IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

CRIMINAL APPEAL NO. 30 OF 2021

RAMADHANI MOSHI @ VITALIS ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

(Arising from the decision of the District Court of Serengeti at Mugumu in Economic Case No. 138 of 2019)

JUDGMENT

11th and 20th August, 2021

KISANYA, J.:

The appellant, Ramadhan Moshi Vitalis and one, Magesa Magambo Masurya (who is not a party to this appeal, hereinafter referred to as the 2nd accused) were jointly and together charged and convicted before the District Court of Serengeti with three counts as follows:

1. Unlawful entry in the Game Reserve contrary to section 15(1) and (2) of the Wildlife Conservation Act, No.5 of 2009 (the WCA);
2. Unlawful possession of weapons in the Game Reserve contrary to section 17 (1) and (2) and 20(1)(b) (4) of the WCA read together with paragraph 14 of the First Schedule to the Economic and Organized Crime Control Act, Cap. 200 R.E 2002 (the EOCCA) as amended by the Written Laws (Miscellaneous Amendments) Act, No. 3 of 2016; and

3. Unlawful possession of Government Trophy contrary to sections 86 (1), and (2)(c) (iii) of the WCA as amended by the Written Laws (Miscellaneous Amendments) Act, No. 2 of 2016 read together with paragraph 14(d) of the First Schedule to the EOCCA as amended by Written Laws (Miscellaneous Amendments) Act, No. 3 of 2016.

Upon being convicted, the appellant and 2nd accused were sentenced to serve one (1) year imprisonment on the first and second counts and twenty (20) years imprisonment on the third count. The trial court ordered the sentences to run concurrently.

Briefly, it was in evidence that on 19th October, 2019 at 2130 hours, the appellant and 2nd accused were found by Pinetal Mafwele (PW1), Kabichi Suma (PW2) and other park rangers at Mto Chumvi area within Grumeti Ikorongo Game Reserve. When searched, the appellant and the 2nd accused were found in possession of two panga and the government trophy to wit, carcass of impala. It was adduced by PW1 and PW2 that the appellant had no permit to enter into the Game Reserve and permits to possess weapons in the Game Reserve and Government Trophies. Therefore, they were taken to Mugumu Police Station where File No. MUG/1R/3166/2019 was opened.

On 20th October, 2019, a wildlife warden namely, Wilbroad Vicent (PW3) went to Mugumu Police Station to identify and value the trophies

alleged to have been found in possession of the appellant. He certified that what the appellant was found in possession was carcass of impala and valued it at TZS 858,000. On the same date (20/10/2019), the said carcass of impala was disposed of following an order sought before the magistrate by WP 5665 DC Sijali (PW4).

To supplement oral testimonies adduced by PW1, PW2, PW3 and PW4 the prosecution tendered four exhibit namely, the certificate of seizure (Exhibit PE1), two panga (Exhibit PE2), the Trophy Valuation Certificate (Exhibit PE3) and Inventory Form (Exhibit PE3).

When placed on their defence, the appellant and 2nd accused refuted the charge against them. They stated on oath that they were arrested when they were on patrol against wild animals.

The trial court was satisfied that the charges, against both accused persons, were proven. It then went on to convict and sentence them as indicated above. Noteworthy is that the 2nd accused was convicted in absentia after defaulting to appear on the date of judgment.

Dissatisfied with the conviction and sentence, the appellant knocked at the doors of this Court, through the instant appeal. He fronted four grounds of appeal as follows: One, the cautioned statement was recorded beyond four hours specified by the law. Two, the trial court erred by relying

on certificate of seizure which was not prepared and signed by him at the scene of crime. Three, the trial court erred in law and fact by relying on contradictory evidence adduced by the prosecution. Four, the third person who signed the certificate of seizure was not called to testify.

When this matter was called on for hearing, the appellant appeared in person. On the other side, Mr. Nimrod Byamungu, learned State Attorney appeared for the respondent.

The appellant had nothing substantial to submit in support of the appeal. However, he added that the Government Trophy subject to this case was identified and valued in his absence. He went on to submit that the said Government Trophy was not tendered in evidence and that he was not present when the order for its disposal was issued by magistrate.

For the respondent, Mr. Byamungu supported the appeal on the third count and opposed the appeal on the first and second counts.

Supporting the appeal on the third count, the learned State Attorney conceded that the procedure of disposing of the Government Trophy was not complied with. He pointed out that, although PW4 testified that the appellant and 2nd accused were taken to magistrate who issued the order for disposal of the said trophy, nothing suggesting that they were heard before issuance of the said order. In that regard, the learned State Attorney was of

the view that the Inventory Form (Exhibit PE4) did not prove the offence of unlawful possession of Government Trophies. He therefore urged to me set aside the conviction and sentence on the third count.

With regard to the first and second counts, Mr. Byamungu submitted that the said offence were duly proved. He went on to reply to the grounds of appeal.

On the first ground, Mr. Byamungu argued that the alleged cautioned statement was not tendered in evidence and that the appellant was not convicted basing on the cautioned statement.

With respect to the second ground on the area where the certificate of seizure was signed the learned State Attorney submitted it was prepared and signed by the park rangers, appellant and 2nd accused at Mto Chumvi area within Grumeti Ikorongo Game Reserve. Therefore, he was of the view that, the procedure of completing the certificate of seizure was complied with.

However, Mr. Byamungu contended that Exhibits PE1 and PE2 were not cleared before being admitted. His contention was based on the fact that PW1 identified the said exhibits from the dock. Thus, he asked me to expunge both exhibits. However, the learned counsel was of the view that,

the remaining evidence of PW1 and PW2 proved the facts related to Exhibits PE1 and PE2.

