

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

CRIMINAL APPEAL NO 166 OF 2020

NYAITANGE WAMBURA NYAKIBARE _____ APPELLANT

VERSUS

THE REPUBLIC _____ RESPONDENT

(Arising from the decision and orders of the district court of Tarime at Tarime Hon. Siliti RM in economic case no 50 of 2018 dated 09.01.2019)

JUDGEMENT

19th January & 5th February 2021

GALEBA, J.

In this appeal, the appellant was charged on three (3) counts of unlawful entry into the national park and unlawful possession of one (1) spear and two (2) animal trapping wires in the national park without any permission sought and procured from the Director of Wildlife. The 3rd count was unlawful possession of two (2) legs of wildebeest, the government trophies. According to the prosecution, the offences were committed on 28.09.2018 at Kibo area in the Serengeti national park within Serengeti district in Mara region, thereby violating various wildlife protection and conservation laws.

The accused person admitted the charge and was instantly convicted on all three (3) counts and the court sentenced him to six (6)

months imprisonment in respect of each of the 1st and 2nd counts and twenty (20) years imprisonment in respect of the 3rd.

The appellant was aggrieved by the orders of the district court hence the present appeal in which he raised six (6) grounds of appeal complaining, *first* that the admission was equivocal hence it would not have grounded a sound conviction and *secondly* that the trial magistrate erred because the appellant was not only innocent but also a layman. The *third* ground was that the conviction of the appellant was unlawful because he is 25 years old and poor with no ability to hire an advocate, *fourthly* that the trial magistrate erred in allowing the public prosecutor to direct the appellant on what to say. *Fifthly* when the case was called his mind was not settled because he had malaria and headache and *lastly*, that the prosecution failed to prove the case beyond reasonable doubt.

When this appeal came up for hearing on 09.01.2021 and before we were to get to the grounds above, Mr. Yese Temba, the learned state attorney who was appearing for the respondent submitted that this appeal is incompetent because the same is offensive of **section 360(1) of the Criminal Procedure Act [Cap 20 RE 2019]**, which does not permit appeals from orders emanating from pleading guilty except for

appeal against the magnitude of the sentence. He added that the admission of the offence was unequivocal, so the finding, conviction and even the sentence imposed was the appropriate remedy. In reply, the appellant submitted that he did not know what was happening because it was his first time in court and that he was not asked anything.

The issue before me is whether the orders passed by the trial court are appealable. In the district court, the following transpired on 09.01.2019;

"Date; 9/1/2019

Coram; Hon SILITI RM

For Pros' Bulembo,

CC; Happiness

Accd; Present

PP; The case comes for preliminary hearing. I pray to proceed.

Accused; I am ready for preliminary hearing.

Court; The charge is read over and explained to the accused person who is asked to plead thereto;

Accused's plea first count; It is true I had entered (sic) in the Serengeti national park without a permit,

Sgd by accused person

Accused's plea second count; It is true I found in possession (sic) of weapons in the Serengeti national park without a permit namely two wires and one spear,

Sgd by accused person

Accused's plea third count; It is true I had found in possession (sic) of government trophies namely two behind legs fresh meat of wildebeest.

Sgd by accused person"

Following admission of all the counts the court entered a plea of guilty and received the facts which were explaining the charge and its ingredients to the accused person. After the facts were read over to the accused person as above he was asked to respond and he stated;

"The facts are true and correct I have listen (sic)".

Before we get where we are to go, there is an advice that is worthy giving. Admittedly, none of us is English, but when it comes to recording a plea of a suspect admitting guilty, one has to double and cross check his language and if possible consults one's dictionary. In recording the plea of the appellant in the trial court the language used was horribly substandard. However, I trust what the magistrate wanted to communicate which is that the accused before him admitted to have committed the offences as charged. In the circumstances, like the trial magistrate, I am satisfied that the appellant admitted the charge as leveled against him.

Now, Section 360 (1) of the CPA provides that;

"No appeal shall be allowed in the case of any accused person who has pleaded guilty and has been convicted on such plea by a

subordinate court except as to the extent or legality of the sentence.”

Which means after having admitted committing the offence, all doors towards appealing were closed by the above section, except for the magnitude and legality of sentence. Therefore, this court is in agreement with Mr. Temba that the orders of the trial court are not appealable.

Based on that understanding, this case is dismissed and the findings and orders of the district court of Tarime in economic case no 50 of 2018 are hereby confirmed and the sentences passed including that of twenty (20) years imprisonment imposed upon **Mr. Nyaitange Wambura Nyakibare** shall be served by him as passed by that court.

The appellant has a right of appeal to the Court of Appeal of Tanzania.

DATED at MUSOMA this 5th February 2021.



Z. N. Galeba
JUDGE
05.02.2021