

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

**AT SUMBAWANGA**

**DC. CRIMINAL APPEAL NO. 36 OF 2020**

(C/O Economic Crimes Case No. 15 of 2019 Mpanda District Court)

**KINAWILA S/O BILANGIDA ..... APPELLANT**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**

16 & 18/08/2021

**JUDGMENT**

**Nkwabi, J.:**

Affronted with the conviction and sentence of the trial court, the appellant paraded three grounds of appeal in this court as they appear in the petition of appeal. I quote the grounds of appeal to show the unhappiness of the appellant against the decision of the trial court:


- 1. That the trial court erred at law and fact by convicting the appellant basing on evidences testified by PW1 and PW2 which were contradictory and with many discrepancies.*



- 2. That the trial court erred in law and fact by not discovering that the appellant was not found in possession of bag containing a government trophies at the café during arrest.*
- 3. That the trial court erred at law and fact by convicting the appellant in a case which was not proved beyond reasonable doubt as required by law.*

The appellant stood trial before the District Court of Mpanda at Mpanda for two counts of 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 16(a) and 13(b) of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016.

It was alleged that the appellant was arrested in possession of two wildebeest tails and one Thomson Gazelle horn and each trophy had its value indicated in the charge sheet.

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During the hearing of this appeal, the appellant was unrepresented while the Respondent was ably represented by Mr. Fadhili Mwandoloma, learned State Attorney. The appellant's submission was short. He contended that the prosecution witnesses gave false testimonies in court. The prosecution failed to prove its case beyond reasonable doubt. He prayed this court to quash the conviction and set aside the sentence.

When it was the turn of Mr. Mwandoloma, learned Senior State Attorney for the respondent came for him to present their case in this appeal, he was quick to back the appeal of the appellant. He said, the appellant argues that the case was not proved beyond reasonable doubt.

Mr. Mwandoloma acceded that the witnesses of the prosecution contradicted themselves. PW1 said, they arrested the accused in possession of one bag while PW2 Jerome was also at the scene where the accused was arrested said they arrested the appellant in possessions of two bags. They are arresting officers, the contradiction ought to be cured by another witness, he added. He was of the view that an independent witness ought to have been called from the restaurant.

I Concur with the view of the learned State Attorney for the Respondent. The contradiction in respect of whether the appellant was arrested in possession of one bag or two bags is glaring on the record of the trial court and the contradiction goes to the root of the matter. The trial magistrate seems to have not heeded to the authority in **Mohamed Said Matula vs. R. [1995] TLR 3 (CA)**

*Held: (i) Where the testimonies by witnesses contain inconsistencies and contradictions, the court has a duty to address the inconsistencies and to resolve them where possible; else the court has to decide whether the inconsistencies and contradictions are only minor, or whether they go to the root of the matter.*

The trial magistrate ought to have dealt with the contradiction and come up with the decision just like the authority in **Mohamed's case** (supra) directs. The ground of appeal therefore has merits and I approve the same.

Finally, I consider the submission and view of Mr. Mwandoloma in pertaining to the search of the appellant. Mr. Mwandoloma contended that the search

was conducted at the police station instead at the scene of arrest of the appellant. The anomaly is huge and makes the evidence to be suspect. Section 42 of the Criminal Procedure Act requires the police to search there at the scene where it is emergence search. He referred this court to the case of **Emmanuel Lyabonga V.R. Criminal Appeal No. 257/2019** and was of the view that the search is suspicious and the doubt benefits the appellant. To back his argument, he cited **Emmanuel Kibona & others V.R. [1995] TLR 241.**

The views of Mr. Mwandoloma over the search march with the view of this court. The search evidence and the documentary evidence in concerning the search ought to have been not used in convicting the appellant as the search was illegal. Ultimately, the appellant ought to have been acquitted. see **Chaali Kiama v. Republic [1979] LRT 54:**

*Discovery of the alleged bait money in the toilet by a police officer in the absence of a civilian called for the purpose of witnessing the search casts doubt as to whether the alleged bait money was not planted there.*

Again, had the learned trial magistrate seen the decision in **Janta Joseph Komba & Others v. Republic Criminal Appeal no. 95 of 2006 (C.A.T.):**

*"We think that a lot of what is stated as above by the learned trial Principal Resident Magistrate with Extended Jurisdiction was speculation. ... Conviction in a criminal matter must be based on good ground and speculation has no room. The burden is on the prosecution to prove beyond reasonable doubt, that the accused committed the offence with which he is charged.*

*....*

*... and the police are obliged to abide by the law like everyone else. The obtaining of the statements of the appellants while still in custody outside the time provided under the law for investigative custody, contravened the provisions of the law. Section 169 of the Criminal Procedure Act provides for exclusion of evidence illegally obtained ...*

*The prosecution did not show how the admission of the appellants' statements in the circumstances of this case would specifically and substantially benefit the public interest without unduly prejudicing the rights and freedom of any person."*

would have not convicted the appellant based on the evidence on the record.

In the end, with the greatest respect to the learned trial magistrate, I sanction the appellant's grounds of appeal that the trial court erred at law and fact by convicting the appellant in a case which was not proved beyond reasonable doubt as required by criminal law. The conviction and sentence therefore cannot be judiciously 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 18<sup>th</sup> day of August 2021.



  
**J. F. Nkwabi**  
**Judge**

**Court:** Judgment is delivered in open court this 18<sup>th</sup> day of August, 2021 in the presence of Mr. John Kabengula, learned Senior State Attorney for the respondent and the appellant who is present in person.



  
**J. F. Nkwabi**  
**Judge**

**Court:** Right of appeal is explained.



**J. F. Nkwabi**

**Judge**

**18/08/2021**