Responding to the third ground on contradiction on the date of arresting the appellant, Mr. Byamungu submitted PW1 and PW2 testified to have arrested the appellant and the 2nd accused on 19/10/2019 while PW4 was assigned to investigate the case on 20/10/2019. Therefore, he argued that the prosecution witnesses did not contradict each other.

In relation to the fourth ground on failure to call a third person who signed Exhibit P1, the learned State Attorney conceded that, Zephania whose name and signature appear on Exhibit PE1 was not called to testify. However, he contended that his evidence was covered by PW1 and PW2 who arrested the appellant on the material date.

Mr. Byamungu went on to invite the Court to consider that the sentence imposed by the trial court on the second count is illegal. He argued that unlawful possession of weapons in the Game Reserve is an economic offence and hence, punishable to a minimum sentence of twenty years imprisonment. He therefore, asked the Court to use its revisionary powers by enhancing the sentence. When probed by the Court on whether the second count was proved, the learned counsel replied in affirmative. Rejoining, the appellant implored the Court to discharge him.

I have carefully considered the evidence on record and taken into account the petition of appeal and the submission. The main issue is whether the prosecution proved its case. I propose to address this appeal in the same order it was canvassed by the learned State Attorney.

Starting with the third count, Mr. Byamungu readily conceded that the offence of unlawful possession of Government Trophies was not proved. As indicated earlier, the appellant was said to have been found in unlawful possession of carcass of impala valued at TZS 858,000. However, the said carcass of impala was not tendered in evidence. The prosecution, through PW4 tendered an Inventory Form (Exhibit PE4). I agree with Mr. Byamungu that, neither PW4 nor Exhibit PE4 show that the appellant and 2nd accused were heard before the magistrate who issued the order for disposal of trophies. The said defect contravened paragraph 25 of the PGO No. 229 (INVESTIGATION - EXHIBITS). It is now settled that an Inventory Form premised on the procedure in which the accused was not heard cannot be acted upon to prove the offence laid against him. See the case of **Mohamed Juma @ Mpakama vs R,** Criminal Appeal No. 385 of 2017, CAT (unreported), where that position was held by the Court of Appeal. For the foregoing, I am at one with the appellant and the learned State Attorney that the third count was not proved.

As regards the second count on unlawful possession of weapons in the Game Reserve, Mr. Byamungu was of the firm view that it was proved. I beg to differ with him. In terms of the particulars of offence and section 17(3) of the WCA, the prosecution was required to prove that the appellant and 2nd accused "failed to satisfy an authorized officer" that the said two pangas "were intended to be used for purposes other than hunting, killing, wounding or capturing of wild animals.

In the instant case, the authorized officers are PW1, PW2 and PW4. None of them told the Court that the appellant and 2nd accused failed to demonstrate that the two panga found in their possession were intended to be used for purposes other than hunting, killing, wounding or capturing of wild animals. In the circumstances where the prosecution failed to prove that the appellant was found in unlawful possession of Government Trophies, I am of the view that the above particulars were required to be proved. For that reason, I hold that the 2nd count was not proved.

I now revert to the first count on unlawful entry into the Game Reserve. I have traversed on evidence adduced by PW1 and PW2. Their evidence was direct and to the effect that the appellant and 2nd accused were found at Mto Chumvi area within Grumeti Ikorongo Game Reserve on 19/10/2019. The appellant did not raise doubt on evidence of PW1 and PW2 on the issue under consideration. He testified that he was arrested when he

and other villagers were patrolling the farm against elephants. That fact was not put to PW1 and PW2. As that was not enough, the villagers who were with him on the material date were not called to support his defence of alibi. For that reason, I am at one with Mr. Byamungu that the first count was proved.

On the first ground that the appellant's cautioned statement was recorded out of time prescribed by the law, with respect, I find this ground to be misplaced. As rightly argued by the learned State Attorney, the prosecution did not tender the appellant's cautioned statement. In that regard, this is unfounded because the appellant was not convicted basing on his cautioned statement.

The second and fourth grounds which seek to challenge the certificate of seizure (Exhibit PE1) should not hold. The relevance of Exhibit PE1 was to prove that the appellant and 2nd accused were found in possession of two panga and one carcass of impala. In other words, Exhibit PE1 aimed at proving the second and third counts. Since I have held herein that the said offences were not proved, I find it not necessary to address this ground.

In dealing with the third complaint on contradiction on the prosecution, I have examined evidence of PW1, PW2, PW3 and PW2 with a view to satisfy myself on the appellant's complaint. As stated earlier, PW1 and PW2 are

park rangers who testified to have arrested the appellant and 2nd accused on 19/10/2019 at 21.30 pm. On the other hand, PW4 deposed that he was assigned to investigate the matter 20/10/2019. One of his duties was to call PW3 who identified and valued the trophy on the 20/10/2019. It follows that the prosecution witness did contradict each other on the date of arresting the appellant. Thus, the third ground is not meritorious as well.

In the final analysis, the appeal is allowed in respect of the 2nd and 3rd counts and dismissed on the first count. As a result, the appellant's conviction on the second and third counts is quashed and the sentences thereon set aside. This implies that the appellant shall continue to serve one (1) year imprisonment (from 08/12/2020) on the first count as ordered by the trial court. It is so ordered.

DATED at MUSOMA this 20th day of August, 2021.

E. S. Kisanya
JUDGE

Court: Court: Judgment delivered this 20th day of August, 2021 in presence of Mr. Nimrod Byamungu, learned State Attorney for the respondent and in the absence of the appellant. B/C Kelvin present.

E. S. Kisanya
JUDGE
20/08/2021