

**IN THE HIGH COURT OF TANZANIA**  
**AT TABORA**  
**DC CRIMINAL APPEAL NO. 40 OF 2019**  
**(From Original Criminal Case No. 11 of 2018 of the District**  
**Court of Tabora at Tabora)**

**TITUS MNYANGOGO ..... APPELLANT**  
**VERSUS**  
**REPUBLIC ..... RESPONDENTS**

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**JUDGMENT**  
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Date of Last Order: 16/07/2021

Date of Delivery: 19/07/2021

**AMOUR S. KHAMIS, J.**

The appellant Titus Mnyangogo was arraigned before the District Court of Tabora for the offence of Unlawful Possession of Government Trophy contrary to Section 86(1) and (2) (b) of the Wildlife Conservation Act No. 5 of 2009 read together with paragraph 14 of the first schedule to and sections 57 (1) and 60 (2) of the Economic and Organized Crime Control Act CAP. 200 R.E 2002) as amended by the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016.

The particulars of the offence shows that the appellant on 24<sup>th</sup> day of September, 2018 during day hours at Tabora New Bus Stand within the Municipality of Tabora was found in possession

of twelve (12) pieces of elephant tusks which means three elephants were killed, all tusks valued at Tshs: 102, 780,000/= the property of the Government of Tanzania.

When the charge was read over to the appellant, he denied the charge hence the case proceeded to a full trial, he was found guilty and convicted accordingly. Consequently he was sentenced to serve a term of twenty years in prison and pay fine to the tune of Tshs. 1,027,800,000/=

Aggrieved and dissatisfied with the decision of the trial court the appellant has preferred this appeal against conviction and sentence armed with following grounds.

- 1. That, the trial magistrate erred when found that the prosecution and proved its case against the appellant beyond reasonable doubt, while the prosecution case had left a lot of doubts to decide*
- 2. That, the trial magistrate erred when relied upon the evidence of the Bus Stand Manager (PW2) as basis for the appellants conviction without noting that the said bus stand manager was not an essential witness, as he only saw the appellant at his office, he didn't take part in the arrest of the appellant and he was unaware whether the elephant tusk brought to his office were in fact found in possession of the appellant or not.*
- 3. That, the judgment of the trial Court lacks a proper analysis and evaluation of the worth of each of the prosecution witness evidence.*
- 4. That, the trophy Valuation Certificate (Exh P6) had no evidential value and it was useless at all as the same was not preceded by any chemist report to establish that before the*

- trophy valuation certificate was made, the elephant tusk in issue (Exh. P2) were once confirmed by any scientific method and found that they were nothing but elephant tusk.*
- 5. That, the trial magistrate erred when failed to consider the effect on non production of chain of custody of the elephant tusk in question. (Exh. P2)*
  - 6. That, the trial Magistrate erred when acted on the cautioned statement of the appellant (Exh. P5) without first ascertaining their credibility.*
  - 7. That, the inspection and the seizure of the elephant Tusk (Exh. P2) was doubtful and violated the recovery of the said elephant tusk. In that no reasonable reasons were given as to why the inspection and recovery of the elephant tusk was made to the Tabora Stand Manager instead of being made to the place where the appellant was arrested.*
  - 8. That, the guilty of the appellant was not proved beyond reasonable doubt.*

In addition to the grounds of appeal the appellant leveled supplementary grounds that:

- 1. That the appellant was denied a fair trial as at the stage of the ruling of the of case to answer the learned trial magistrate made conclusive statement or remarks which are prejudicial to the appellant or amounted to convicting the appellant even before the appellant is heard in his defense.*
- 2. That, the pieces of elephant tusks (exhibit P2) the subject matter of the charge were wrongly acted upon by the trial magistrate as PW1 who tendered the same adduced no an iota of evidence to establish beyond reasonable doubt s to how he*

*(PW1) was still in possession of the said pieces of elephant tusks (exhibit P2) he took to same and handled them to kikosi dhidi ya Ujangili (KDU) office yet to unnamed person.*

3. *That, had the evidence of PW4 been properly evaluated by the trial Magistrate it would have been found that it was useless and weakened both the trophy valuation certificate and the prosecution case at all as PW4 who identified and valued the trophies in issue he only/simply stated that he found the pieces of elephant tusks without explaining from whom he had obtained or given them to cement his evidence.*

At the hearing of the appeal, the appellant appeared in person whereas the Republic was represented by Ms. Gladness Senya, learned State Attorney.

Opposing the appeal Ms. Senya submitted on second ground of appeal that, PW2 was a key and independent witness who stated on how the appellant was taken to his office and the way the appellant himself produced 12 pieces of tusks that he had kept to PW2. That, search warrant and seizure not was signed and the appellant himself signed the same.

As to the 4<sup>th</sup> ground Ms. Senya submitted that, there is no legal requirement for chemist's report to be issued in order for valuation report to be tendered in Court. Valuation report was tendered by game officer (PW4) who was competent witness to tender the same and he further stated how he identified the trophies by texture, fibre arrangement and sound that elephant tusk produces makes it different from other bones.

