

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

CRIMINAL APPEAL NO. 21 OF 2021

MADUHU MALEGI @ NILA APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

***(Arising from the decision of the District Court of Serengeti at
Mugumu in Economic Case No. 57 of 2020)***

JUDGMENT

18th August and 23rd September, 2021

KISANYA, J.:

Maduhu Malegi @Nila, the appellant herein, seeks reversal of the decision of the District Court of Serengeti sitting at Mugumu ni Economic Case No. 57 of 2020. In terms of the aforesaid decision, the appellant was convicted of offences of unlawful entry into the National Park contrary to section 21 (1) (a), (2) and 29 (1) of the National Parks Act [Cap. 282, R.E. 2002] (as amended), unlawful possession of weapons in the National Park contrary to section 24 (1) (b) and (2) of the National Parks Act [Cap, 282 R.E. 2002] and unlawful possession of the Government trophies contrary to section 86 (1) and (2) (b) of the Wildlife Conservation Act No. 5 of 2009 as amended read together with paragraph 14 of the first schedule to the Economic and Organized Crime Control Act [Cap. 200, R.E. 2002] as amended. Upon conviction, he was sentenced to

one (1) imprisonment on the first and second count and twenty (20) years imprisonment on the third count.

The essential facts of the case are that, on 18th June, 2019 at 0730 hours, the appellant and one Peter Bumbura who is not subject to this appeal (hereinafter referred as the 1st accused) were arrested by the park rangers at Simiti area within Serengeti National Park in Serengeti District. It was the evidence of Paineto Mafwele (PW1) and Juma Kunani (PW3) that the appellant and the 1st accused were found in possession of: weapons to wit, one knife, one spear and three animal trapping wires; and government trophies to wit, two pieces of fresh meat of zebra and one hind limb of zebra. PW1 and PW3 testified further that the appellant and 1st accused had no permit to enter into the National Park, permit to possess weapons in the National Park and permit to possess the government trophies. Therefore, the said weapons and government trophies were seized and the matter reported to the Mugumu Police Station. Wilbroad Vicent (PW2) was summoned at Mugumu Police Station to identify and value the government trophies alleged to have been found in possession of the appellant and 1st accused. He identified and valued the said two fresh meat of zebra and one hind limb of zebra at Tshs. 2,640,000/= Since the said government trophies were subject to speed decay, G3694 DC Shaban (PW4) applied before the magistrate for disposal of the same. In addition to the oral testimonies of PW1, PW2, PW3 and PW4, the prosecution tendered four exhibits namely, the certificate of seizure (Exhibit PE1), the weapons - one

knife, one spear and three animal trapping wires (Exhibit PE2), the trophy valuation certificate (Exhibit PE3) and the inventory form (Exhibit PE4).

It is pertinent to note here that the charges against the 1st accused were withdrawn by the prosecution under section 98 (a) of the Criminal Procedure Act [Cap. 20, R.E. 2019] immediately before the preliminary hearing.

In his defence, the appellant denied to have committed the offence laid against him. His evidence was to the effect that he was arrested at the house of Moremi Chora where he went to visit him. He summoned the said Moremi Chora (DW2) to support his evidence.

As already hinted, the learned magistrate was impressed that all counts were proven beyond reasonable doubt. In consequence, the appellant was convicted and sentenced as indicated hereinabove.

Therefore, in this appeal the appellant seeks reversal of the trial court's judgment and sentence. His petition of appeal had three grounds of appeal. All grounds were premised on one complaint that, the prosecution case was not proved beyond all reasonable doubts.

During the hearing of this appeal, both parties appeared virtually. The appellant appeared in person connected from Mugumu Prison. On the other hand, the respondent had the services of Mr. Nimrod Byamungu, the learned State Attorney who was connected from the National Prosecutions Service - Mara Region.

When invited to argue the appeal, the appellant prayed to adopt the petition of appeal as part of his submission. He submitted further that he did not commit the offence. He also contended that he was arrested at Chora's house and implicated in the case at hand. Therefore, he urged the Court to discharge him.

In response, Mr. Byamungu supported the appeal. He submitted that the procedure employed to dispose of the government trophies subject to this case was contrary to the law. The learned State Attorney pointed out the prosecution did not adduce evidence to prove that the appellant was heard by the magistrate who issued the order for disposal of trophies. In that regard, he was of the view that the third count on unlawful possession of government trophies was not duly proved.

The learned State Attorney submitted further that the appellant defence that he (the appellant) was arrested at his friend's house was not contradicted by the prosecution. Therefore, he contended that the appellant managed to raise doubt on the prosecution case. From the foregoing submission, Mr. Byamungu asked the Court to allow the appeal, quash the conviction and set aside the sentence imposed by the trial court.

This Court will proceed to discuss the appeal basing on the ground whether the prosecution proved its case beyond reasonable doubt. The principle is that any doubt on the prosecution ends in favour of the accused. Further,

this being the first appeal, I am inclined to re-evaluate the whole evidence adduced before the trial court with a view to satisfy myself on whether the trial court's findings should be allowed to stand or not.

