IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

CRIMINAL APPEAL NO. 181 OF 2020

CHACHA MWITA @ MEGOKO .... APPELLANT

VERSUS

THE REPUBLIC .... RESPONDENT

(Appeal from the judgment of the District Court of Tarime at Tarime in Economic Case No. 9 of 2020)

JUDGMENT

28th April and 10th June, 2021

KISANYA, J.:

Chacha Mwita @ Megoko along with, Mseti Chacha @ Riso (hereinafter referred to as the second accused), who is not a party to this appeal, were tried in the District Court of Tarime at Tarime on three counts as follows:

1. Unlawful entry into the National Park contrary to sections 21 (1) (a), (2) and 29 (1) of the National Parks Act, Cap. 282, R.E 2002 (the NPA) as amended by the Written Laws (Miscellaneous Amendments) Act No. 11 of 2003;
2. Unlawful possession of weapons in the National Park contrary to sections 24 (1) (b) and (2) of the NPA; and

3. Unlawful possession of Government Trophy contrary to section 86 (1) and (2) (b) of the Wildlife Conservation Act, 2009 (the WCA) as amended by the Written Laws (Miscellaneous Amendments) Act, No. 2 of 2016 read together with paragraph 14 of the First Schedule to and section 59 (1) and 60(2) of the Economic and Organized Crime Control Act, Cap. 200 R.E 2002 (the EOCCA).

The appellant and second accused were convicted as charged. The trial court went on to sentence them, on the first and second counts, to pay fine of T7S. 300,000/= or in default thereof they were to serve one year imprisonment. On the third count, they were sentenced to serve two years imprisonment. The custodial sentences were to run concurrently. It is pertinent to note here that the second accused was convicted and sentenced in absentia.

Aggrieved, the appellant appeals against the convictions and sentences on eight grounds of appeal to the following effect:

1. The trial court relied on incredible evidence of PW1, PW2, PW3 and PW4.
2. The appellant is a young person who had no means of engaging an advocate to defend him.

3. The case was fabricated by the park rangers.
4. The trial magistrate misdirected herself in holding that the appellant was found in the National Park in possession of government trophies and weapons.
5. The trial magistrate failed to evaluate evidence adduced by the appellant and relied on insufficient evidence given by the prosecution.
6. That the defence case was not considered.
7. That an independent witness was not called by the prosecution.
8. That the prosecution failed to prove its case beyond all reasonable doubts.

Briefly, the prosecution case went as follows: The appellant and second accused were, on 14.02.2020 found at Daraja Mbili area within Serengeti National Park, Tarime District by the park rangers including Josephat Nzuho (PW2) and Steven Sabai (PW3). Upon being searched, they were found in possession of one knife, one spear, two trapping wire, "two ribs fused with its neck fresh meat of topi". It was deposed by PW3 that the appellant and second accused had no permits of entering into the National Park and possessing weapons therein and Government Trophies. The alleged Government trophies (two ribs fused with its neck fresh meat

of topi) were identified and valued at TZS 1,848,000/= by Gift Levis Sanga (PW4). The said trophies were disposed by order of the magistrate at the instance of E.8439 CPL Peter (PW1), a police officer who investigated this case. Apart from the oral testimonies given by PW1, PW2, PW3 and PW4, the prosecution tendered the following four exhibits, weapons to wit, one knife, one spear and two trapping wires (Exh. P1); certificate of seizure (Exh. P2); trophy valuation certificate (Exh. P3); and inventory form as to disposal of two ribs fused with its neck fresh meat of topi (Exh. P4).

When put to their defence, the appellant and second accused denied to have committed all offences. Their evidence was to the effect that they were arrested and taken to the camp by the park rangers who found them grazing cattle near the boundary of Serengeti National Park. At the end, the appellant and second accused were convicted and sentenced as above and hence, this appeal.

At the hearing of this appeal, the appellant appeared through a video link connected to the prison where he was serving his sentence. On the other side, the respondent/Republic had the service of Mr. Nimrod Byamungu, learned State Attorney.

The appellant adopted the petition of appeal and implored the Court to discharge him. Responding, the learned State Attorney supported the

appeal on the third count and resisted the appeal on the first and second counts. His submissions will be considered in the course of addressing the issues involved in the appeal at hand.

I propose to start with the third, fourth, fifth and eight grounds of appeal. In my view, these grounds can be determined jointly by addressing whether the prosecution case was proved beyond all reasonable doubts. Mr. Byamungu argued that the third ground was not proved. His argument was based on the reason that PW4 did not testify how he identified the Government trophies alleged to have been found in possession of the appellant and second accused as that of topi.

