

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

CRIMINAL APPEAL NO 132 OF 2020

YACOBO s/o DANIEL @ SIONG'O _____ 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 91 of 2018 dated 30.06.2020)

JUDGEMENT

1st December 2020 & 15th January 2021

GALEBA, J.

In this appeal, the appellant along with **Makitaria Machera Lucas**, who jumped bail, were charged on four (4) counts of unlawful entry into a Game Reserve and unlawful possession of one (1) machete, two (2) spears and seven (7) animal trapping wires in the Game Reserve without authorization from the Director of Wildlife. The 3rd count was unlawful possession of three (3) legs and two (2) fresh ribs of wildebeest on one hand and one (1) fresh skin of Topi on the other. The 4th count was unlawful possession of two legs and two ribs both being fresh meat of Zebra. The legs, the ribs and the skin of the wild animals at the 3rd and 4th counts are government trophies, hence a statutory restriction on their possession.

According to the prosecution, the offences were committed by the appellant and the other offender on 06.09.2018 at Samisami River within the Ikorongo Game Reserve in the district of Serengeti within Mara region. The acts of the duo, according to the respondent violated various laws designed to protect wildlife.

Following his trial, the district court of Serengeti convicted the appellant on all four (4) counts and sentenced him to 1 (one) year imprisonment in respect of each of the 1st and 2nd counts and twenty (20) years imprisonment in respect of each of the of 3rd and the 4th counts.

The appellant was aggrieved by the orders of the district court hence the present appeal in which he raised four (4) grounds of appeal complaining, **first** that he was wrongly tried by a subordinate court without a certificate of the Director of Public Prosecutions (the DPP) vesting jurisdiction unto it, so it tried him without jurisdiction and **secondly** that his conviction and sentence are both unlawful because at the time that the trophies were being ordered to be destroyed he was not present and he did not sign the inventory. The **third** ground was that his conviction was unlawful because his defense was not considered

and *lastly* that his conviction was illegal because it was based on wrong **EXHIBITS** which were tendered by **PW1, PW2** and **PW3**.

When this appeal came up for hearing, Mr. Isihaka Ibrahim, learned state attorney was appearing for the respondent whereas the appellant was appearing unrepresented. The latter adopted his grounds as submissions to support the appeal and this court required Mr. Ibrahim to react 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 of the Regional Prosecutions Officer and filed it in court on 29.05.2019. This court is in agreement with Mr. Ibrahim that indeed the trial of the case was lawful because the certificate to confer jurisdiction was filed in court on 29.05.2019 and the original instrument is on record, which means the complaint in the 1st ground has no merit.

In respect of the 2nd ground of appeal Mr. Ibrahim submitted that, the ground is misconceived because the appellant signed the inventory (**EXHIBIT PE4**) as testified by **PW4 H 90 DC Faraja**. I have gone through the proceedings, and it is evident that the inventory (**EXHIBIT PE4**) was tendered without any objection. At page 45 of the typed proceedings **PW4** testified that he took the appellant with the perishable exhibits to the magistrate who made an order for their

destruction, but the appellant did not cross examine this witness on the issue of the inventory or even on the truthfulness of his evidence of taking him to the magistrate with the **EXHIBITS** and the drawing of the inventory. Legally a fact or a point not challenged by way of cross examination is deemed to be admitted and cannot be challenged at a later stage, see the Court of Appeal's holding at pages 7 and 8 in its decision in the case of **Martin Misara v the Republic**, Criminal Appeal no 428 of 2016 (unreported). In this case although the inventory is not signed by the appellant, but had what **PW4** testified been false the appellant would not have respected it during the trial. He would have denied it or questioned it or even contested its admission. It is the holding of this court that a matter or document not questioned or cross-examined upon at the trial or denied during the defense, cannot be challenged on appeal. In other words, a trial of the appellant to question the authenticity of the Inventory at this time on appeal cannot be procedurally lawful. In the circumstances the 2nd ground of appeal has not merit and the same is dismissed.

In response to the 3rd ground Mr. Ibrahim submitted that the allegations that the appellant's defence was not considered are false because, it was considered in the judgement at page 7. This court has reviewed the judgment and at page 5, the court stated that the

appellant did not testify anything in relation to the trophies and that is repeated at page 7 of the judgment. It is therefore the holding of this court that the defence was considered. It is important to note however that the complaint in this ground of appeal was not that the magistrate considered the defence wrongly or insufficiently but that the court did not consider the defence at all. That is why; this court is in agreement with Mr. Ibrahim that the defence of the appellant was considered at pages 5 and 7 of the judgment, although it was briefly considered, which is explainable because of the amount of the evidence tendered by the defense itself. The evidence was just 5 lines of text, in which case it cannot be expected that its analysis would be quite substantial. In the circumstances, the 3rd ground of appeal has no merit.

The complaint of the appellant in the 4th ground of appeal was that the court erred to take the evidence of **PW1, PW2** and **PW3** because their evidence was wrong. In response Mr. Ibrahim submitted that the witnesses complained of are the witnesses who were material to the offence that the appellant was charged with, adding that those witnesses were necessary for proving the charge. The complaint of the appellant in the 4th ground is not founded. *First*, it is not for the accused to choose or approve which evidence or which witnesses that his adversary should produce in court and *secondly*, the appellant does

not state why was he of the view that the evidence attacked was wrong. In the trial court, the appellant was charged with unlawful entry in the game reserve, with various weapons and also being found there with various parts of wild animals. **PW1 Hamis Liranga** and **PW2 Kabichi Juma** are the persons who arrested the appellant in the game reserve with the weapons and the trophies. These witnesses cannot be said to be '*wrong*' witnesses. They are the material witnesses for all the three counts. **PW3 Wilbrod Vicent**, was necessary to identify the species or types of the animals from which the trophies were obtained. It cannot also be said that his evidence was unnecessary or wrong as the appellant put it. In the circumstances the 4th ground of appeal is misconceived.

Finally, because all the 4 grounds of appeal have failed for want of merit, this court makes the following orders;

1. The judgment of the district court of Serengeti in economic case no 91 of 2018 is hereby confirmed.
2. This appeal is dismissed and the appellant has a right of appeal to the Court of Appeal to challenge this judgment according to law.

DATED at MUSOMA this 15th January 2021





Z. N. Galeba
JUDGE
15.01.2021

Court; Since the appellant is in prison and was 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 appellant is held followed by a formal letter attaching the judgment to the same prison as evidence that we sent the judgment to the prisoner.



Z. N. Galeba
JUDGE
15.01.2021