IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

CRIMINAL APPEAL NO. 56 OF 2020

(Original Economic case No. 03 of 2019 at the District Court of Babati)

IDD ALLY MNYANGATA ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

JUDGMENT

26/11/2020 & 15/2/2021

ROBERT, J:-

The Appellant was convicted and sentenced to twenty years imprisonment by the District Court of Babati for 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 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 sections 16(a) and 13(b) respectively of the Written Laws (Miscellaneous

Amendments) Act, No. 3 of 2016. Aggrieved, he lodged this appeal against the conviction and sentence given by the trial court.

The prosecution case was to the effect that on 26th day of January, 2019 at Itolwa village within Chemba District in Dodoma Region the Appellant was found in unlawful possession of seven pieces of Elephant Tusks weighing 20.3 kilograms valued at Tanzanian Shillings One Hundred Thirty Eight Million only (TZS 138,000,000/=) the property of Tanzania Government without permit from the Director of Wildlife. The Appellant denied these allegations and the prosecution brought five witnesses to prove the case against him.

After a full trial, the court was convinced that the evidence adduced by prosecution was relevant, cogent, and credible. The court was further convinced that the evidence adduced left no reasonable doubt that the Appellant was found with the trophies without any permit from the Director of Wildlife and convicted him as charged. He was sentenced to twenty years imprisonment. Aggrieved, the Appellant filed this appeal to challenge the decision of the trial court on four grounds as follows:

1. *That, the trial Court erred in law and in fact convicting the appellant basing on the poor and weak evidence of certificate of seizure (PE1)*
2. *That, the learned trial magistrate erred in law and in fact when he failed to analyse and evaluate evidence in records.*
3. *That, the trial counsel (sic) grossly erred in law and in fact when it convicted the appellant basing on the evidence of PW1, PW2, and PW4 which was contradictory.*
4. *That, the trial court decisions were bad in law lacking reasoning and legal legs to stand.*

When this appeal came up for hearing on 26th November, 2020 the Appellant appeared in person unrepresented whereas the Respondent was represented by Mr. Ahmed Hatibu, Learned State Attorney.

Submitting on the first ground of appeal, the Appellant faulted the trial court for convicting him based on the weak evidence of the certificate of seizure. He argued that in the testimony of PW1 at page 15 to 18 of the proceedings as well as his statements dated 26th January, 2019 and 16th September, 2019, PW1 indicated that he filled the certificate of seizure with information which indicates that they seized two big elephant tusks, one of

which was small and the other one was worn out as well as three pieces of tusks. However, the charge sheet indicates that he was found in unlawful possession of 7 pieces of elephant tusks weighing 20.3 kilograms worth TZS 138,000,000/=.

He argued further that, the charge sheet being the basis of allegations filed against him, all exhibits and prosecution witnesses should prove the allegations raised according to the charge sheet and proof must be beyond reasonable doubt.

He pointed out that the number of elephant tasks mentioned at pages 13,14,19,20,26,28 and 29 of the proceedings differs with the number indicated in the certificate of seizure which indicates that the certificate of seizure has weaknesses and should not have been admitted.

Responding to the first ground Mr. Hatibu argued that, the certificate of seizure has no any problem, it was properly filled at the scene of crime as explained by PW1. He noted that, the Appellant did not object to the tendering of the certificate of seizure at the trial court. He submitted further that, PW2 identified the certificate of seizure in court after explaining how it was filled. All procedures leading to its admissibility were

followed. He stated that, at page 18 of the proceedings the witness explained that the circumstances of the area where the Appellant was arrested, in the bushes, did not allow them to get an independent witness.

On the alleged irregularities to the charge sheet, he argued that there were no any deficiencies. He admitted that the charge sheet alleged that the Appellant was found in possession of seven pieces of elephant tusks and that is the same number of trophies mentioned by all witnesses. PW2 said there were two big pieces, two small ones and three pieces were cut which came from one tusk, so there were no inconsistencies with the charge sheet.