It is trite law that the prosecution is duty bound to prove every element of the offence. As far as the offence of unlawful possession of Government trophies in the case at hand is concerned, the prosecution was, among others duty bound to prove that the appellant and second accused were found in possession of government trophies to wit "two ribs fused with its neck fresh meat of topi". The witness called to prove this ingredient is Gift Levi Sanga (PW4). He introduced himself as a Wildlife Officer Grade III. His evidence on the issue under discussion went as follows:

"I recall on 17/02/2020 in the morning I received a call from the investigator of Nyamwaga Police Station requesting me to come to Tarime District Court for (sic) identifying the meat which was suspected to be a government trophy. I came to Tarime District Court, the investigator and police officers were along with two accused persons who had two ribs fused with the neck fresh meat of topi. I identified it and filled a Trophy Valuation Certificate the type of Government trophy and its value."

As rightly observed by Mr. Byamungu there is no indication in evidence of PW4 as to how the meat found in possession of the appellant and second accused was identified as Government trophies namely, topi and not otherwise. It was not sufficient for PW4 to state that the said two ribs fused with its neck fresh meat were of topi without further explanation. In **Abdallah Thabit Issa vs R**, Criminal Appeal No. 79 of 2019, HCT at Mtwara (unreported), this Court (Ngembe, J) faced a similar situation and held that:-

> *"The court expected to receive a comprehensive investigative evidence from both police officers and Wildlife Officers supported with expert report on identity of the type of meat. Mere allegations that the meat was of Great Kudu (Tandala) may not convince the conscious of this court to support conviction and sentence."*

In our case, neither PW4 nor the Trophy Valuation Certificate (Exh. P2) display evidence on identification of the Government trophies. In the absence of evidence as to how the items found in possession of the appellant were identified as topi, the third count was not proved for the conviction and sentence to stand.

As regards the first and second counts, Mr. Byamungu was of the view that the said offences were duly proved. He argued that evidence to prove the said offences was adduced by PW2 and PW3 who arrested the appellant and second accused in the National Park and seized the weapons which were with them. Referring this Court to the case of **Macho Gervas vs R**, (2002) TLR 27, Mr. Byamungu submitted the credibility of witnesses is assessed and decided by the trial court. He urged me to consider that PW2 and PW3 are reliable witnesses as it was before the trial court.

I am alive that PW2 and PW3 adduced in common that in the course of patrol at Daraja Mbili area within Serengeti National Park, Tarime District, they traced human footsteps and managed to find the appellant and second accused. It was adduced further by PW2 and PW3 that the appellant and second accused had among others, one spear, one knife and two trapping wires. In his evidence, PW3 told the trial court that the appellant and second accused had no permits to enter in the National Park

and possessing weapons in the National Park. PW2 tendered the certificate of seizure (Exhibit P2) which shows the items seized from the appellant and second accused. These include the above named weapons

In view of the above evidence by PW2 and PW3, I am satisfied that the first and second counts were proved. The appellant did not challenge or raise doubt on evidence of PW2 and PW3. I find nothing to hold that the said PW2 and PW3 were unreliable witnesses. They adduced direct evidence which supported each other.

The appellant complained that the prosecution paraded park rangers without calling an independent witnesses. On his part, Mr. Byamungu submitted that all witnesses were competent to testify. Citing the case of **Popart Emmanuel vs R,** Criminal Appeal No. 2020 of 2010, CAT at Iringa (unreported), he argued that person from the same office are not barred from giving evidence.

On my part, I agree with the learned State Attorney. The law does not bar officers or persons from one office to testify on the same matter. What matters is the quality of evidence adduced by the said witnesses and whether they are competent to testify. As far as PW2 and PW3 who gave evidence to prove the first and second counts, I find them to be competent witnesses.

In relation to failure by the prosecution to call an independent witnesses, I have read the provisions of section 106 of the WCA. It provides an independent witness is required if the search is being conducted in a dwelling house. It is a manifest on record that the accused was arrested in the National Park. In the circumstances, it was impossible for the park rangers to have an independent witness.

Lastly, the appellant complains that the defence case was not considered. Mr. Byamungu replied that the defence case was duly considered by the trial court which was arrived at the finding that, his defence did not raise doubt on the prosecution case.

The law is settled that the trial court must consider the defence case. I earlier on alluded that, the appellant' defence was to the effect that he was arrested when he was grazing near the National Park. I have read the judgment. It shows that the said evidence was considered by the learned trial magistrate. She was satisfied that the appellant's defence did not shake the credibility of the prosecution. Therefore, this complaint is unfounded.

The upshot of the matter is that the prosecution proved its case on the first and second counts but, failed to prove the third count. At the end, this Court uphold the conviction and sentences passed by the trial court on

the first and second counts. On the other hand, the conviction on the third count is hereby quashed and its sentence set aside. In consequence, the appellant, Chacha Mwita @ Megoko is liable to serve the trial court's sentences in respect of the first and second counts only. It is so ordered.

DATED at MUSOMA this 10th day of June, 2021.

E. S. Kisanya
JUDGE

Court: Judgment delivered through video link on the 10th June, 2021 in appearance of the appellant and Mr. Nimrod Byamungu, learned State Attorney for the respondent.

E.S. Kisanya
JUDGE
10/06/2021