

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

**AT SUMBAWANGA**

**DC. CRIMINAL APPEAL NO. 34 OF 2021**

(C/O Economic Crimes Case No. 12 of 2019 Mlele District Court)

**JENELOZA D/O NOEL ..... 1<sup>st</sup> APPELLANT**  
**SABAS S/O MWANDA ..... 2<sup>nd</sup> APPELLANT**

**VERSUS**

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

17 & 23/08/2021

**JUDGMENT**

**Nkwabi, J.:**

The appellants were upset by the conviction and sentence of the trial court in Economic Crimes case No. 12 of 2019. To express their sadness in over the conviction and sentence they 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 appellants against the decision of the trial court:

- 1. That the trial court erred at law and fact by convicting the appellants basing upon seizure of Government trophies without issuance of*


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*receipt acknowledging the seizure contrary to section 38(3) of the CPA  
Cap 20 R.E. 2019.*

- 2. That the trial court erred in law by convicting appellants depending on  
chain of custody which was admitted contrary to the law.*
- 3. That the trial court erred at law and fact by convicting the appellants  
for a case which was not proved beyond reasonable doubt.*

The appellant stood trial before the District Court of Mlele at Mlele in Economic Crimes case No. 12 of 2019 for one count of unlawful possession of Government trophies 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 section 16(a) and 13(b) of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016.

It was alleged that the appellants were arrested in possession of one kilogram giraffe meat value at T.shs 34,500,000/=. The arrest was conducted at the residence of the 1<sup>st</sup> appellant where it appears that the 2<sup>nd</sup> appellant had visited hence the implication in the offence.

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Amidst the hearing of this appeal, the appellants appeared in person on the one hand while the Respondent was ably represented by Mr. John Kabengula, learned State Attorney.

I am of the view that the 3<sup>rd</sup> ground of appeal disposes the appeal and I will canvass the same. It was to the effect that the trial court erred at law and fact by convicting the appellants for a case which was not proved beyond reasonable doubt.

The appellants' submissions in this appeal were very brief. The 2<sup>nd</sup> appellant had nothing to say more than the grounds of appeal they tabled before this court. He prayed they be adopted as part of his submissions.

1<sup>st</sup> Appellant said she was not satisfied with the conviction and sentence and prayed to adopt my grounds of appeal as her submissions.

Of course, both appellants had nothing to remark in rejoinder



Then it was the turn of Mr. John Kabengula, learned State Attorney for the respondent to submit over the appeal. He expressed he had noted something which was not correct in the proceedings of the trial court. The procedure was not followed. He referred this court to the 2<sup>nd</sup> page of the proceedings. He observed prior to being destroyed the pieces of meat was admitted as exhibit. Then order of destruction was issued. At the time it was admitted, the trial court had no jurisdiction. There was no evaluation report and the meat had not been established to be that of giraffe.

Mr. Kabengula disclosed that the order for destruction, was wrong as it ought to have been there inventory order made by another magistrate. The procedure was not followed. He prayed the exhibit be expunged from the record.

My perception tallies with that of the learned State Attorney for the respondent. At the time the alleged giraffe meat was admitted, the learned trial magistrate had no jurisdiction, therefore, had no jurisdiction to admit the meat as an exhibit. On the very day, he clearly indicated that he could not take the plea of the appellants because there was no certificate and

consent as per section 12(3) and 26(2) of the Economic and Organized Crimes Control Act. Again, there was no prayer from the prosecution for the meat to be admitted as exhibit, so the trial magistrate granted a relief which was not prayed for, illegally. Exhibit P1 ought to be expunged from the record and I proceed to do so. As rightly pointed out by Mr. Kabengula, without the meat featuring anywhere in the evidence, the charge against the appellants could not stand and ought to be dismissed.

Mr. Kabengula further remarked that then what remains after the expunging of exhibit P1 are the documentary exhibits. No inventory in the record, then there is no any evidence that proves the charge against the appellants. He stressed, there is doubt then. The 1<sup>st</sup> appellant in her defence testified that she bought the meat believing it was meat of cow. Mr. Kabengula concluded that they did not prove the charge beyond reasonable doubt. He prayed the appellants' appeal be allowed, conviction quashed and the appellants set free.

I scanned the proceedings of the court, though the prosecution called 9 witnesses in an endeavour to prove the charge against the appellants, no witness tendered an inventory of the destructed alleged giraffe meat. The argument by the learned State Attorney therefore, should be accepted.

In fine, the 3<sup>rd</sup> ground of appeal in the petition of appeal to the effect that the trial court erred at law and fact by convicting the appellants for a case which was not proved beyond reasonable doubt is excellent.

To wrap-up, with the greatest respect to the learned trial magistrate, I am satisfied that the trial court erred in law and fact in convicting the appellants in a case which was not proved beyond reasonable doubt. The conviction and sentence are quashed and set aside respectively. The appellants are to be set free unless they are otherwise held for other lawful cause(s).

It is so ordered.

DATED and signed at SUMBAWANGA this 23<sup>rd</sup> day of August 2021.

**J. F. Nkwabi**

**Judge**




**Court:** Judgment is delivered in open court this 23<sup>rd</sup> day of August, 2021 in the presence of Mr. Simon Peres, learned State Attorney for the respondent through video link and the appellants who are present in person through video link.

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

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



  
**J. F. Nkwabi**  
**Judge**  
**23/08/2021**