

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA**

AT SHINYANGA

CRIMINAL APPEAL NO 57 OF 2020

***(Arising from Economic Case No. 09 of 2017 of the District Court of
Bariadi at Bariadi)***

HEWA SAID..... ..APPELLANT

VERSUS

THE REPUBLICRESPONDENT

JUDGMENT

8/3/2021 & 12/3/2021

MKWIZU J:-

Appellant is a resident of Bulima village within Busega District in Simiyu Region. According to the records, appellant is a peasant and a traditional healer. The information reached the police officer that, a child who was being treated by the appellant had been dumped in a pit latrine at Nila primary school. With village leaders, police went to the appellant's home. They searched his home and found one skin of otter, one tongue of hippopotamus, and a skin of tortoise without a permit. He was then arrested and charged with six counts namely; **One**, Unlawful Possession of Government Trophy Contrary to section 86 (1) (2) (c) (I) of the Wildlife Conservation Act No. 05 of 2009 as amended by section 59 of the written

Laws Miscellaneous Amendment Act No. 2 of 2016 read together with paragraph 14 of the 1st schedule to section 57 (1) and section 60 (2) and (3) of the Economic and Organized Crime Control Act [Cap 200 R.E 2002], **Two**, Unlawful Possession of Government Trophy Contrary to section 86 (1) (2) (c) (I) of the Wildlife Conservation Act No. 05 of 2009 as amended by section 59 of the written Laws Miscellaneous Amendment Act No. 2 of 2016 read together with paragraph 14 of the 1st schedule to section 57 (1) and section 60 (2) and (3) of the Economic and Organized Crime Control Act [Cap 200 R.E 2002], **three**, Unlawful Possession of Government Trophy Contrary to section 86 (1) (2) (c) (I) of the Wildlife Conservation Act No. 05 of 2009 as amended by section 59 of the written Laws Miscellaneous Amendment Act No. 2 of 2016 read together with paragraph 14 of the 1st schedule to section 57 (1) and section 60 (2) and (3) of the Economic and Organized Crime Control Act [Cap 200 R.E 2002], **Fourth**, failure to report Possession of Government Trophy Contrary to Section 87 (1) (2) of the Wildlife Conservation Act No. 5/2009 read together with paragraph 14 of the first to and section 57 (1) and section 60 (2) and 3 of the Economic and Organized Crime Control Act [Cap 200 R:E 2002], **Fifth**, failure to report Possession of Government Trophy Contrary to Section 87

(1) (2) of the Wildlife Conservation Act No. 5/2009 read together with paragraph 14 of the first to and section 57 (1) and section 60 (2) and 3 of the Economic and Organized Crime Control Act [Cap 200 R:E 2002] and **sixth**, , failure to report Possession of Government Trophy Contrary to Section 87 (1) (2) of the Wildlife Conservation Act No. 5/2009 read together with paragraph 14 of the first to and section 57 (1) and section 60 (2) and 3 of the Economic and Organized Crime Control Act [Cap 200 R:E 2002].Appellant denied the charges.

To prove their case, prosecution paraded five witnesses .PW1, PW2 are all police officers at Busega police station. they said, on 5/1/2017.They were instructed by OC CID Warioba to go to Bulima village to arrest the appellant who had killed a child. Assisted by the village leaders, they went to the appellant's house where they found inter alia one skin of ottar, one hippopotamus tongue, and a tortoise skin without a permit. They filled a seizure certificate. The mentioned government trophies were tendered as exhibit in court. This evidence was supported by PW3, Bulima sub village chairman, and PW4 Mwanongi sub village chairperson.

PW5 is a Game reserve officer who identified and valued the seized trophies. He explained how he identified the trophies by type and value and tendered the valuation certificate as exhibit in court.

Appellants denied the allegations. While admitting that he was searched by the police accompanied by the village leaders, he said he was found with nothing. He suggested that, the case against him was a frame up.

After a full trial, the trial court found the appellant guilty, conviction was entered in all the counts and sentenced accordingly. For the first offence appellant was sentenced to pay fine of Tshs. 714,000/=, 20 years imprisonment was imposed on the second count.; Fine of 294,000/= or three years (3) imprisonment in default in the third count 100,000/= fine or 12 months imprisonment in default in the fourth, fifth and 6th counts .

