

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF BUKOBA  
AT BUKOBA**

**CRIMINAL APPEAL NO. 97 OF 2020**

*(Originating from Ngara District Court in Economic Case No. 11/2019)*

**JUMA ALEX.....1<sup>ST</sup> APPELLANT**  
**JOANES JOSEPH.....2<sup>ND</sup> APPELLANT**  
**AUDAX WISTON.....3<sup>RD</sup> APPELLANT**

***VERSUS***

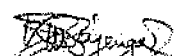
**REPUBLIC .....RESPONDENT**

**JUDGMENT**

*16 May & 17 May 2022*

***Kilekamajenga, J.***

The appellants in this case were charged with unlawful possession of Government Trophies Contrary to Section 86 (1) and (2) (iii) of the Wildlife Conservation Act No. 5 of 2009 as amended by Section 59 of the written Laws (Miscellaneous Amendments (No. 2) Act NO. 4 of 2016 read together with paragraph 14 of the 1<sup>st</sup> schedule to Section 57 (1) of the Economic and Organised Crime Control Act, Cap. 200 RE 2002. According to the charge and other information contained in the court file, it is alleged that, on 24<sup>th</sup> May 2019, the appellants together with William Jacob (one of the accused persons who was acquitted) were found selling two leopard skins in a room of a guest called Star Max Lodge located at Benaco within Ngara District. The two leopard skins, being government trophies were valued at Tshs. 15,890,000/=. The full trial of the case led to the conviction and finally the sentence of the appellants. They were



sentenced to serve twenty (20) years in prison. Being disgruntled with the decision of the trial court, the appellants appeared before this Court challenging both the conviction and sentence.

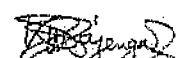
In their petition of appeal, they raised four grounds thus:

1. *That, the trial magistrate erred in law and facts by convicting and sentencing the appellants on the basis of the evidence which was not proven (sic) beyond reasonable doubt as required by the law.*
2. *That, the trial magistrate erred in law and facts by relaying (sic) on false evidence with full contradiction adduced by prosecution witnesses. At page 2 of the judgment PW1 avers that after receiving information from a park ranger and he (sic) and station master they went to Starmax and arrested the accused with two leopard skins while at the same page 2, PW2 avers that persons (sic) who entered the lodge (Max guest house) were PW2, Police officer (sic), Tanapa Park ranger and OCS of Kasulo Station, at the same time at page 3 of the copy of judgment receptionist testifies that persons (sic) that who entered (sic) room No. 307 were Tanapa Officers and Chairman Zofilo.*
3. *That, the trial magistrate erred in law and facts by acquitting the first accused leaving the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused having the same defence.*
4. *That, the trial magistrate erred in law and facts by failing to discover that the case was manufactured and planted against the accused persons (appellants).*

When the case was fixed for hearing, the appellants appeared via virtual Court from Kwitanga Prison in Kigoma. Before their oral submissions, they prompted

the learned State Attorney, Mr. Joseph Mwakasege who appeared for the republic to start the submission. The learned State informed the Court on four illegalities which might have faulted the decision of the trial Court. **First**, he argued that, the prosecution witnesses PW1, PW2 and PW3 who arrested the appellants were not able to identify the certificate of seizure. **Second**, the trophy itself though was tendered but was not identified. **Third**, the valuer failed to tender any certificate of valuation in Court. **Fourth**, PW5 seemed to identify a document which is not however stated and the evidence of PW5 and PW6 seems to contradict each other. Based on these irregularities, the learned State Attorney prayed to allow the appeal. On their part, the appellants simply supported the counsel's submission.

After considering the submission from the learned State Attorney which was vehemently supported by the appellants and having gone through the grounds of appeal, the major issue that crops-up is whether or not the prosecution proved its case to the required standard. In answering this issue, I was prompted to revisit the prosecution evidence adduced during the trial. In this case, the prosecution paraded six witnesses and tendered three exhibits. PW1 (E2945 D/CPL Kuboja) testified that, on 24<sup>th</sup> May 2019 while at work at Kasulo Police Station, he received information from a ranger called Misanga Awadh about the people who had leopard skins at Star Max Guest House. He went to the crime



scene and set-up a snare by using a person called Mahendeka (another National Park ranger) as a person in need of such leopard skins. The snare paid off and they managed to arrest the appellants with the leopard skins in room No. 307 of the said guest house. Thereafter, a police officer with force number D6923 D/SGT Elias filled in the certificate of seizure in the presence of other witnesses including a hamlet chairman called Jonathan Zofilo.

PW2 (Jonathan Zofilo) who was the village chairman supported the testimony of PW1 stating that, on 24<sup>th</sup> May 2019, he was phoned by the police officer called Elias from Kasulo police station and informed him about the presence of persons in possession of government trophies. PW2 went to the named guest house and found the park rangers and the OCS of Kasulo Police Station. He was one of the persons who accompanied the police officers to room No. 307 where they found four persons, including the appellants, with two leopard skins. PW3 (Zablon Mahendeka) who was a park ranger testified that on 24<sup>th</sup> May 2019, while on normal duty at Nyumbwe, he was informed about the persons selling leopard skins. In effecting the arrest, PW3 posed as a customer for the leopard skins and hired room No. 307 at Star Max Guest House for concluding the purchase of the skins. The appellants took the skins to room No. 307 where they were arrested.

