

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

CRIMINAL APPEAL NO. 66 OF 2020

(Economic Case No. 01 of 2018, in the District Court of Babati at Babati)

THE DIRECTOR OF PUBLIC PROSECUTION.....APPELLANT

VERSUS

JUMA YUSUPH @ JUMAJU.....RESPONDENT

EX PARTE JUDGMENT

10/11/2021 & 15/12/2021

GWAE J

The Director of Public Prosecutions, the appellant herein dissatisfied with the decision of the District Court of Babati at Babati (trial court) has appealed to this court on one ground of appeal that; the trial Magistrate erred in law for illegally sentencing the respondent one Juma Yusuph @ Jumaju.

Principally, the respondent herein was arraigned before the trial court charged with an offence of Unlawful Possession of Government Trophy to wit; Giraffe meat and tail valued at Tshs. 34,500,000/=. The offence with which the respondent was charged is contrary to section 86 (1) & (2) (b) of

the Wild Life 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 Crime Control Act, Cap 200, Revised Edition, 2002.

The respondent pleaded not guilty to the charge and therefore the full trial had to proceed. In proving its case the prosecution summoned a total of seven (7) witnesses whereas the defence side had three witnesses. After determination of the evidence of both sides the trial court's findings were to the effect that, the prosecution side had proved its case beyond reasonable doubt, the accused was thus convicted of the offence as charged and he was eventually sentenced to a fine of Tshs. 5,000,000/= or to serve five (5) years imprisonment in default thereto.

It is the trial court's sentence imposed against the respondent which has provoked the appellant to file the present appeal alleging that, the sentence imposed against the respondent is in violation of the statutory requirement which imposes a punishment of twenty (20) years imprisonment or to pay a fine ten times the value of the trophy found in unlawful possession of the respondent, accused.

At the hearing of this appeal, the appellant was represented by the learned State Attorney Ms. Alice Mtenga, the respondent on the other hand did not enter appearance despite being duly served through substituted service through Mwananchi newspapers dated 4th October 2021, therefore the appeal proceeded to be heard ex-parte.

As the complaint by the appellant is based on the statutory sentence that ought to have been levied against the respondent, therefore, it is therefore apposite reproduce the provisions of section 86 (1) & (2) (b) of the Wild Life 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 Crime Control Act. Section 86 (1) & 2 (b) is hereunder reproduced;

"86-(1) Subject to the provisions of this Act, a person shall not be in possession of, or buy, sell or otherwise deal in any government trophy.

(2) A person who contravenes any of the provisions of this section commits an offence and shall be liable on conviction-

(a) N/A

(b) where the trophy which is the subject matter of the charge or any part of such trophy is part of an animal specified in Part I of the First Schedule to this Act, and

the value of the trophy exceeds one hundred thousand shillings, to a fine of a sum not less than ten times the value of the trophy or imprisonment for a term of not less than twenty years but not exceeding thirty years or to both.”

From the wordings of the above section, it goes without saying that, it is therefore legally correct as complained by the appellant that, the sentence imposed to the respondent was in serious in contravention with the statutory provision of the law which is below the prescribed mandatory penalty. As the charge and evidence on record undoubtedly establish that, the value of the trophy unlawfully found in the possession of the respondent valued at Tshs. 34,500,000/= . It follows therefore, the proper sentence as per the above provision of the law, ought to have been a sentence of a fine of a sum not less than ten times the value of the trophy or imprisonment for a term of not less than twenty (20) years but not exceeding thirty years or to both and not the ones wrongly imposed by the learned trial magistrate.


It is trite law that, a sentence which is inadequate or above (excessive) the one imposed by the law is illegal and an appellate or revisional court, upon appeal or application, should fault such illegal sentence in order for it to be inconformity with the applicable law.

In **Mfundo v Republic** (1975) 1 EA 63, in this case, the High judge himself observed, the magistrate had passed an illegal sentence under section 4 (a) of the Minimum Sentences Act 1972, instead of the mandatory legal sentence under section 5 (d) of the Act, yet the judge confirmed the illegal sentence. Before confirming the illegal sentence that he could not on appeal enhance a sentence without first having given the appellant an opportunity of showing cause why the sentence should not be enhanced, on appeal before the Court of Tanzania sitting at Dar es salaam, it was held;

“We do not think that those cases were relevant as they did not concern minimum sentences. In the case of the appeal before him there was no legal sentence capable of enhancement or confirmation, and the judge’s exercise of confirming the illegal sentence was a nullity. His duty in the circumstances was to set aside the illegal sentence and to substitute a legal one. No question of enhancement arose. Accordingly, we set aside the illegal sentence of four years and substitute a sentence of imprisonment for five years under s. 5 (d) of the Minimum Sentences Act, with effect from the date of the conviction”.

See the decision of the Court of Appeal (T) in **Amani Ramadhani Mgonja v. Republic**, Criminal Appeal No. 219 of 2007 (unreported) where




M. R. GWAE
JUDGE
15/12/2021