairly tried because when the trophies were being destroyed, they were not present and they did not sign the inventory. The **third** ground was that the trial court breached the principles of natural justice, **fourthly**, that no exhibit was tendered to substantiate the 3rd count of unlawful possession of government trophies and **lastly** that the appellants were unlawfully convicted without giving them a chance to call their witnesses during the trial.

When this appeal came up for hearing on 01.12.2020 Mr. Isihaka Ibrahim, the learned state attorney was appearing for the respondent whereas the appellants were appearing unrepresented. The latter adopted their grounds as submissions to support the appeal and this court required Mr. Ibrahim to respond to the grounds.

In respect of the 1st ground of appeal Mr. Ibrahim submitted that before the district court of Serengeti was to try the case, the prosecution procured a certificate to vest jurisdiction in the trial court and filed it in court. He argued that the trial court had jurisdiction to try the case and the ground raised was misconceived. This court has gone through the court record and it is true that indeed on 28.11.2019, the certificate was one the documents which were presented in court. The original instrument is also on the record of the trial court. In the circumstances, the 1st ground of appeal has no merit and the same is dismissed.

In respect of the 2nd ground, Mr. Ibahim submitted that when the trophies were being destroyed the appellants were present and it was on 25.04.2019. He argued that the appellants even signed the inventory. I have reviewed the proceedings and I am satisfied that the order to destroy the trophies was procured in the presence of the appellants and they signed **EXHIBIT PE4** the inventory on 25.04.2019. When the inventory was tendered as an exhibit on 24.04.2020, all the appellants had no objection with tendering of that document. In the circumstances, the complaints of the appellants at the 2nd ground of appeal have no merit.

As for the 3rd and 5th grounds, Mr. Ibrahim submitted that the appellants were given a full right of hearing because they participated in

preliminary hearing; they were consulted when the prosecution was tendering exhibits and they were allowed to cross examine. He argued that the appellants were fairly heard because they were also given a right to call their witnesses but they opted not to call them.

In these grounds the appellants were complaining of not being accorded a fair trial. In my view to guarantee a fair trial, a judge or magistrate has to ensure that ***first*** the accused is present on all days that his case is called for any orders in court. ***Secondly***, a charge must be read over to the accused even after hearing has started although in most cases, the accused would always indicate that there is no need to read the charge over to him. ***Thirdly*** an accused person must fully participate in the preliminary hearing including signing the matters he does not disputed in the charge. ***Fourthly***, each after evidence in chief of the prosecution, the accused must be informed that he has a right to cross examine the witness and the fact that that right was afforded to the accused must be recorded. ***Fifthly***, each time a prosecution witness is called to tender an **EXHIBIT** the accused must be asked whether he objects to tendering of the **EXHIBIT** or not and the response should be recorded and ***lastly***, upon closure of the prosecution case section 231(1)(3) and (4) of the **Criminal Procedure Act [Cap 20 RE 2019]** (the **CPA**) must be complied with. That section provides for two

fundamental rights; **one** is for the accused to be informed that he has a right to give evidence in defending the case and to ask him how he would like to tender it and **two** is to inform the accused of his right to call other witnesses if he has any. In this case, all rights above in respect of the appellants were observed at the trial which means the appellants' complaints in the 3rd and 5th grounds are lacking basis.

As for the 4th ground, the complaint of the appellants was that there was not tendered any trophy that they were alleged to be arrested with. Their understanding was that actual meat of a wild animal must be tendered in court. Mr. Ibrahim submitted that possession of government trophies was proved by tendering of documents relevant for that purposes. I agree with Mr. Ibrahim, because in order to prove possession of government trophies one does not have to tender physical exhibits especially where they are perishables like the exhibits in this case which were fresh limbs and a head of an animal. Under the provisions of **Police General Order No. 229** particularly **paragraph 25** and **section 101(2) of the Wildlife Conservation Act, no 5 of 2009** (the WCA), a perishable exhibit may be destroyed by an order of the magistrate (under the PGO) or the court (under the WCA) and the document evidence the order to destroy the exhibit may be tendered in place of the destroyed trophy.

The **Police General Orders no 229 paragraph 25** provides as follows;

"25. 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."

In addition, **Section 101 (1) and (2) of the WCA**, provides that;

"101 (1) The Court shall, on its own motion or upon application made by the prosecution in that behalf-

(a) Prior to commencement of proceedings, order that

(i) Any animal or trophy which is subject to speedy decay;

(ii) ... and is intended to be used as evidence, be disposed by the Director;

(2) The order of disposal under this section shall be sufficient proof of the matter in dispute before any court during trial."

That said the point that the physical limbs and the head of the animal were supposed to be tendered physically has no merit because in their behalf **EXHIBIT PE4**, the Inventory of Claimed Property in respect of the trophies was good enough.

Based on the above discussion and considerations, this court makes the following orders;

1. The conviction and the sentence of twenty (20) years imprisonment imposed upon the appellants are hereby confirmed.
2. This appeal is dismissed and the appellants have a right of appeal to the Court of Appeal as per the law.

DATED at MUSOMA this 15th January 2021



Z. N. Galeba
JUDGE
15.01.2021

Court; Since the appellants are in prison and were not present today when I was delivering the judgment, I direct Hon. the Deputy Registrar to ensure that a scanned copy of this judgment via electronic mail reaches the incharge of the prison in which the appellants are held followed by a formal letter attaching 5 copies of the judgment to the same prison as evidence that we sent the judgment to the prisoners.



Z. N. Galeba
JUDGE
15.01.2021