

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

APPELLATE JURISDICTION

(DC) CRIMINAL APPEAL NO. 18 OF 2021

(Arising from Economic Case No. 12 of 2019 of Kasulu District Court Before C.A.
Mushi, RM)

ALFAXAD S/O MBIHA..... APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

J U D G M E N T

01st & 01st September, 2021

A. MATUMA J.

The appellant was charged and convicted of unlawful possession of government trophy contrary to section 86 (1) (2) (b) of the Wildlife Conservation Act, No. 5 of 2009 read together with paragraph 14 of the 1st Schedule to and Sections 57 (1) and 60 (2) of the Economic and Organized Crimes Control Act, Cap. 200 R.E. 2019.

He was sentenced to a custodial sentence of twenty years (jail term). Aggrieved with such conviction and sentence by the District Court of Kasulu, the appellant has preferred this appeal with four grounds but for the purpose of determination of this appeal, only the first ground suffices

to dispose of this appeal. This is a challenge of the prosecution evidence generally that the same did not prove the case against the appellant beyond reasonable doubt.

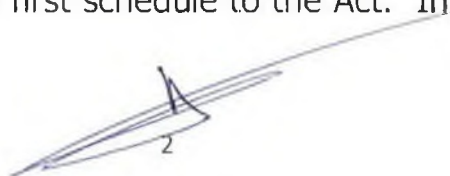
At the hearing of this appeal the appellant was present in person and represented by advocate Thomas Msasa. The Respondent/Republic was represented by Mr. Clement Masua learned State Attorney.

Both Counsels agreed that the prosecution case was not proved beyond reasonable doubts against the appellant. the deficiencies are; defectiveness of the charge sheet for want of proper charging, chain of custody of alleged trophy exhibit, the manner in which the inventory of the exhibit was executed and failure of the trial court to give weight the defence evidence.

I agree with both learned brethren that in fact the prosecution case was not proved to the required standard.

I will use only one deficiency to dispose of this appeal.

As I have indicated herein above, the appellant was charged under the provisions of section 86 (1) (2) (b) of the Wildlife Act supra. Under such provision (subsection 2 (b)), the referred animals are those which fall under the first part of the first schedule to the Act. In that Schedule the

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protected animal is Mountain-Reedbuck or in Swahili Tohe-mlima among others. The appellant was not charged for having been found in possession of the said Tohe-mlima but he was charged for possession of Reedbuck generally which does not feature in the law.

On the other hand, PW4 Elikana Abihudi Maige vide exhibit P3 the Trophy Valuation Certificate identified the trophy to be Bohor-Reedbuck (Tohe-ndope) which is found in the second schedule.

To put it simple, the evidence on record tried to establish possession of the trophy which the appellant was not alleged to have been found in possession. In that respect the charge against the appellant that he was found in possession of Reedbuck which was not specified was not proved. He ought to have been charged for specific specie of the trophy and the evidence given pointing specifically on the specific trophy he was found with.

The reedbuck according to the law are three; Mountain-Reedbuck, Bohor-Reedbuck and Southern-reedbuck. The charge sheet does not allege either of such reedbucks. It thus beared general allegations which are not accommodated under the law.

With such observations and without dwelling into other complaints, I find this appeal to have been brought with sufficient cause and I allow it. It

is hereby ordered that the appellant's conviction is quashed and the sentence set aside. He should be released from custody forthwith unless held for some other lawful cause.

It is so ordered.



A. Matuma

Judge

01/09/2021

Court: Judgment delivered in the presence of the appellant in person and his advocate Mr. Thomas Msasa and in the presence of Mr. Clement Masua learned State Attorney. Right of further appeal explained.

Sgd: Matuma

Judge

01/09/2021