

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MUSOMA SUB REGISTRY**

**AT MUSOMA**

**CRIMINAL APPEAL NO 77 OF 2021**

*(Original from Economic Case No 108 of 2019 at District Court of Serengeti at Mugumu)*

**BUBUYA S/O MARWA @MWITA .....APPELLANT**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**

**JUDGMENT**

22<sup>nd</sup> March & 1<sup>st</sup> April 2022

**F.H. MAHIMBALI, J.:**

The appellant in this case was charged at and convicted by Serengeti District Court of three offences, namely: unlawful entry in Serengeti National Park, unlawful possession of weapons in Serengeti National Park and unlawful possession of government trophies within Serengeti National Park. He was eventually sentenced to one year, one year and 20 years imprisonment for the first, second and third counts respectively.

It was alleged in the first count that on 08<sup>th</sup> September, 2019 at Korongo Senzo area within Serengeti National Park in Serengeti District

in Mara Region, the appellant was found being within the National Park unlawfully contrary to section 21(1) (a) (2) and 29 of the National Parks Act, Cap 282 R.E 2019.

In the second count it was alleged that the appellant while within the said Serengeti National Park, he was found possessing weapons to wit: two pangas and animal trapping wires unlawfully contrary to section 24(1) (b) and (2) of the National Park Act, Cap 282 R.E 2019.

In the third count, the appellant was found in unlawful possession of Government Trophies to wit: two pieces of dry skins of wildebeest equal to two wildebeest animals contrary to section 86 (1) and (2) (c) (iii) of the Wildlife Conservation Act, Act No. 05 of 2009 as amended by Act No. 4 of 2016 read together with paragraph 14 of the first schedule and section 57(1) and 60 (2) of the Economic and Organized Crime Control Act, Cap 200 R.E 2019.

Upon hearing of the case, the trial court convicted the appellant in all three offences and sentenced him as stated hereinabove. The appellant has been aggrieved, thus this appeal;

- 1. That, the prosecution side erred in law and procedure when tendered the said certificate of seizure which was not signed by another person who witnessed the signing at the scene.*

2. *That, the trial court erred in law and procedure to take into consideration hence conviction the said certificate of seizure which was not procedural tendered and prepared.*
3. *That, the trial court erred law and procedure when didn't prove the case against the appellant beyond reasonable doubt.*
4. *That, the appellant prays to your honourable court to quash the decision of honourable trial court and set me at liberty.*
5. *That, the appellant wishes not to be present at the time of hearing an appeal.*

During the hearing of appeal, the appellant fended for himself whereas Mr. Tawabu learned state attorney who supported the appeal, appeared for the respondent

In his submission, the appellant prayed that his grounds of appeal be adopted by the court to form part of his submission, and he had no more to add.

On his part, Mr. Tawabu, learned state attorney supported the appeal. The reasons for his support are:

The first count as per law i.e offence of entry into National Park is not legally existing. That as per section 21 (1) (2) of the National Park there is no that offence created, save only general punishment. Since Marginal note is not part of the law, it was not proper to charge the

appellant on that basis. He cited the case of **Willy Kinchunchi @ Marwa vs Republic**, Criminal Appeal No 311 of 2019, CAT at Dar es Salaam, to cement his point. He insisted that as per law, the offence of unlawful entry into National Park is currently not existing as per recent amendments of the law.

Secondly, considering the manner the said inventory was prepared to form part of the case's evidence, didn't adhere/comply with the laid down legal procedures. As per PGO paragraph 25, at page 2029, he submitted it provides that where an exhibit is destroyed prior to the disposal of the case, the accused person needs to be present before the Magistrate ordering disposal/destruction of the exhibit, heard and that there must be photograph taken in that respect.

In the circumstances of this case, there has been no full compliance of the said procedure. As per exhibit PE4, apart from thumb print, it is not clear whether the said signing was done in the presence of the Magistrate and Whether there was any hearing. In the case of **Mohamed Juma Mpakama vs Republic**, Criminal appeal No 785 of 2019, CAT at Mtwara provided appropriate directives on what to be done by the magistrate for the procedure to be in legal compliance prior to the issuance of destruction order of the said inventory exhibit. If the

procedure is not followed then the said exhibit lacks appropriate legal value and is subject to be expunged. That done the third offence lacks evidentially value to stand on.

With the second offence of unlawful possession of weapons within the National Park, he submitted that in totality of the evidence in record, there is no detailed explanations offered how the arrest was done and the connection with the appellants. He prayed that as the appeal is meritorious, the same be allowed.

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. As the said appeal is not contested, the main issue is whether the appeal is meritorious as argued.

I agree with Mr. Tawabu that, the first count of the charged offence does not exist as per law. This is because the charged offence under section 21 is none existent. The same provides:

*(1) Any person who commits an offence under this Act shall, on conviction, if no other penalty is specified, be liable - Act No.11 of 2003 (a) in the case of an individual, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one years or to both that fine and imprisonment; (b) in the case of a*

*company, a body corporate or a body of person to a fine not exceeding one million shillings. (2) Any person who contravenes the provisions of this section commits an offence against this Act.*

*Section 29(1) provides as follows:*

*(1) Any person who commits an offence against this Act is on conviction, if no other penalty is specified herein, liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not 18 exceeding one year or to both.*

On this elaboration, see the case of **Willy Kichunchi @ Marwa vs Republic (supra)**.

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 PW2 who in essence just say that in the morning of 8<sup>th</sup> September 2019, they arrested the appellant being in possession of the said two pangas and animal trapping wires. It has not been statutorily established whether the point of his arrest was within Serengeti National Park as per law for an offence of unlawful possession to be meaningful and legally established (korongo Senzo). A mere saying that they arrested the appellant at Korongo area within Serengeti National Park, is legally not an

establishment that the said is within Serengeti National Park. There ought to have been coordinates of the said area for it to be within Serengeti National Park. Otherwise, it makes a suggestion that at every Korongo area in Serengeti (North, South, East or its West is an area of Serengeti National Park. In my considered view, the evidence falls short of range. In totality of the evidence in record, there is no detailed explanations offered how the arrest was done and the connection with the appellant.

On the third count of unlawful possession of government trophy, to wit: two animal skins of wildebeest were found in possession thereof by the appellant. With this offence, Mr. Tawabu is of the firm view that the procedure was not well complied with. In the circumstances of this case, there has been no full compliance of the said procedure. As per exhibit PE4, apart from thumb print it is not clear whether the said signing was done in the presence of the Magistrate and Whether there was any hearing. In the case of **Mohamed Juma Mpakama vs Republic**, Criminal appeal No 785 of 2019, CAT at Mtwara provided appropriate directives on what to be done by the magistrate for the procedure to be in legal compliance prior to the issuance of destruction order of the said inventory exhibit. If the procedure is not followed then the said exhibit lacks appropriate legal value and is subject to be

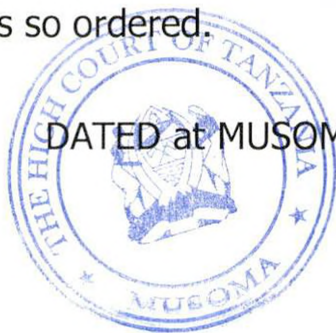
expunged. That done the third offence lacks evidentially value to stand on.

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

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 1<sup>st</sup> day of April, 2022.

  
F.H. Mahimbali

Judge

**Court:** Judgment delivered this 1<sup>st</sup> day of April, 2022 in the absence of both parties.

  
F.H. Mahimbali

Judge

1/4/2022