

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

APPELLATE JURISDICTION

(DC) ECONOMIC APPEAL NO. 01 OF 2021

(Arising from Economic Case No. 03 of 2020 of Kigoma District Court Before K.V.
Mwakitalu, RM)

JUMA S/O KAMPYO..... APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

JUDGMENT

10th & 10th August, 2021

A. MATUMA J.

The appellant herein stood charged in the District Court of Kigoma at Kigoma for eight (8) counts for unlawful possession of government trophies per each count. He was alleged to have been found possessing various species of government trophies on the 23rd day of February 2020 at Nkonkwa Village within Uvinza District in Kigoma Region, the trophies were allegedly; fifteen (15) horns of Bushbucks (Pongo), twenty-three (23) shells of ground pangolin (Kaka kuona), two teeth of Warthog (Ngiri), Six (6) horns of Common duiker (Insha), One (1) horn of Roan Antelope (Korongo), two (2) noses of bush pig (Nguruwe pori), one (1) upper jaw


of python (Chatu), two (2) skins of Wild Cat (Paka pori). The trophies were all total valued at 2,305 USD which was equivalent to Tshs. 25,839,050/=.

On his party, the appellant denied the charges stating that the alleged trophies were not found with him as he was a mere guest at the homestead of his deceased grandfather where the search was conducted and the alleged trophies found in '**Msonge**' house which he had never entered nor lived.

At the end of trial, the trial magistrate Hon. K.V. Mwakitalu (RM) was satisfied that the prosecution successfully proved their case in all eight counts. He thus found the appellant guilty, convicted him and sentenced him to suffer a custodial sentence of 20 years in each count which he ordered to run concurrently.

The appellant was aggrieved with such conviction and sentence hence this appeal with seven (7) grounds of appeal but for the purposes of this appeal only one ground suffices to dispose it. The ground though couched in a layman's language but it reflects the complaint that;

The trial court erred in law and facts to rule out that the prosecution case was proved beyond reasonable doubt while there was no positive evidence for identification and valuation of



the alleged trophies because such identification and valuation was done by an incompetent person.

At the hearing of this appeal, the appellant was present in person and the Respondent/Republic was represented by Mr. Benedict Kivuma learned State Attorney.

I required the parties to address me on that ground before we move into other grounds because if the ground stands, the appeal would be disposed of accordingly.

Mr. Kivuma learned State Attorney submitted that PW6 the Land and Natural Resource Officer qualified to identify the trophies because according to the evidence he is a holder of Bachelor degree in the Wildlife Science and he stated in evidence that among other duties he used to identify and value the trophies.

The appellant had nothing useful to elaborate his complaint. It is thus my turn to determine this complaint.

It is undisputed fact that the identification and valuation of the alleged trophies was done by PW6 Kachegwa Masumbuko who is the Natural Resource and Land Officer (Afisa Ardhi na Maliasili) in the District Council of Uvinza. The issue is therefore, whether PW6 qualified in law to identify



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and value government trophies. Under section 86 (4) and 114 (1), (3) and (4) of the Wildlife Conservation Act, No. 5 of 2009 only the Director of Wildlife, or the Wildlife Officer of the rank of Wildlife officer can identify and value the trophy for the purposes of criminal evidence in any trial. The Director of Wildlife and Wildlife officer have been defined in the Act, and the Natural resource officer is not among those who are categorized as either the Director or the Wildlife Officer.

Under the definition clause in the Wildlife Conservation Act, the Wildlife Officer means the Wildlife Officer, Wildlife Warden and Wildlife ranger who are engaged for the purposes of enforcing the Wildlife Conservation Act No. 5 of 2009.

PW6 is not engaged as such and could have therefore not be able to identify and value the trophies under the Act. The argument that PW6 is a holder of Bachelor Degree in the Wildlife Science cannot stand as the law requires the title and rank not level and kind of education. There is no doubt that for one to acquire the title and rank in question there are some qualifications but not necessarily that every holder of Bachelor degree in the Wildlife science can qualify as the Director of Wildlife or the Wildlife officer. PW6 was thus incompetent to identify and value government trophies. He was not even an authorized officer under the

Act who might be any other Public Officer but on a condition of being appointed in writing by the Director of Wildlife to execute certain duties under the Act.

In the circumstances, it cannot be certain that what is alleged to have been found with the appellant was really government trophies nor that its value was established. Failure to identify the trophy and value it raises reasonable doubts in the prosecution case and the benefit thereof must be resolved in favour of the appellant/accused. In the circumstances without even dwelling on the question whether or not the appellant was in fact found in possession of the alleged trophies, it suffices to rule out that the same were not established to be government trophies within the meaning of the Wildlife Conservation Act to constitute a Criminal offence.

I therefore, find that the appellant was wrongly convicted and sentenced. His conviction is hereby quashed and the sentences meted against him set aside. I order his immediate release from prison unless held for some other lawful cause.

It is so ordered.

The right of further appeal to the Court of Appeal is hereby explained.

A handwritten signature in blue ink, consisting of a stylized, elongated shape with a small loop at the top and a long, sweeping tail that curves upwards and to the right.




A. Matuma

Judge

10/08/2021

Court: Judgment delivered in the presence of the appellant and Mr. Benedict Kivuma for the Respondent. Right of Appeal explained.

It is so ordered.

Sgd: A. Matuma

Judge

10/08/2021