It is common ground that the prosecution case was based on the oral testimonies of PW1, PW2, PW3 and PW4 and four exhibits. Upon re-evaluation of the evidence adduced by the prosecution, I have noted the following:

First, there is contradiction on the park rangers who arrested the appellant and 1st accused. While PW1 and PW3 testified that the appellant and 1st accused were arrested by Paineto Mafwele (PW1), Juma Kunani (PW3), Amosi Mjungu and Musa Maduka, Exhibit PE1 names Martin Juma, Amosi Mjungu, Juman Kunani Amani Mwambo and Paineto Mafwele. Therefore, in terms of Exhibit PE1, Musa Maduka named by PW1 and PW3 is not among the park rangers who arrested the appellant and 1st accused. On the other hand, PW1 and PW2 did not mention whether Martin Juma and Amani Mwambo listed in Exhibit PE1 were present at the time of arresting the appellant. In my considered view, the said contradiction goes to the root of the case. It is not clear as to why the prosecution evidence is not certain on the park rangers who were on patrol on the material day or park rangers who arrested the appellant. Much as the appellant disputed to have been arrested within Serengeti National Park, the prosecution ought to have proved how the appellant was found and

arrested within Serengeti National Park. In view thereof, the contradiction pointed herein suggests doubt on the prosecution case.

Second, according to charge, the appellant was alleged to have been found at **Simitu** area within Serengeti National Park. However, Exhibit PE1 shows that the appellant and 1st accused were found at **SENAPA Eneo Dogo-SIMITI**. On his part, PW3 deposed that they were at **Simitin** area within Serengeti National Park, while PW1 was silent on the fact as to the area where the appellant and 1st accused were found. It is was cleared by the prosecution on whether **Simitu**, **SENAPA Eneo Dogo-SIMITI** and **Simitini** refers to the same place. Otherwise, the prosecution did prove that the appellant was found at the place or area (i.e. Simitu area, Serengeti National Park) named in the charge. For that reason, the appellant's defence that he was found at his friend's house raised doubt on the prosecution case. This is so when it is considered that the prosecution did not cross-examine DW2 who testified that the appellant was arrested at his (DW2) house.

Third, it is in evidence that this matter was investigated by PW4. His testimony shows that the investigation carried out by him was related to the offence of unlawful possession of government trophies. He did not tell the trial court whether the appellant was alleged to have committed the offences of unlawful entry into the game reserve and unlawful possession of weapons into the national park.

Fourth, the government trophies subject to this case were not tendered in evidence. The prosecution relied on evidence of PW4 and Exhibit PE4 that the said trophies could not be preserved until the case is heard and thus, disposed of by an order of the magistrate. However, as rightly observed by the learned State Attorney, the procedure governing disposal of exhibits were not complied with. The testimony of PW4 suggests that the trophies alleged to have been found in possession were disposed of under the Police General Order (PGO). This is reflected in PW4's evidence when he stated:

"My duties among others are to investigate all criminal cases, arrest offenders, interrogate offenders and other duties as provided under Police General Orders (PGO) [Cap 352]"

The relevant provision on disposing of the exhibit is paragraph 25 of the PGO (Exhibits) which provides as follows:

"Perishable exhibits which cannot easily be preserved until the case is heard, shall be brought before the Magistrate, together with the prisoner if any so that the Magistrate may note the exhibits and order immediate disposal. Where possible, such exhibits should be photographed before disposal."

In his testimony, PW4 adduced to have prepared the Inventory form (Exhibit PE4) and presented the appellant together with the government trophies before the magistrate who ordered the disposal of the said trophies. That was not enough, the law requires the accused to be accorded the right to be heard by the magistrate who issues the disposal order. See the case of of **Mohamed Juma @ Mpakama vs R**, Criminal Appeal no. 385 of 2017, CAT (unreported). Since the evidence on whether the appellant was accorded the

right to be heard is wanting, PW4's evidence and Exhibit PE4 that the trophies were disposed by the order of the magistrate cannot be used to prove the third count on unlawful possession of government trophies.

From the foregoing findings, I am in agreement with the appellant and the learned State Attorney that, all offences levelled against the appellant were not proved beyond all reasonable doubts.

That said and done, I am satisfied that the appellant's conviction cannot be sustained and, accordingly, his appeal is meritorious. The conviction and sentence are, respectively, quashed and set aside. It is ordered that the appellant should be released from the prison custody forthwith unless he is detained for some other lawful cause.

DATED this 23rd day of September, 2021.



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E.S. Kisanya
JUDGE

Order: Judgment to be delivered by the Deputy Registrar.




A handwritten signature in blue ink, appearing to be "E.S. Kisanya".

E.S. Kisanya
JUDGE
23/09/2021

Court: Judgment delivered this 23rd day of September, 2021 in the presence of the respondent and absence of the appellant




F. L. Moshi
Deputy Registrar
23/09/2021

Court: Right of appeal properly explained




F. L. Moshi
Deputy Registrar
23/09/2021

Deputy Registrar
High Court Of Tanzania
Musoma