

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MBEYA REGISTRY**

**AT MBEYA**

**CRIMINAL APPEAL NO. 158 OF 2019**

*(Arising from Economic Crime Case No. 12/2019 in the District Court  
of Chunya at Chunya)*

**HAMIS JOHN KIJA-----APPELLANT**

**VERSUS**

**THE REPUBLIC -----RESPONDENT**

**JUDGEMENT**

*Date of last order: 06.08.2020*

*Date of Decision: 17.09.2021*

**Ebrahim, J.:**

The Appellant herein has filed the instant appeal raising three grounds of appeal as follows:

1. That the trial magistrate erred in law and fact to convict the appellant without an independent witness from the area of the scene.
2. That the trial magistrate erred in law and fact to convict the appellant basing on contradictory evidence of prosecution witnesses.

3. That the evidence given by PW1 and PW2 was not corroborated.

The Appellant was charged with two counts. **The 1<sup>st</sup> count** was unlawful possession of government trophies **c/s 86(1) and (2) (c)(iii) of the Wildlife Conservation Act No. 05 of 2009 as amended by section 59 of the Written Laws (Miscellaneous Amendments) Act No. 2 of 2016** read together with **paragraph 14 of the 1<sup>st</sup> Schedule to and Section 57(1) of the Economic and Organized Crimes Control Act, Cap 200 RE 2002 as amended by Written Laws (Miscellaneous Amendment) Act No. 3 of 2016.**

**The 2<sup>nd</sup> count** was unlawful possession of government trophies **c/s 86(1) and (2) (c)(ii) and (3) of the Wildlife Conservation Act No. 05 of 2009 as amended by section 59 of the Written Laws (Miscellaneous Amendments) Act No. 2 of 2016** read together with **paragraph 14 of the 1<sup>st</sup> Schedule to and Sections 57(1) and 60 (2) of the Economic and Organized Crimes Control Act, Cap 200 RE 2002 as amended by section 16 of the Written Laws (Miscellaneous Amendment) Act No. 3 of 2016.**

It was alleged by prosecution side that the Appellant on 21<sup>st</sup> day of September, 2018 at Lupatingatinga village within Chunya District in Mbeya Region was found in possession of leopard and lion skin totalling the value of TZS. 19,212,480/-, the property of the Government of the United Republic of Tanzania.

The brief facts of the case gathered from the proceedings on record is that the on 21.09.2018 at around 1630hrs when PC H2866 was in a bus travelling from Chunya to Lupatingatinga. He phoned PW1 G.8064 DC Chesco asking for assistance in arresting the appellant after he became suspicious of him. The arrest was effected and one Athman Mikidadi- PW2 was a witness to the search. In searching the appellant, they found him with a leopard skin and a piece of a lion skin hence the charged offence. Prosecution paraded four witnesses and the appellant adduced his own evidence. After hearing the evidence from both parties, the trial court convicted the accused and sentenced him to pay fine of Tshs. 112,072,800/- for the first count or serve a term of 20 years imprisonment. On the second count, the appellant was sentenced to pay a fine of Tshs. 8,005,200/- or serve a jail term of twenty years imprisonment.

When the case was called for hearing, the appellant appeared in person, unrepresented. The respondent was represented by Ms. Bernadetta Thomas, learned State Attorney.

The appellant adopted his grounds of appeal and prayed for the same to be considered by the court.

Responding to the grounds of appeal, counsel for the respondent responded to the first ground of appeal that when PW1 was searching the appellant it was in the presence of Athumani Mikidadi (PW2). Therefore, PW2 corroborated the testimony of PW1 as an independent witness who said that the appellant said he was using the skins for his witch-doctor's activities. He added on the point that one witness is enough to prove a fact at issue as per **section 143 of the Evidence Act, Cap 6 RE 2019.**

Responding to the second ground of appeal, counsel for the respondent stated that the evidence was not contradictory and the appellant has not pointed out any to raise a reasonable doubt.

As for the 3<sup>rd</sup> ground of appeal that the evidence of PW2 was a mere story, counsel for the respondent contended that PW2 witnessed the appellant being searched and he witnessed the seizure certificate (exhibit P1). She submitted further that PW3 corroborated the evidence of PW1 and PW2 by testifying that he was present when the appellant was arrested in the presence of PW2. PW4 examined the skins and prepared a valuation report which was admitted as exhibit P2. The skins were admitted as exhibits PE3 and PE4 respectively. She prayed for the appeal to be dismissed.

