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

AT MUSOMA

CRIMINAL APPEAL NO. 149 OF 2020

PETER MATOROKE @RANTE ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

(Appeal from the judgment of the District Court of Serengeti at Mugumu in Economic Case No. 151 of 2019)

JUDGMENT

14th April and 19th May, 2021

KISANYA, J.:

The appellant was charged and convicted by the District Court of Serengeti at Mugumu of two counts namely, unlawful entry into the national park; and unlawful possession of government trophy. In consequence, the trial court sentenced him to serve a one (1) and ten (10) years and jail term for the 1st and 2nd counts respectively.

It was alleged in the charge sheet that, on 24th November, 2019, the appellant was found at Korongo la Machochwe area within Serengeti National Park in Serengeti District without permit of the Director. The prosecution alleged further that, upon being searched the appellant was found in an unlawful possession of one hind limb and one fore limb of

impala equivalent to TZS 897,000/= and the said trophies were the property of the United Republic of Tanzania.

The appellant denied any involvement in the alleged offences. Therefore, the prosecution was called upon to prove its case. In so doing, four witnesses were paraded and four exhibits tendered in evidence. The witnesses included two park rangers namely, **PW1 Shadrack Ongoa** and **PW2 Paul Ochieng'** who arrested the appellant in the national park; **PW3 Wilbroad Vicent,** a wildlife warden who identified and valued the trophies and **PW4 H.3802 D/C Yunus**, a police officer who investigated this case. The prosecution witnesses tendered three exhibits to wit, **Certificate of Seizure (Exhibit PE1)**; the weapons to wit, **Trophy Valuation Certificate (Exhibit PE2)** and **Inventory Order (Exhibit PE3).**

On his part, the appellant defended himself on oath. He called no witness to supplement his defence.

After a hearing of the prosecution and the defence case, the trial court was satisfied that the prosecution had proved its case. It went on to convict and sentence the appellant as stated herein. The appellant felt aggrieved by that decision. Therefore, he preferred the instant appeal

which has four grounds to the following effect:

1. That, the prosecution side erred in law in failing to record the appellant's cautioned statement within for hours after admitting him to the police station.
2. That the certificate of seizure was not signed by the appellant at the time of arrest and witnessed by another person.
3. That the trial magistrate erred in law and fact to rely on Exhibit PE1 which was tendered more than "two days of its apprehension."
4. That the trial magistrate erred in law and fact to rely on evidence of the prosecution which was contradictory.

At the hearing of this matter, the appellant fended himself while Mr. Nimrod Byamungu, learned State Attorney appeared for the respondent.

When called upon to submit in support of the appeal, the appellant had nothing to submit. He prayed to adopt his petition of appeal. He went on to contend that he did not commit the offence and urged me to discharge him.

Mr. Byamungu commenced his submission by indicating that he was not supporting the appeal. He therefore submitted in reply to all the grounds of appeal.

With regard to the 1st ground, the learned state attorney submitted that it was meritless because the prosecution did not tender the appellant's cautioned statement.

On the 2nd ground, Mr. Byamungu submitted that certificate of seizure (Exhibit PE1) was signed at the scene of crime and that it was signed by the appellant and officers who arrested him. He argued further that this ground was raised as an afterthought on the reason, the appellant did not object admission of the document.

As regard the 3rd ground, the learned state attorney claimed that it was not clear. However, he was of the view that the ground was meritless because Exhibit PE1 was tendered in accordance with the law.

In respect of the 4th ground, Mr. Byamungu contended that the prosecution witnesses did not contradict each other to prove both offences. The learned state attorney pointed out the role played by each witness. As far as PW4 is concerned, he submitted that the said witness applied to the Court for an order to dispose of the trophies as per

inventory order (Exhibit PE3). He contended further that, the prosecution evidence was not challenged by the appellant and that the case was proved beyond all reasonable doubts.

