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

AT MUSOMA

CRIMINAL APPEAL NO. 136 OF 2020

JUMATATU S/O ELIAS @MNGARE ..... 1ST APPELLANT
MASAKA S/O JOHN @ MACHOKI ..... 2ND APPELLANT
JUMAPILI S/O MARAKANYI @MIRUSI ..... 3RD APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

(Appeal from the decision of the District Court of Serengeti at Mugumu in Economic Case No. 74 of 2019)

JUDGMENT

23rd March and 21st April, 2021

KISANYA, J.:

The appellants were confronted with three charges. The said charges were unlawful entry into the Game Reserve, unlawful possession of weapons in the Game Reserve and unlawful possession of Government Trophies contrary to the relevant laws of the land.

At the trial, the prosecution adduced evidence to the effect that, on 27/07/2019, the park rangers namely, Kulwa Richard Maganga (PW1), Alphose Mugambo (PW2), Pampu Manumbu and Zephania Elijah were on patrol at Mto Grument area within Ikorongo Game Reserve within Serengeti District. They found the appellants near Mto wa Grument which also known as "Triangle area". Upon

searching them, the appellants were found in possession of one knife, one spear and 24 pieces of dried meat of impala. Since the appellants had no relevant permits, all items found in possession of the appellants were seized as per certificate of seizure (Exhibit PE1). The weapons (one knife and one spear) were also tendered in evidence as Exhibit PE2.

The appellants were then taken to Mugumu Police Station where case file No. MUG/IR/227/2019 was opened. Wilbroad Vicent (PW3) was called to identify and make valuation of the trophies alleged to have been found in possession of the appellants. He identified the 24 pieces of dried meat of impala by their darker and reddish brown colour and valued them to TZS 850,000. PW3 tendered the trophy valuation certificate (Exhibit PE3).

The 24 pieces of dried meat of impala were subject to speed decay. Therefore, PW4 took the appellants and the said dried meat to a magistrate where he sought for an order of disposal. The order was granted in the presence of the appellants. The prosecution, through PW4 tendered the Inventory Form (Exhibit PE4) to prove that fact.

In their defence, the appellants deposed that they were arrested when they were grazing cattle at Mto Robana area. The appellants testified further that, they were taken to the park rangers' camp and the police before being charged with the above named offences.

After due consideration of evidence adduced by both parties, the trial court was satisfied that the prosecution had proved its case

beyond all reasonable doubts. Consequently, the appellants were convicted of all three charges and the trial court sentenced them to two years imprisonment for the 1st and 2nd counts and twenty years imprisonment for the third count with the sentence to run concurrently.

The appellants were aggrieved by that decision. They filed their respective petition of appeal and raised the grounds to the following effect:

1. That the trial was illegally conducted for want of Certificate of the Director of Public Prosecution (DPP).
2. That the government trophies were disposed of in the absence of the appellants who did not sign the inventory form.
3. That the appellants were denied the right to call their respective key witnesses.
4. That the trial court erred in law and fact in relying on weak, untrue and uncorroborated evidence of PW1 and PW2.

At the hearing of this appeal through video link, the appellants appeared in person while the respondent was represented by Mr. Nimrod Byamungu, learned State Attorney.

The appellants prayed to adopt the petition of appeal. The first appellant went on to contend that they were arrested at their house. He alluded that the 3rd appellant was grazing in the field. When he and the 2nd appellant followed the 3rd appellant, they were arrested, taken to the police and implicated in this case. He submitted further

that, the prosecution did not tender the government trophies in evidence. His submission was adopted by the 2nd and 3rd appellants. They urged me to allow the appeal, quash the conviction and set aside the sentence.

In his reply submission, Mr. Byamungu indicated that he was not supporting the appeal. As regards ground one, the learned State Attorney argued that, the consent of the DPP and the Certificate conferring jurisdiction to a subordinate Court to try economic and non-economic offences were duly filed in the trial Court.