On the 5<sup>th</sup> ground on the issue of broken chain of custody she buttressed that, PW1 complied to required chain of custody of

exhibit P2 as he is the one who seized the same from appellant, took them to KDU office for custody, he signed the register and later collected it using issuing voucher and tendered it in Court.

Denying the assession contain in 1<sup>st</sup> ground to supplementary grounds of appeal that the appellant was denied fair trial where at the stage of ruling of case to answer Ms. Senya submitted that, the magistrate stated in a ruling that the evidence on record

On the other hand in addition to the grounds of appeal filed in the petition of appeal and supplementary grounds of appeal the appellant stated that:-

The prosecution documentary exhibits were not read over in Court as the law requires, he listed the exhibits that were not read to wit, Valuation report, register regarding exhibits, Issue voucher and Cautioned Statement of the appellant.

He added that, the prosecution's failure to read over the exhibits tendered and admitted in Court denied the appellant his fundamental rights on a trial and thus failed to cross examine on those documents and prepare his defence accordingly, he prayed this Court to expunge those exhibits from the record.

The appellant further propped that during trial the magistrate issued an order that an exhibit admitted to be kept for custody at KDU while the case was still pending, it is his argument that, an exhibit admitted in Court must be kept in the custody and Management of the Court until conclusion of the case.

Finally, the appellant prayed this honourable Court be pleased to acquit and release him from prison.

In rejoinder Ms. Senya conceded that some of documentary exhibits were not read over in court, only the valuation report was read over. It is her argument that, failure to read documentary exhibits to appellant did not prejudice his right because he had a good understanding of those exhibits and he issued questions to witnesses who produced them.

Having considered the submissions by the learned State Attorney and appellant in regard to the grounds of appeal raised, my starting point is on the ground of appeal which were conceded by the learned State Attorney.

In his submission the appellant alleged that the prosecution's documentary exhibits which were admitted in Court were not read so that he could understand its content and be in a position to prepare his defence. Ms. Senya on her side conceded that of all four documentary exhibits that were admitted in Court its only one exhibit that was read, the rest were not read in court.

It is a legal requirement that, when documentary exhibits are admitted in court the same must be read aloud so that the accused person may understand the nature of their contents.

In **MATHIAS DOSELA @ADRIANO KASANGA VS REPUBLIC CRIMINAL APPEAL NO. 212 OF 2019 HC MWANZA** (*unreported*) the Court emphasized that failure to read out documentary exhibit after their admission renders the said evidence contained in that document improperly admitted and should be expunged from the record.

Also in **FESTO MGIMWA VS REPUBLIC CRIMINAL APPEAL NO. 378 OF 2016** the Court of appeal emphasized that:

*“On our part, firstly, we entirely agree that the contents of exhibit P1 was not made known to the appellant as it was not read over as required. We therefore, expunge the same from the record as prayed by Mr. Mwandalama. We wish however, to implore trial courts to always adhere to what the Court stated in **ROBINSON MWANJIS AND THREE OTHERS V. THE REPUBLIC [2003] TLR 218**, on the importance of reading over the contents of the document once it is cleared and admitted in evidence”.*

In the case at hand the register regarding exhibits, Issue voucher and Cautioned Statement of the appellant were not read in court soon after they were admitted, that omission renders the whole evidence contained in those exhibits unreliable.

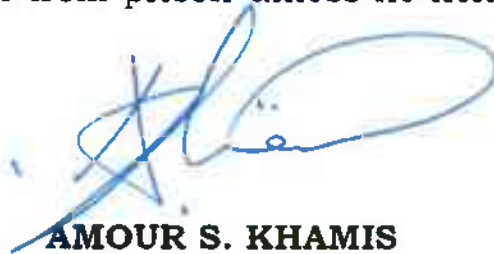
As rightly submitted by the appellant that omission violated the procedure of hearing and the whole evidence contained in those documents ought to be expunged from the record.

Having perused the proceedings of the trial Court I agree with both the appellant and the learned State Attorney that the above-mentioned documents were not read aloud in Court as required by the law. That omission renders all evidence contained in those documents valueless. As such, they are hereby expunged from the record.

Now having expunged part of evidence from record, the question that remains is whether the remaining evidence prove the appellant's case beyond reasonable doubt?

Having weighed the remaining evidence on record, I am satisfied that it is not sufficient to convict the appellant for the offence charged.

For the foregoing reason, I find merits in the appeal which is consequently allowed. The appellant's conviction is hereby quashed and a sentence imposed on him is set aside with an order of immediate release from prison unless he held for other lawful reason.



**AMOUR S. KHAMIS**

**JUDGE**

**19/07/2021**

Judgment delivered in open Court in presence of the appellant in person under custody and Ms. Juliana Moka, Senior State Attorney for the Republic. Right of Appeal explained.



**AMOUR S. KHAMIS**

**JUDGE**

**19/7/2021**