

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

CRIMINAL APPEAL NO. 155 OF 2021

(Arising from the decision of the District Court of Serengeti at Mugumu before Hon. A. C. Mzalifu, RM in Economic Case No. 84 of 2020)

BETWEEN

SUGUTA S/O MARWA @ MWITA.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

06th April & 11th May, 2022.

A. A. MBAGWA J.:

This is an appeal against conviction and sentence imposed by the District Court of Serengeti (Hon. A. C. Mzalifu- RM).

The appellant, Suguta s/o Marwa Mwita was arraigned before the District Court of Serengeti on a charge containing three counts namely, Unlawful Entry in to the National Park contrary to sections 21(1)(a) and (2) and 29(1) of the National Parks Act, Unlawful Possession of Weapons in the National Park contrary to section 24(1)(b) and (2) of the National Parks Act and Unlawful Possession of Government Trophies contrary to section 86(1) and (2)(c) (iii) of the Wildlife Conservation Act as amended by the Written

Laws (Miscellaneous Amendments) (No.2) Act, 2016 read together with paragraph 14 of the First Schedule to, and sections 57(1) and 60(2) of the Economic and Organised Crime Control Act.

The appellant pleaded not guilty hence the matter went through a full trial. In a bid to prove the charge, the prosecutions side paraded four witnesses along with four exhibits both documentary and physical. The exhibits tendered are seizure certificate (PE1), one panga and knife (PE2), Trophy Valuation Certificate (PE3) and Inventory Order (PE4). In defence, the appellant stood a solo witness.

In brief, the prosecution account was to the effect that the appellant, Suguta Marwa Mwita on 15th day of August, 2020 at Korongo la Nyamburi within Serengeti National Park was found in possession of one panga and a knife, one fresh head and one fore limb of government trophy namely, topi without a permit.

It was the evidence of PW1, Ezekiel s/o Kulwa that on the fateful date at around 19:00hrs while on patrol in the company of his fellow park rangers to wit, Wilson Adam, Bakari Athumani, Fredy Kivuyo and Venance Muhomi saw torch light. They pursued the light until they arrested the appellant.

According to PW1 and PW2, Wilson Adam, the appellant was found with weapons, one panga and a knife as well as government trophy to wit, one fresh head and fore limb of topi. A seizure certificate was therefore filled and signed by both the appellant and the arresting officers, PW1 and PW2 inclusive.

Thereafter, the appellant together with the seized items were submitted to Mugumu Police Station where a case file No. MUG.IR/2214/2020 was opened. On the same day i.e. 15/08/2020 the said case file was assigned to D/C Yunus (PW4) for investigation. PW4 called PW3 Wilbroad Vicent, a wildlife officer who came at Mugumu Police Station and identified the government trophy to be of topi. PW3 also valued the trophy at Tshs 1, 840,000/= . Later on, on the same day, PW4 submitted the said trophies and the appellant before the Magistrate for disposal order. According to the inventory order, exhibit PE4, the Magistrate issued a disposal order on 15/08/2020 in the presence of the appellant.

In defence, the appellant disputed the prosecution's version. He stated that on 14/08/2020 he went to fetch glass but, surprisingly he was arrested by park rangers and consequently taken to the camp. Then, to his dismay, on the following day i.e. 15/08/2020 he was taken to Mugumu Police Station.

Having heard the evidence of both sides, the trial magistrate was satisfied that the prosecution proved the offence beyond reasonable doubt. Accordingly, the trial magistrate convicted the appellant as charged and sentenced him to one year imprisonment for the 1st and 2nd count and twenty year imprisonment for 3rd count of unlawful possession of government trophies.

Aggrieved by the verdict and sentence of the trial Court, the appellant knocked the doors of this Court. He filed a petition of appeal containing complaints which can be reduced into the following grounds of appeal.

1. That the trial Magistrate erred both in law and fact to convict the appellant without affording him the right to be heard
2. That the trial Magistrate erred both in law and facts to convict the appellant in absence of the sufficient prosecution evidence in particular independent witness
3. That the trial Magistrate erred both in law and facts to convict the appellant despite the contradictions in the evidence of PW1 and PW2 against the charge as to the place of arrest.

When the matter was called on for hearing, the appellant appeared in person from prison through the aid of video conference whereas the respondent/ Republic was represented by Nimrod Byamungu, learned State Attorney.