On the value of the tusks, he submitted that, explanation on the value cannot be given in the charge sheet that is why PW3 who is the valuer explained that the tusks were from four elephants.

On the fact that at page 16 and 20 one exhibit was tendered by two witnesses, he submitted that the exhibit was tendered by one witness only, the other witness did not tender the exhibit, he simply identified it.

He submitted that the alleged offence took place on 21/1/2019 and by 29/1/2019 is when the valuation was done.

He submitted that, the fact that PW1 did not mention who instructed him is of no significance.

On the second ground, he argued that all the evidence produced in court has the same weaknesses and irregularities just like the certificate of seizure (exhibit P1). He maintained that the contradictions between all five prosecution witnesses is a clear indication that prosecution evidence was not reliable to prove a case beyond reasonable doubt. He submitted further that there was no proper explanation on how the value of elephant trophies indicated in the charge sheet was arrived at.

He pointed out the areas of contradiction between the five prosecution witnesses. He noted that at page 16 and 20 exhibit P1 was tendered by two different persons. He noted that there were other contradictions at page 12, 13 and 16.

Further to that, he argued that the offence was alleged to happen on 21/1/2019 but at page 23 of the proceedings identification of the trophies was done on 29/1/2019. He referred the court to page 23, 3rd to 4th line from the bottom where PW3 stated that he received a call from Babati police station for identification. He argued that that creates doubt on the

evidence presented. The other concern is at page 16 where PW1 said he prepared certificate of seizure without saying he was instructed to do so but at page 19 it appears that PW2 instructed him to do so. At page 28 it is not indicated whether the said 20.3 kilograms were for 3 tusks or 7 tusks.

Submitting further, he questioned why the Appellant was not taken to Justice of peace to record a statement if he had admitted to have committed the offence charged.

Responding to the second ground Mr. Hatibu submitted that this ground has no merit. He argued that, the trial magistrate evaluated evidence of both sides, framed issues and considered defence case. At page 6 of the impugned judgment the trial magistrate made a finding that the defence case did not manage to raise doubt on the prosecution evidence which was relevant, cogent and credible.

Coming to the third ground, the Appellant argued that the trial court was wrong in convicting the Appellant based on the testimony of PW1, PW2 and PW4 which was contradicting each other. He maintained that at page 16 the proceedings PW1 mentioned one Solomon Pai among the people who were present at the police station but the said Solomon did not

testify as a witness. He submitted further that PW1 did not mention if he signed the certificate of seizure or mention the names of witnesses who signed as well.

He further submitted that, PW2 at page 18 – 20 did not state the time he arrived at Babati or specify the time used for PW1 to join him. That PW2 at page 19 of the proceedings said the polythene bag had 4 big elephant tusks and 3 pieces of tusks and at page 20 he said if he sees the said tusks he would identify them as 2 big tusks and 2 old ones, and one was very small and 3 others.

Reacting to the third ground, Mr. Hatibu submitted that there was no contradiction in the testimony of PW1, PW2 and PW4. He noted that, PW1 and PW2 were consistent that there were seven pieces of tusks which were tendered in court. The certificate of seizure was tendered in court and testimony was given to the effect that the exhibits were kept for custody with PW4 who also admitted to have received the said exhibits and filled exhibit P4.

Submitting on the fourth ground, the Appellant faulted the trial court decision for lacking legal reasoning and legs to stand on. He maintained

that in this ground of appeal he intends to show how his constitutional rights as enshrined in Articles 12 to 29 of the United Republic of Tanzania Constitution were violated. First, the charge sheet which was prepared on 5/2/2019 used the word "were" when describing the person who committed the alleged offence on 26th January, 2019 which implies that the Appellant and other persons committed the alleged offence while the subsequent charge sheet dated 20th August, 2019 refers to the Appellant only. He questioned the whereabouts of the other persons who were referred in the first charge sheet. Secondly, he argued that, if the first charge sheet was prepared on 5th February, 2019 why the proceedings indicates that the Appellant was taken to court for the first time on 5th January, 2019. He maintained that, this means the offence was committed when the Appellant was already arrested and he was in custody. Third, he asked the criteria used on 21/8/2019 where there was a consent from the Regional Prosecutions Officer but the Appellant was asked not to respond to the charges against him on 5/1/2019 and the Appellant was informed that the trial court had no jurisdiction to grant him bail and was asked to apply to a court with jurisdiction.