The learned state attorney went to call upon this Court to consider that the sentence of custodial sentence for ten (10) years imposed by the trial court on the second count was illegal. He argued that in terms of section 60(2) the Economic and Organized Crimes Control Act [Cap. 200, R.E. 2019], the minimum sentence for the offence of unlawful possession of government trophies is twenty years jail term.

In view thereof, Mr. Byamungu moved me to dismiss the appeal for want of merit and exercise the powers vested in the Court by section 366 (1)(a)(ii) of the Criminal Procedure Act, Cap. 20, R.E. 2019 to enhance the sentence in respect of the second count.

In his rejoinder submission, the appellant reiterated his plea that he did not commit the offence. He had nothing to say on the sentence for the second count.

I have considered the petition of appeal and submissions by the parties. In determining the appeal, I wish to begin with the 1st ground on the prosecution's failure to record the appellant's cautioned statement

within four hours after admitting him to the police station. I need not be detained much in addressing this ground. As rightly argued by the learned state attorney, the prosecution did not tender the cautioned statement. Therefore, the issue whether or not the cautioned statement was recorded beyond four hours after admitting or taking the appellant to the police station cannot be determined by the Court. It follows that the 1st ground is misplaced and hence, meritless.

I now move on to consider the 2nd ground that the certificate of seizure (Exhibit PE1) was not signed by the appellant and the person who witnessed the search. I went through Exhibit PE1 and noted that, it was duly signed by the appellant. It is also on record that when the prosecution prayed to tender the exhibit, the appellant did not raise that issue. Also, he did not cross examined PW1 who tendered Exhibit PE1 on the issue related to his signature. As that was not enough, that ground does not feature in his defence. Therefore, the appellant is estopped from raising the issue relating to his signature on Exhibit PE1 at this stage of appeal.

The second limb of the 2nd ground is to the effect that Exhibit PE1 was not signed by witnesses. The respondent does not dispute that apart from the park rangers who arrested the appellant, Exhibit PE1 was not

signed by an independent witness. The question is whether, it necessary for other persons to sign the Exhibit PE1.

The certificate of seizure at hand was made and issued under section 106(1) of the Wildlife Conservation Act, 2009 (the WCA). This provision empowers the authorized officers to enter and **search without warrant,** among others, any baggage or other thing in possession of the person alleged to have committed an offence under that Act and seize any animal, game meat, trophy, weapon, licence, permit in his possession or control. In terms of the provisor to section 106(1) (b) of the WCA, an independent witness is only required when the search is being conducted in the dwelling house.

In our case, PW1 and PW2 adduced that the appellant was searched upon being found in the national park. He was not searched in the dwelling house. In the circumstances, it was not practicable for PW1 and PW2 to have independent witnesses. Therefore, the second ground is dismissed for want of merit.

With regards the 3rd ground, the appellant contends that Exhibit PE1 was tendered before the Court "after more then (sic) two days after its apprehension". I am at one with Mr. Byamungu this ground is not clear. However, as alluded herein, the appellant was arrested on 24th November,

2019. He signed Exhibit PE1 at 1500 hours of the same date and PW1 tendered it when the case was called on for hearing on 13th March, 2020. For the foresaid reasons, I find no merit in the 3rd ground.

The last ground is based on the quality of evidence adduced by the prosecution. The appellant contends that the prosecution witnesses contradicted themselves. On his part, Mr. Byamungu was of the view that there was no contradiction in the prosecution case and that each witness gave evidence which proved the offence levelled against the appellant. Therefore, apart from addressing whether the prosecution witnesses contradicted each other, I will look at the value of their evidence and whether the two offences were duly proved.

I have examined the evidence of PW1, PW2, PW3 and PW4 called by the prosecution and failed to detect any material contradiction in the evidence of one witness or between one witness and another.

The substance of evidence adduced by PW1 and PW2 was to the effect that the appellant was found at Korongo la Machochwe area within Serengeti National Park in Serengeti District. PW1 and PW2 were consistent in their evidence which corroborated each other. Both witnesses were not cross-examined at all by the appellant. It is trite law that failure to cross examine the witness on important fact subject to the case is

tantamount to admission. In that regard, the appellant is considered to have admitted that he was found in the national park as adduced by PW1 and PW2. Therefore, I am satisfied that the first count was duly proved by PW1 and PW2. The appellant's defence that he was arrested at his home place did not raise doubt on the prosecution case for the first count.