The appellant, being a layman, had little to submit. He simply prayed the Court to consider his grounds of appeal and finally allow the appeal.

In response, the Republic supported the appeal. Mr. Nimrod Byamungu, at the very outset, intimated that he was in full support of the appeal. He said that he conceded the appeal in respect of the first and second counts on legal grounds whereas he supported the appeal in the 3rd count on evidential grounds.

With regard to the 1st count of unlawful entry into the National Park, the learned State Attorney submitted that section 21(1) of the National Parks Act does not create the offence. He cited the case of **Maduhu Nihandi @ Limbu vs the Republic**, Criminal Appeal No. 419 of 2017, CAT at Mwanza to support his contention. He thus, prayed the court to quash conviction and set aside the sentence.

On the 2nd count of unlawful possession of weapon within the National Park, Mr. Byamungu submitted that it was not proved because the testimony of PW1 and PW2 did not provide demonstrative evidence. He also relied on the case of **Maduhu (supra)**.

With respect to 3rd count of unlawful possession of government trophy, Mr. Byamungu said that there was variance between the charge and evidence. Whereas the charge states that the appellant was found and arrested at Korongo la Nyambizi, PW1 and PW2 testified that the appellant was arrested at Korongo la Nyamburi, Hingira. Further, the seizure certificate (PE1) indicates Nyamburi Hingira. Given the contradictions pointed out, Mr. Byamungu was opined that the 3rd count was not proved beyond reasonable doubt.

On my part, I had an occasion to navigate through the trial Court record in addition to the grounds of appeal and submissions by the parties. The crucial issue for determination of this appeal is whether the conviction was merited.

Without much ado I entirely agree with the learned State Attorney that appellant was wrongly convicted of unlawful entry into the National Park

and unlawful possession of weapons in the National Park in the 1st and 2nd counts respectively. This is because as rightly submitted by the learned State Attorney, on the strength of **Maduhu Nihandi @ Limbu vs the Republic**, sections 21(1)(a) and (2) and 29(1) of the National Parks Act do not create any criminal offence hence convicting a person under the said sections is tantamount to convicting a person of non existing offence.

Furthermore, with regard to the 2nd count of unlawful possession of weapons within the National Park, it is common cause that there was no demonstrative evidence from the arresting officers to establish, beyond reasonable doubt, that the appellant was found within the statutory boundaries of Serengeti National Park. See the cases of **Maduhu Nihandi @ Limbu vs the Republic**, Criminal Appeal No. 419 of 2017, CAT at Mwanza and **Cheyonga Samson @ Nyambare vs the Republic**, Criminal Appeal No. 510 of 2019, CAT at Musoma at page 14 and 15.

Concerning the 3rd count of unlawful possession of government trophy, indeed, the prosecution evidence leaves a lot to be desired. As pinpointed by the State Attorney in the charge it is alleged that the appellant was found at Korongo la Nyambizi whilst PW1 and PW2 testified that they arrested him at Korongo la Nyamburi, Hingira. Further, there are

contradictions in the prosecution case which raise reasonable doubt. PW1 and PW2 testified that they arrested the appellant on 15/08/2020 at 19:00hrs whereas PW4 stated that he was assigned the case file on 15/08/2022 in the afternoon and PW3 stated that he went to Mugumu Police Station on 15/08/2022 at 1:00PM. Going by the evidence on record, the appellant was surrendered at the police before he was arrested. Besides, PW1 and PW2 said that they saw torch light which they pursued and consequently arrested the appellant. However, the prosecution evidence is silent on the torch. One would expect the arresting officers testify on the where about of the torch which aided them to locate the appellant. Admittedly, the above pitfalls dent the prosecution evidence particularly the reliability of the arresting officers namely, PW1 and PW2.

In view of the above, I am of the unfeigned view that the offence of unlawful possession of government trophy was not proved beyond reasonable doubt.

In the event, I quash conviction and set aside sentence in respect of all three counts. This appeal therefore is allowed in its entirety. The appellant, Suguti Marwa Mwita should be released immediately unless he is lawfully detained.

It is so ordered.

Right of appeal is explained.



A. A. Mbagwa
A. A. Mbagwa

JUDGE

11/05/2022

Court: Judgment has been delivered in the presence of the appellant via teleconference, on the one side and in presence of Nimrod Byamungu, learned State Attorney, on the other side this 11th May, 2022.

A. A. Mbagwa
A. A. Mbagwa

JUDGE

11/05/2022