PW4 (Christom Komba) who was a park ranger testified that, he recognised the leopard skins by their colour as they had dots. PW5 (Benitha Mwombeki) who worked at Star Max Guest House as a receptionist testified that on 24<sup>th</sup> May 2019, he received a customer who wanted to hire a room. She gave her room No. 307 and immediately thereafter, four people who had a bag came and went straight to that room. The police came accompanied with other TANAPA officer and a village chairman called Zofilo. PW5 was called into the room and she witnessed the bag with leopard skins. The certificate of seizure was filled in and she signed it. During the trial, she identified the same certificate of seizure.

PW6 (Assistant Inspector Baraka Joseph) who was the OCS of Kasulo Police Station testified that, on 24<sup>th</sup> May 2019, he was phoned by D/CPL Kuboja and informed about the persons selling leopard skins. He testified further that PW3 pretended to be the buyer of the skins; thereafter, he went to the guest house with Kuboja and other TANAPA officers and managed to arrest the appellants. Thereafter, he filled in the certificate of seizure which was tendered in court as exhibit P1. He also tendered the leopard skins which were admitted as exhibit P2. He further tendered the certificate on chain of custody which was admitted as exhibit P3. Thereafter, the prosecution closed its case.

In his defence, the first appellant stated that, on 24<sup>th</sup> May 2019, as he was at Benaco looking for transport and he was arrested and finally charged with the alleged offence. The second appellant defended himself that, on 24<sup>th</sup> May 2019, he was phoned by someone to assist him at Benaco. He was taken to Star Max Hotel in room No.307. Thereafter, the police officers came and arrested them. The third appellant told the court that he was arrested at Benaco because he was found peeing at a public place.

The evidence adduced during the trial does not leave any gap that the appellants together with William Jacob were selling two leopard skins at Benaco on 24<sup>th</sup> May 2019. When the information reached TANAPA officers, a snare was devised and PW3 who was one of the park rangers pretended to be the customer for the skins. He hired room No. 307 at Star Max Guest House to create a favourable environment for the business. The evidence further shows that the appellant went into that room in order to sell the leopard skins which were stashed in a bag. There is no doubt, the appellants were arrested in room No. 307 while in the process of selling the skins to PW3. The arrest of the appellants was witnessed by all the prosecution witnesses. Immediately after the arrest, PW6 filled-in the certificate of seizure which was signed by the appellants and witnessed by other seven witnesses including PW1, PW2, PW3, PW4 and PW6. To fortify further the prosecution evidence, the certificate of seizure was

identified by PW5 and tendered by PW6 and read in court. PW6 also tendered the two leopard skins which were admitted as exhibit P2; the certificate on chain of custody was also read in court.

The evidence above does not leave any doubt that the appellants were found in possession of government trophies, to wit two leopard skins contrary to the law. In their defence, the appellants had almost similar defences which, in my view, did not cast any doubt to the strong prosecution case.

During the hearing of the appeal, the learned State Attorney identified four irregularities which faulted the decision of the trial court. I also wish to consider such faults, first, he argued that PW1, PW2 and PW3 who participated in the arrest did not identify the certificate of seizure something which affected the prosecution case. In my view, this argument does not hold water because, PW3 and PW6 were able to identify it. Alas, the learned State Attorney is possibly relying on an irregularity which does not affect the entire good evidence proving that the appellants were arrested, ready handed with two leopard skins in the presence eight witnesses. In my view, this Court cannot jettison all these good oral and eye evidence confine on a minor irregularity which does not go into root of the case. So long as the certificate was identified by two prosecution witnesses and the same is signed by the appellants, the fact that PW1, PW2 and

PW3 were not given the right to identify it does not fault the decision of the trial court.

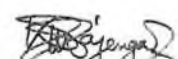
The learned State Attorney further argued that the skins, though were tendered, were not identified. I also find no merit in this argument because, despite being frequently referred by all prosecution witness, PW6 identified and tendered it. Possibly, the major question is how the failure to identify the skin by other prosecution witness might have prejudiced the appellants. Suppose, the skins were availed for identification would the prosecution witnesses fail to identify them. In my view, there is no doubt created by the failure to identify the skins so long as all the prosecution witnesses saw the appellants being arrested in possession of leopard skins. I am worried, too much dependence on legal technicalities will make the criminal justice system a mockery. Also, the learned State Attorney, stated that the evidence of PW5 and PW6 contradict each other. As portrayed above, there is no contradiction between the evidence of PW5 and that of PW6. I therefore find no merit in the grounds of appeal and dismiss it. It is so ordered.



**Ntemi N. Kilekamajenga**

**JUDGE**

**17<sup>th</sup> May 2022**





**Court:**

Judgment delivered this 17<sup>th</sup> May 2022 in the presence of the learned State Attorney, Mr. Mwasimba and the appellants present in person. Right of appeal explained.



  
**Ntemi N. Kilekamajenga**  
**JUDGE**  
**17<sup>th</sup> May 2022**

