

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

CRIMINAL APPEAL NO 76 OF 2021

(Originating from Economic Case no 93 of 2019 in the District court

of Serengeti at Mugumu)

AMOS S/O CHARLES @ CHACHA APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

17th & 31st March 2022

F. H. MAHIMBALI, J.:

On 18th December, 2020 the district court of Serengeti convicted the appellant and his two fellow accused persons (not parties to this appeal) for three economic offences namely: unlawful entry into the National Park, unlawful possession of weapon in the National Park and unlawful possession of government trophies.

It was alleged by the prosecution that on 22nd August, 2019 at Bush Top area within Serengeti National Park within Serengeti in Mara Region

entered into the Serengeti National Park without the permission of the Director previously sought and obtained, the appellant and his co accused persons at the trial court were arrested around 06.00am by park rangers. When arrested allegedly being within Serengeti National Park unlawfully, they were found being in unlawful possession of weapons to wit two pangas and government trophies to wit six hind limbs and one fore limb all belonging to Zebra. That the said six hind limbs of zebra amounted to three grown up Zebras worth 7,920,000/= as per testimony of PW2. All this is as per testimonies of PW1, PW2, PW3 and PW4.

The appellant denied the charge. As other accused persons had jumped bail, it was only the appellant who gave his defense testimony who in fact admitted to have been arrested on 21st August, 2019 by park rangers at about 06.00pm at Bisarara Village while grazing his cattle but not within the National Park as alleged.

Having considered the evidence by the prosecution case as well as the defense, the trial court convicted the appellant and sentenced him to serve one year each for offences in counts one and two and 20 years for the third offence. All sentences were ordered to run concurrently.

Aggrieved by both conviction and sentences imposed, the appellant has preferred this appeal armed with a total of three grounds of appeal, namely;

- 1. That, the prosecution side erred in law and procedure when fainted to narrate before the court the said case was admitted with what reference at police station.*
- 2. That, the said certificate of seizure was not signed by the appellant at the scene. Also, the procedure for preparing and tendering it was not adhered.*
- 3. That, the trial court erred in law and procedure when didn't question itself on the admission of inventory order which was not signed by the appellant on the presence of the magistrate.*

During the hearing of appeal, the appellant **prayed** that his grounds of appeal be adopted to form part of his submission. Additionally, he submitted that, in the said inventory, he was not involved on its preparation and destruction. On that basis, he prayed that his appeal be allowed and that he be acquitted.

In resisting the appeal, Mr. Malekela learned state attorney submitted as follows:

With the first ground of appeal, as per page 22 and 40 of the typed proceedings, the police case reference number

MUG/IR/2548/2019 is mentioned. Nevertheless, not mentioning it in court is not fatal as per law. Thus, he argued that ground number 1 is baseless.

On the second ground of appeal that the certificate of seizure was not signed by him, he replied that as per testimony of PW1 (at page 22 of the typed proceedings) is clear on his testimony that PE1 was fully signed by amongst others by the appellant. Regarding the fact that the said PE1 was not procedurally tendered is want of proof. The proceeding at page 23 (typed proceedings) is clear. Thus, this ground of appeal is equally baseless.

On the third ground of appeal, his grief is on the procedure of dealing with exhibit. As per page 5 of the typed judgment and exhibit PE4, the accused persons (the appellant being inclusive) dully participated in the said procedure.

He lastly submitted that in his considered view, he concedes with the appeal on first offence that unlawful entry into the National Park is not an offence known by the law. save for the first count, he prayed that offences number two and three were dully proved. On this, he

prayed that conviction and sentence meted out be confirmed and upheld in respect of the second and third offences.

Having heard both parties to the appeal, the main issue for Court's consideration is whether the appeal is meritorious in respect of the second and third offences. In reaching this verdict, the Court will evaluate the evidence in record and reach its finding whether the appeal is meritorious as argued.

Whether the second offence of unlawful possession of weapons within the National Park has been proved by the prosecution. The available evidence in record is from PW1 and PW3 who in essence just say that in the morning of 22nd August 2019, they arrested the appellant being with his two fellows (co-accused persons at the trial). When they searched them, they found them being in possession of two pangas. The shortfall of this evidence is on two aspects. One, it is not clear who amongst the three actually was in possession of the said two pangas. In anyway, it is illogical for the said weapons allegedly being in their possession could be jointly held by all three accused persons. Two, it has not been statutorily established whether the point of their arrest is within Serengeti National Park as per law for an offence of unlawful

possession to be meaningful and legally established. A mere saying that they arrested the appellant at Bush area within Serengeti National Park, is legally not an establishment that the said point is within Serengeti National Park. That makes a suggestion that at every Bush is an area of Serengeti National Park. In my considered view, the evidence falls short of range.

On the third count of unlawful possession of government trophy, to wit six hind limbs and one fore limb all belonging to Zebra, it has been alleged that the trio when searched by PW1 and PW3, were found in possession thereof. The evidence does not state as how many limbs were found in possession from each accused person. Furthermore, the manner the said inventory exhibit was prepared and produced in court as exhibit is questionable. Whereas Mr. Malekela is of the view that there was proper procedure followed before the said exhibit PE4 was procured and tendered in court, the evidence in the trial court does not support his assertion. In the said PE4 exhibit (inventory), there is no any proceeding done before the Resident Magistrate made his remarks. What appears in the said exhibit PE4 is just description of properties, estimated value, accused signature, remarks on condition and the order of the magistrate. The same has no coram, no any proceedings and how

the accused persons are involved in the said proceedings. Moreover, the procedure of destroying the trophy was not complied with. The appellant was supposed to be present and heard before the said order of destroying or dealing with the perishable exhibit was issued as provided under paragraph 25 of the Police General Orders. This provision requires, among others, the accused person to be presented before the magistrate who may issue the disposal order of exhibit which cannot easily be preserved until the case is heard. It provides: -

"Perishable exhibits which cannot easily be preserved until the case is heard, shall be brought before the Magistrate, together with the prisoner if any so that the Magistrate may note the exhibits and order immediate disposal. Where possible, such exhibits should be photographed before disposal."

The law is settled the accused must be heard as well. (See **Mohamed Juma @ Mpakama vs R**, Criminal Appeal no. 385 of 2017, CAT (unreported)).

Having stated the above, it is safe to state that the third count was as well not proved beyond reasonable doubt.

All said and done, this court holds that since all the three counts were not proved beyond reasonable doubt, this appeal is allowed and

the trial's court proceedings and conviction are quashed and the sentences meted out are set aside.

This court orders the immediate release of the appellant from custody unless he is lawfully held for another course.

It is so ordered.

DATED at MUSOMA this 31st day of March, 2022.



F. H. Mahimbali

Judge

Court: Judgment delivered this 31st day of March, 2022 in the presence of the appellant, Mr Malekela learned state attorney for the respondent and Mr. Gidion Mugo – RMA.

F. H. Mahimbali

Judge

31/03/2022