PW1 and PW2 deposed further that the appellant was found in possession one hind limb and fore hind limb of impala. Their evidence was supported by Exhibit PE1. There came PW3 who testified on oath to have identified and valued the said trophies at TZS 897,000. He tendered the trophy valuation certificate (Exhibit PE2) to supplement his oral testimony. On his part, PW4 told the trial court how he investigated the case reported by PW1 and PW2. His duties included to call PW3 to identify and make valuation of the trophies. Thereafter, PW4 took the appellant and the alleged trophies to the magistrate who issued the order of disposing of the trophies. To prove this fact, PW4 tendered the inventory order which was admitted as Exhibit PE3.

The question that follows is whether such evidence proved the second count on unlawful possession of Government Trophies. It is common ground that the trophy alleged to have been found in possession of the appellant was not tendered in evidence. In addressing this matter, I

take note that the said trophies were subject to a speed decay. The procedure for disposal of trophies during the hearing is provided for under section 101 of the WCA as amended by the Written Laws (Miscellaneous Amendments) Act, 2017. This section provides, inter alia, that prior to the commencement of the proceedings, the trial court may on its own motion or on application made by the prosecution, order that the trophy subject to speedy decay be disposed of.

Reading from the evidence of PW4, nothing suggest that the trophy subject to this case was disposed under section 101 of the WCA. What I gather from PW4's evidence is that the trophy alleged to have found in possession of the appellant was disposed under 25 of the Police General Orders (PGO). The said provision reads:-

> *"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 before disposal."*

The law is settled that, an accused person is entitled to be heard before the order for disposal of exhibit subject to a speed decay is issued by the magistrate. This stance was taken in **Mohamed Juma** @

Mpakama vs R, Criminal Appeal no. 385 of 2017, CAT (unreported), when the Court of Appeal held as follows:-

> *"While the police investigator, Detective Corporal Saimon (PW4), was fully entitled to seek the disposal order from the primary court magistrate, the resulting Inventory Form (exhibit PE3) cannot be proved against the appellant because* ***he was not given the opportunity to be heard by the primary court Magistrate****.* (Emphasize supplied).

Guided by the above position of law, I have gone through evidence of PW4 to see whether the appellant was accorded the right to be heard. I find it pertinent to reproduce his evidence on the issue under discussion:

> *"I prepared the inventory form and take it to the magistrate together with accused person with his exhibit to seek order of disposal. The Court ordered the exhibit to be destroyed because it was perishable. I have identify (sic) the inventory form because it bears my name, stamp of the office and the exhibit found in possession of the accused person. I pray this court to admit an inventory order."*

It is my considered view that the evidence do not suggest that the appellant was heard when he was taken to the magistrate. The fact that the appellant was taken before the magistrate does not necessarily mean that he was heard. I have also looked at the said inventory order and glanced that the magistrate did not indicate to have heard the appellant before issuing the order for disposal of trophies.

In the circumstances, I find that the second count was not duly proved because the trophy subject to this case was not tendered in evidence and for failure to hear the appellant before disposing of the trophies.

That said and done, I dismiss the appeal on first count for want of merit and allow the appeal on the second count. Consequently, the trial court's conviction in respect of the second count is hereby quashed and its sentence set aside. This implies that, the appellant shall serve the sentence of **one (1) year jail term** for the first count, from **30th June, 2020**, when he was sentenced by the trial court. Ordered accordingly.

DATED at MUSOMA this 19th day of May, 2021.

E. S. Kisanya
JUDGE

COURT: Judgment delivered through video link this 19th May, 2021 in the absence of the appellant and in appearance of Ms. Agma Haule, learned State Attorney for the respondent. B/C Simon-RMA present.

Right of appeal explained.

E. S. Kisanya
JUDGE
19/05/2021