

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DODOMA DISTRICT REGISTRY)**

AT DODOMA

(DC) CONSOLIDATED CRIMINAL APPEALS NO. 30 AND 99 OF 2020

(Originating from Economic Case No. 46 of 2017 of the District Court of Manyoni at
Manyoni)

1. BENSON WILLIAM@BANJE

2. DOCTOR S/O KHAMIS@ATHUMANI..... APPELLANTS

VERSUS

THE REPUBLIC.....RESPONDENT

17/12/2021 & 20/12/2021

JUDGMENT

MASAJU, J

The Appellants, Benson William@Banje and Doctor Hamis @Athuman, jointly together were charged with, and convicted of UNLAWFUL ENTRY INTO A GAME RESERVE, UNLAWFUL POSSESSOPN OF WEAPON IN A GAME RESERVE. (3 Counts) UNLAWFUL DESTRUCTION OF VEGETATION IN A GAME RESERVE allegedly on plea of guilty and sentenced accordingly on the 1st -5th counts. They were also convicted of UNALWFUL POSSESSION OF GOVERNMENT TROPHY and sentenced to serve 20 years imprisonment. Hence the appeals respectively No. 30 and 99 by the Appellants against the conviction and sentence of the trial court. The said appeals have been consolidated.

When the appeals were heard in the Court on the 10th day of December, 2021, the laymen Appellants appeared in persons. They adopted their grounds of appeal to form submissions in support of the appeals and prayed the Court to allow the appeals.

The learned State Attorney, Ms. Mwajuma Mkonyi, for the Respondent republic did not contest the appeal because the documentary evidence certificate of seizure (Exhibit P3), the Inventory Form (Exhibit P4) and the Exhibit Book (Exhibit P1) were not read over to the trial court. The Appellants were therefore not able to know the nature of the case against them on the offence of UNLAWFUL POSSESSION OF GOVERNMENT TROPHY they didn't contest of its liability. That, the said documentary evidence be expunged from the record of the trial court accordingly. That, once the said documentary exhibits are expunged, the remaining prosecution case evidence would be hanging on a very thin thread. The Respondent Republic also argued that, Paul Anjelo Lumimba (PW4) failed to distinguish and explain how he identified that the government trophy was indeed that of Giraffe. That, the prosecution case was therefore not proved beyond reasonable doubt.

The Court has also learned that even on the 1st -5th counts, the Appellants were convicted of the offences on their own pleas of guilty, the pleas thereof were equivocal as the purported facts thereof were just memorandum of facts not facts of the case in support of the charges the Appellants allegedly pleaded guilty of. That is to say their pleas were equivocal despite the fact they had pleaded guilty of the charges. Though the Applicants didn't appeal on their conviction and sentence on the 1st -5th counts, since the procedure thereof was illegal the Court invokes its revisionary powers under section 372 of the Criminal Procedure Act, [Cap 20

RE 2019] to nullify the proceedings and conviction and sentence related to the 1st-5th counts against the Appellants. There shall be no trial *de novo* of the Appellants in relation to the said counts.

On the 6th count, UNLAWFUL POSSESSION OF GOVERNMENT TROPHY, the Court agrees with the parties that the prosecution case was not proved beyond reasonable doubt as against the Appellants before the trial court. The Court also hereby expunges documentary exhibits P1,P3 and P4 from the record of the trial court, for its not being read over to the trial court upon its admission in evidence. The Appellants having been denied of their right to know the nature of evidence obtaining in the said documentary evidence for the would be their well informed facts of the prosecution case so that they can defend themselves from a well informed point of view.

That said, the meritorious appeal is hereby allowed accordingly. The conviction and sentence of 20 years imprisonment, respectively, are hereby quashed and set aside accordingly. The Appellants shall be released forthwith from prison except if there was a lawful cause to the contrary.




GEORGE M. MASAJU

JUDGE

20/12/2021