He submitted that, if he was arrested committing the alleged crime on 26/1/2019 the trial court was wrong for not inquiring into why was he brought to court on 5/2/2019 and where was he kept for those eight days. He prayed for the court to consider the grounds of appeal and set him free.

Replying to the relevant arguments raised in this ground, Mr. Hatibu reacted to the allegation that the Appellant was not taken to justice of peace by arguing that this is not a mandatory requirement. He explained that PW5 testified to the effect that the Appellant admitted before him that he committed the alleged crime.

On the fact that the Appellant was not convicted on the basis of the weight of prosecution case, he submitted that that is not true. He argued that section 100(1) of the Wildlife Conservation Act requires that where a person is found in possession of Government Trophy he has to prove that he had a permit which the Appellant did not have.

On the fact that the typed proceedings indicates that the Appellant was taken before the trial court for the first time on 5/1/2019 while the crime took place on 26/1/2019, he argued that this is not reflected in the grounds of appeal therefore, he did not get time to cross check on this

point. However, he believed that it was a typing error which can be cross checked with the original handwritten proceedings.

Based on the stated reasons he prayed for the appeal to be dismissed.

In a brief rejoinder, the Appellant argued that he is not sure if the date indicated as the first time to appear in trial court, i.e. 5/1/2019 was a typing error. He stated that, all he knew was that on the mentioned date he was already in remand prison.

He reiterated the argument that the certificate of seizure was filled without involving independent witness.

Based on those reasons he prayed for the appeal to be allowed.

Having abridged the submissions from both the Appellant as well as the Respondent I am now in a position to deliberate on the grounds of appeal starting with the first ground.

With regards to Appellant's complaints on the first ground, having looked at the charge sheet, proceedings especially the testimony of witnesses and the certificate of seizure, this Court agrees with the learned counsel for the Respondent that there are no any deficiencies attached to

the certificate of seizure in terms of how it was filled, admissibility procedures or inconsistencies with either the charge sheet or testimony of witnesses in respect of the number of tusks found in possession of the Appellant. The charge sheet alleged that the Appellant was found in possession of seven pieces of elephant tusks and that, as rightly argued by the learned counsel, is the same number mentioned by other witnesses each in their style of description. For example, PW stated at page 19 of the proceedings that " there were three pieces and four big elephant tusks" which makes the total of seven tusks described in the charge sheet and certificate of seizure. On that basis I find no merit on this ground.

The second to fourth grounds of appeal faulted the trial Court for failure to analyze and evaluate evidence on record, basing its decision on contradictory evidence and lacking legal reasoning. I will address all grounds together due to similarity of issues raised. Having subjected the entire evidence to a fresh re-evaluation as a first appellate court, this court is convinced that, the trial magistrate did a good job of evaluating the evidence of both sides, framed issues and analyzed issues based on the evidence collected. The Court is in agreement with the findings of the trial court at page 5 and 6 of the impugned judgment that, the Appellant was

arrested at the scene of crime, in a broad daylight, the seizure certificate was signed by the Appellant acknowledging that the trophies were seized from him on the fateful date, eye witnesses including PW2 also signed the certificate of seizure and testified that trophies were seized from the Appellant. The trial Court was right in finding that the defence evidence did not raise any reasonable doubt on the prosecution evidence which was relevant, cogent and credible.

In the circumstances of this case, considering the reasons stated above, I find no reason to disturb the decision of the trial court. Accordingly, this appeal is dismissed in its entirety.

K.N. ROBERT
JUDGE
15/2/2021