

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(SUMBAWANGA DISTRICT REGISTRY)**

AT SUMBAWANGA

DC. CRIMINAL APPEAL NO. 7 OF 2020

(C/O Economic Crimes Case No. 1 of 2020 Resident Magistrate Court of
Katavi)

SALUM SAIDY @ PETRO..... APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

09 & 13/08/2021

JUDGMENT

Nkwabi, J.:

The appellant was arraigned before the Resident Magistrate Court of Katavi at Mpanda for unlawful possession of Government trophies contrary to section 86(1) and (2) (c)(iii) of the Wildlife Conservation Act No. 5 of 2009 as amended by section 59(a) and (b) of the Written Laws (Miscellaneous Amendments) (No. 2) Act No. 4 of 2016 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 section

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16(a) and 13(b) of the Written Laws (Miscellaneous Amendments) Act No3 of 2016.

The particulars of the offence were that the appellant, on 19th day of January, 2020 at Mpembe village within Tanganyika District in Katavi region was found in unlawful possession of one kilogram (1 kg) of Roan Antelope meat valued at USD 2550 equivalent to T.shs 5,918,550 only the property of the Government of Tanzania without a permit from the Director of Wildlife.

When the charge was filed in court it was filed along-side the consent of the prosecuting Attorney in-charge as well as certificate conferring jurisdiction to subordinate Court to try an economic crimes case. These necessary documents enabled the charge sheet to be read over and explained to the appellant on the very day. He pleaded guilty to the charge. The matter was adjourned to another date when he was reminded of the charge, and proceeded to plead guilty. He admitted all the facts that were read over and explained to him. He was convicted contrary to section 86(1) and 92) (c)(iii) of the Wildlife Conservation Act No. 5 of 2009 as amended by section 59(a) and (b) of the Written Laws (Miscellaneous Amendments) (No. 2) Act No. 4 of 2016 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 section 16(a) and 13(b) of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016 and sentenced to serve 20 years imprisonment.

The appellant was afflicted by both conviction and sentence hence lodged this appeal to this court seeking the court's indulgence to find fault in the proceedings, conviction and sentence of the trial court. He filed a petition of appeal which is comprised of three grounds of appeal as follows:

1. That the trial court erred in convicting and sentencing relying on my own plea of guilty as such plea was purely equivocal. I didn't understand the language of the court hence I pleaded what I did not know.
2. That he was convicted on a non-existing law.
3. That I was convicted and sentenced for the offence which was not proved beyond reasonable doubt.

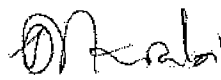
During the hearing of this appeal, the appellant appeared in person while the Respondent was ably represented by Ms. Marietha Maguta, learned State

Attorney. In his submission, the appellant, being a lay person, prayed to adopt his grounds of appeal as his submission and rested his case.

In reply submission, Ms. Marietha learned State Attorney for the respondent, submitted only on the 2nd ground of appeal which is to the effect that the appellant was convicted on a non-existing Law. She submitted, the law is correct, the trial court misdirected itself and convicted him under section 86(1) & section 92(c) (ii) of the Wildlife Conservation Act No. 5/2009. However, the provision was not used in charging the convict. He was charged under S. 86(1) & (2) (c) (iii). The learned State Attorney for the Respondent added that, the charge sheet was wrong as subsection (2) (c) (iii) is not in the law. The law ends with subsection 2 (c) (ii).

She insisted that, they support the appeal as the appellant was convicted on a provision which he was not charged with and was charged with a non-existing law. She prayed that his appeal be allowed as the proceeding, charge sheet and the conviction of the court have anomalies.

In rejoinder, the appellant, understandably, being a lay person, had nothing in rejoinder.

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I have taken considerable time to decide whether in the circumstances of this case, the appeal should be allowed. The respondent is conceding the appeal. I too join hand with both parties and hold that this appeal should be allowed. I cannot have better words in this case than those of the Sisya, Judge, in **Republic v Karimu Taibale [1985] TLR 196** where he held:

The charge was so fundamentally defective that the accused could as well have been admitting different offences in the same count and his plea cannot be taken to have been unequivocal.

In the present appeal, the appellant was charged on a non-existing provision of law and convicted on a provision of the law which the appellant was not charged with. It is true that the appellant readily pleaded guilty to the charge and admitted all the facts that were read over to him. Based on the decision of my learned brother Sisya, J. in **Karimu's case** (supra), the plea, in the circumstances of this case cannot be unequivocal. This vindicates the appellant on his first ground of appeal as well as the 2nd ground of appeal.

Time and again, there has been advice to the magistrates and whoever else involved in admission of charge sheets to make sure that they admit charge sheets that are free from defects. This will enhance administration of justice. I reiterate the advice. See for instance the case of **Osward Mangula v Republic Criminal Appeal no 153 of 1994** (CAT) (MBEYA) (Unreported):

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"We wish to remind the magistracy that it is a salutary rule that no charge should be put to an accused before the magistrate is satisfied, inter alia, that it discloses an offence known to law. It is intolerable that a person should be subjected to the rigors of a trial based on a charge which in law is no charge. It shall always be remembered that the provisions of S. 129 of CPA 1985 are mandatory. The charge laid at the appellant's door having disclosed no offence known to law all the proceedings conducted in the District Court on the basis thereof were a nullity since you cannot put something on nothing. Appeal allowed."

In the end, with respect to the learned trial magistrate, I subscribe the appellant's ground of appeal that he was charged on a non-existing provision of law and worse still he was convicted on a provision that he was not charged with. The conviction and sentence therefore cannot be rationally supported. I therefore, allow the appeal as it has merits. I endorse the arguments of the learned State Attorney for the Respondent and I am of the view that in the circumstance of this case conviction has to be quashed and

sentence set aside, I proceed to do so. The appellant is to be set free unless he is otherwise held for other lawful cause(s).

It is so ordered.

DATED and signed at SUMBAWANGA this 13th day of August 2021.




J. F. Nkwabi
Judge