Dissatisfied, appellant has come to this court challenging the conviction and sentence. He filed seven grounds of appeal as follows.

- i. That, the Prosecution side allegation that I was arrested within Majibinga Game reserve is a cooked story because such purported*

game reserve does not exist in Busega District nor in among the list of Tanzania game reserves.

- ii. That, the Resident Magistrate erred in law and in fact accept the purported search warrant (Exhibit P1) while the alleged search was not conducted at my residence*
- iii. That there is no certificate of seizure tendered by any of the prosecution witness to prove whether I was arrested in possession of the alleged trophies.*
- iv. That, no caution statement which altered by the appellant tendered before the Trial court to prove the same as well as investigators was summoned before the court to collaborate the same.*
- v. That, my defence submission was ignored b the trial Magistrate in favour of the prosecution side.*
- vi. That, the alleged scene of crime is more contradictory where about the appellant was arrested. The evidence adduced by PW1 and PW2 contravenes a great that of PW3 and PW4 on the scene of crime.*
- vii. That, the identification of trophies made by PW5 (Jesca Mathias) a game Officer and the admission of Exhibit Pw3 (Trophy valuation*

certificate) was not according of the law as no inventory from tendered as exhibit before court to collaborate the same.

At the hearing of the appeal, Appellant was in person, unrepresented. Republic/ respondent was represented by Mr. Enoshi Gabriel Kigoryo, learned State Attorney.

Supporting his appeal, appellant prayed to adopt his grounds of appeal and he be set free.

Mr. Kigolyo supported the appeal. His support was stimulated by the appellant's complain in ground seven of the appeal. Mr. Kigoryo submitted that the identification of the trophies (Exh.P2) was not in accordance with the law. He contended that PW5 was an expert of identification of the Trophies which were tendered in court by PW2 (Exhb. P2) he said exhibit P2 was not shown to PW5 for identification. He could not point to the court whether the trophies tendered in court are the same trophies that he identified and valuated. Mr. Kigoryo queried how the trial court believed mere word from the value without showing to the court the trophies he

had identified and valued. Mr Kigolyo was therefore of the view that, as from the records it is not certain whether the trophies alleged to have been found with the appellant are the same trophies that were identified and valued by PW5. He for that reason prayed to have the appeal allowed.

I have carefully gone through the trial court records, grounds of appeal together with both parties' submissions. My task now is to determine whether the conviction and the sentence by the trial court were justifiable.

Prosecution's evidence is to the effect that appellant was found with the Government trophies mentioned in the charge sheet. However, as rightly submitted by the learned State Attorney, though the trophy were examined and valued by an expert, the valuation certificate was tendered without the valuer, PW5 ascertaining to the court whether the trophies allegedly found with the appellant (exhibit P.2) was the same trophies, he examined and valued. During the trial, PW2 the valuer, who did the valuation of the trophies and tendered in court the valuation certificate was not shown exhibit P2 to confirm to the court whether they are the same trophies he examined. This was not done. The trial court therefore, was not in a

position to gauge whether the tendered trophies (exhibit P2) include the same trophies allegedly found with the appellants, evaluated by PW2 and whose details are incorporated in exhibit P3. In **Mohamed S/o Kimase Mbweite Vs the Republic** Criminal Appeal No. 45 of 2020 (Unreported) the court said:

"The offence of possession of Government Trophies is serious offence which carries the minimum sentence of twenty years. Prosecution should ensure that identification of Government trophies is well testified in evidence."

The identification of the trophies in this case was carelessly done and therefore the court was left without knowledge whether the trophies explained by PW5, are the same trophies tendered in court as exhibit P2 and which the appellant is alleged to have been found with. Because this was an issue which was contested by the defence, proof was necessary. Contrary to that, appellant is entitled to enjoy the benefit of doubt.

In the upshot, the appeal is allowed, conviction is quashed and sentences set aside. Appellant should be released from prison forthwith unless he is held there for any other lawful purpose.

It is ordered.

DATED at SHINYANGA this 12th day of MARCH, 2021.



E.Y.MKWIZU
JUDGE
12/3/2021

Court: Right of appeal explained.



E.Y.MKWIZU
JUDGE
12/3/2021