In relation to ground two whether the appellants were present at the time of disposing the Government trophies, Mr. Byamungu submitted that evidence of PW4 shows that the appellants were present before the Magistrate who issued the order for disposal of the said trophies. He went on to submit that PW4 was not cross examined on that fact by the appellants.

Submitting on the third ground, Mr. Byamungu contended that the appellants were not denied the right to call witnesses. His argument was based on the evidence on record that, the 1st and 2nd appellant indicated that they had no witnesses while the 3rd respondent informed the trial court that he would call 2 witnesses. However, he argued that this ground was meritless on the ground that each appellant prayed to close his case.

Mr. Byamungu went on to respond on the ground on the value of evidence adduced by the prosecution. He started by arguing that

every witnesses are entitled to credence unless there are reasons to the contrary. He submitted further that PW1 and PW2 are officers who arrested the appellant and that they did not contradict each other. Mr. Byamungu argued further that the credibility of PW1 and PW2 was not challenged by the appellants.

The learned counsel went on to point out that, PW3's evidence was to the effect of identifying and valuing the government trophies while PW4 investigated the case including seeking an order for disposal of government trophies. When probed by the Court whether the PW3 had mandate of making valuation of government trophies, Mr. Byamungu's reply was in affirmative. He submitted that PW3 is a wildlife warden.

Therefore, the learned State Attorney moved the Court to dismiss the appeal for want of merit.

The appellants rejoined by submitting that the weapons were not tendered in evidence and that the case was fabricated against them.

I have carefully examined the evidence on record and considered the petition of appeal and the above submissions. The issue is whether this appeal is meritorious or otherwise.

I must admit that the first ground is not clear. It was coached to the effect that the trial was a nullity for want of "certificate of seizure (sic) from the Director of Public Prosecutions." It is not a legal requirement for the case to commence with the certificate named by

the appellant. However, if the appellants meant the Consent of the DPP and the Certificate Conferring Jurisdiction on a subordinate court to try an economic and non-economic case which are issued under section 26(2) and 12(4) of the EOCCA, I agree with Mr. Byamungu that the said documents were duly filed before the commencement of hearing. Therefore, I find this ground devoid of merit.

For convenience purposes, I will consider the third and fourth grounds before looking into the merit of second ground.

In the third ground, the appellants contend that they were not accorded the right to call witnesses. It is my considered view that the right to call witnesses is one of the features of the right to a fair hearing protected under Article 13(6)(a) of the Constitution of the United Republic of Tanzania, 1997. Further to that, the provision of section 231 of the Criminal Procedure Act, Cap. 20, R.E. 2019 (the CPA) requires the trial court to inform the accused of his rights to defend himself and call witnesses. A decision founded on proceedings in which, a party to the case is not accorded the right to call witnesses is a nullity for contravening the right to be heard. Were the appellants denied of that right?

Reading from the proceedings, I find no where the trial court denied the appellants of their right to call witnesses. Upon making a ruling that the appellants had a case to answer, the trial court addressed them in terms of section 231 of the CPA. As rightly submitted by Mr. Byamungu, the 1st and 2nd appellant replied that

they had no witnesses while the 3rd appellant indicated that he would call 2 witnesses. Thereafter, the appellants adduced their respective evidence and closed the defence case. It follows that the appellants did not intend to call witnesses. For that reason, the third ground is devoid of merit as well.

In relation to the fourth ground, the appellants fault the trial court for convicting them basing on evidence of PW1 and PW2 whose evidence was contradictory, false and uncorroborated. I am at one with Mr. Byamungu that every witness is entitled to credence from the Court unless there are reasons for not believing him. See also the decisions of the Court of Appeal in **Goodluck Kyando vs R**, Criminal Appeal No. 118 of 2003 (unreported) and **Mapambano Michale @ Mayanga vs R**, Criminal Appeal No. 268 of 2015 (unreported).