Being the first appellate court, I am obliged to subject the *"entire evidence to an objective scrutiny and arrive to its own findings of facts"*. The principle was held in the case of **Charles Mato Isangala and 2 Others V The Republic**, Criminal Appeal No. 308 of 2013.

I have thoroughly gone through the submission by the counsel for the respondent and the grounds of appeal. I shall determine the grounds of appeal generally. The appellant complained that there

was no independent witness. He complained also that there was contradiction in the evidence of the prosecutions witnesses.

Going through the testimony of **PW1**, he told the court that he received a phone call from **PW3** on 21.09.2018 at 1630hrs seeking for help to arrest a suspect who was in the same bus with him. **PW1** went to the bus stop at Lupatingatinga, arrested the appellant and took him to the police station where they interrogated and searched him before PW2. They found the appellant with a piece of a leopard skin and a lion skin. They filled in a seizure certificate (exhibit P1). **PW2** said he was at Lupatingatinga police station around 1630hours on his own business when he saw two police men bringing a suspect. They called him to witness the search and the said suspect was found in his trouser pockets with 2 pieces of leopard and lion skin. Police, PW2 and the suspected person signed the seizure certificate. PW3 telling the same story that together with PW1 arrested the appellant and took him to police station together with PW2. The question now comes where did PW1 and PW3 meet with PW2. While PW1 said they met PW2 at the police station and PW2 said he was at the police station, PW3 said after arresting the appellant they went to police

station with PW2. This is a contradiction. The appellants stated in his testimony that he was arrested when he was coming from a funeral at Upendo Village and sent to Lupatingatinga police station where he was kept for a week. He said PW2 was a militia man and not peasant. He denied to have been found with any trophy or being searched.

Going by the testimonies of prosecution witnesses, it is not hard to see that there is contradiction on where they found the said independent witness. The Court of Appeal said in the case of **Mohamed Said Matula V R**, (1995) TLR 3 that;

*"Where the testimonies by witnesses contain inconsistencies and contradictions, the court has a duty to address the inconsistencies and try 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".*

I find the contradictions go to the root of the matter in considering the defence of the appellant that PW2 was not an ordinary citizen. Again, considering that PW3 was also present when the appellant was arrested, it would be weird to confuse at to

whether they went with PW2 from the bus stand to the police or they found PW2 at the police. More-so it also poses a question and a doubt as to why wait after they had arrested the appellant and the fact that PW3 was suspicious of him until they go to the police to search him? What stopped them from searching him where they arrested him with other independent people observing their arrest and search. Therefore, their inconsistency in their testimonies raises doubt and poses many questions which I find that it tests their credibility contrary to the principle set in the case of **Goodluck Kyando VR**, Criminal Appeal No 118 of 2003.

Again, in scrutinizing exhibit P1, I found that PW1 has signed at line no 1 indicating that he was a witness to the search whilst at the same time he has confirmed in the form that he was the one who conducted the search and signed at no.4 being an officer executing the search. **Section 38(3) of the Criminal Procedure Act, Cap 20 RE 2019** states clearly that the police officer conducting the search shall sign together with the owner of the premises together with an independent witness. Of-course it is common sense with independent witness it means a person who has no affiliation with



the matter at issue. Thus, the act of PW1 signing both as a police who conducted the search and a witness makes exhibit P1 to lose weight as it is tainted with irregularities. I accordingly expunge it from the record.

That being said, there is only remained the evidence of PW1, PW2 and PW3 which is also tainted with contradictions. The evidence of PW4 cannot stand alone to form basis of conviction without solid proof that indeed the appellant was found with the alleged Government Trophy.

That being said, I find that prosecution evidence is spotted with shadows of doubt and as the law requires those doubts should benefit the appellant.

Consequently, I allow the appeal and order immediate release of the Appellant from prison unless otherwise lawfully held.

Ordered accordingly.



**Mbeya**

**17.09.2021**

  
**R.A. Ebrahim**  
**Judge**

**Date:** 20.09.2021.

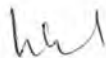
**Coram:** Hon. P. D. Ntumo – PRM, Ag-DR.

**Appellant:** In Songea Prison via virtual court.

**For the Republic:** Miss. Xaveria – State Attorney.

**B/C:** Gaudensia.

**Court:** Judgement delivered in open chambers via virtual court while the appellant is in Songea Prison this 20<sup>th</sup> day of September 2021.



P.D. Ntumo - PRM

Ag- Deputy Registrar

20/09/2021