I have gone through evidence of PW1 and PW2 who introduced themselves as park rangers. They testified how they found the appellants in the game reserve while in possession of one knife, one spear and 24 dried pieces of impala without relevant permits. Their evidence was direct and relevant to the charges preferred against the appellants. PW1 tendered the certificate of seizure (Exhibit PE1) and the weapons (Exhibit PE2). The said exhibits were admitted in evidence without being objected by the appellants. I read and re-read evidence of PW1 and PW2 and found no contradiction for the Court to hold that they were not reliable. Further, their credibility was not challenged by the appellants during cross examination.

Therefore, in view of evidence deduced from PW1, PW2, Exhibits PE1 and PE2, I am of the view that the 1st and 2nd counts were proved beyond all reasonable doubt.

Another witnesses called by the prosecution are PW3 and PW4. In addition to supporting the testimonies of PW1 and PW2, the said witnesses had the role of proving the third count on unlawful possession of government trophies alleged to have been found in possession of the appellants.

In terms of section 86 of the Wildlife Conservation Act, 2009 (the WCA), the offence of unlawful possession of government trophies stands if the value of trophies is ascertained. Pursuant to section 86(4) of the WCA, an evidence as value of trophy involved in the proceedings is proved by a certificate signed by the Director or wildlife officers from the rank of wildlife officer. On the other hand, the term "wildlife officers" is defined under section 3 of the WCA to mean a wildlife officer, wildlife warden and wildlife ranger engaged in enforcing that Act. This implies valuation of trophy by unauthorized person is of no value. Similar stance was taken in **Petrol Kilo Kinangai vs R.**, Criminal Appeal No. 56 of 2019 (unreported)

> *"We agree with the learned State Attorney that the Trophy Valuation Report (Exh. P2) was filled by an unauthorized person the consequence of which is lack of probative value. In the premises, Exh. P2 is prone to, and*

must be expunged as we hereby do.

Mr. Byamungu was of the view that, PW3 was a wildlife warden. Indeed that, title is reflected in the trophies valuation certificate (Exhibit PE3) and his opening statement before taking oath. However, upon taking oath, PW3 gave the following testimony.

> *"I am a **park warden** from Ikorongo Grumenti Game Reserve, my duties are to patrol in and outside Game Reserve to identify and value government trophies...(Emphasize supplied).*

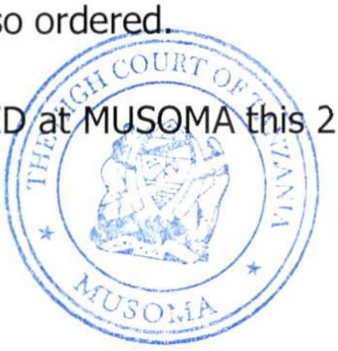
In view of the above evidence taken under oath, PW3 is a park warden. Such evidence contradicts the contents of Exhibit PE3 where PW3 introduced himself as wildlife warden. In my view, the said contradiction goes to the root matter, whether PW3 had power of valuing the trophies. Therefore, the third count was not proved on the required standard for want of value of trophy subject to this case. In such a case, the sentence to be imposed against the appellants is not known.

Reverting to the second ground, it was the appellants' contention that they were not present at the time of disposing the trophies aimed at challenging the third count. Reading from the evidence of PW4, I find that the appellants were present when the said order was sought in the Court. Thus, the said ground has no merit.

In the upshot of the above findings, the appeal partly succeeds. The appellants' appeal against conviction and sentence in respect of the first and second counts is hereby dismissed for want of merit. On the other hand, the appellants' conviction and sentence on the 3rd count of unlawful possession of government trophies is quashed and set aside. Thus, the appellant shall continue to serve the sentence of two years imprisonment as imposed by the trial court in respect of the 1st and 2nd counts.

It is so ordered.

DATED at MUSOMA this 21st day of April, 2021.



E. S. Kisanya
JUDGE

COURT: Judgment delivered through video link this 21st April, 2021 in the appearance of the appellants and in the absence of the respondent.

Right of appeal to the Court of Appeal is well explained.

E. S. Kisanya
JUDGE
21/04/2021