

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

**(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**RM. CRIMINAL APPEAL NO. 28 OF 2022**

**RICHARD S/O JOSEPH @ MPENDAKULA ..... APPELLANT**

**VERSUS**

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

(Appeal from the decision of the Resident Magistrates' Court of Katavi at Mpanda)

(E. L. Ngigwana, RM)

Dated 17<sup>th</sup> day of September 2019

In

Criminal Case No. 27 of 2018

**JUDGMENT**

25 & 25/07/2022

**NKWABI, J.:**

The appellant was convicted in the Resident Magistrates' Court of Katavi for unlawful possession of Government Trophies contrary to section 86 (1) and (2) (c) (iii) of the Wildlife Conservation Act, No. 5 of 2009 as amended by section 59 (a) of the Written Laws (Miscellaneous Amendments) Act, No. 4 of 2016 read together with paragraph 14 of the 1<sup>st</sup> schedule to sections 57(1) and 60(2) of the Economic and Organized Crimes Control Act, Cap. 200 R.E. 2002 as amended by Section 16 (a) and 13 (b) of the Written Laws (Miscellaneous Amendments) Act, No. 3 of 2016. He was sentenced to

twenty years imprisonment for the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> counts. He was also sentenced to pay fine at T.shs 132,000/= or serve five years imprisonment in default. The custodial sentences were ordered to run concurrently.

Aggrieved with both convictions and sentences, the appellant lodged in this Court a petition of appeal having five grounds of appeal. For reasons that will be apparent shortly, I will not reproduce the grounds of appeal. It is however, important to note that the appellant prayed this Court to quash the convictions, set aside the sentences and acquit him.

When the appeal was called up for hearing today, the appellant appeared in person unrepresented, while the respondent was duly represented by Ms. Marietha Maguta, learned state Attorney.

In his arguments in support of his appeal, the appellant prayed that his grounds of appeal be taken as his submissions on the one hand while, Ms. Maguta, conceded the appeal though on different ground.

Elaborating her stance that this appeal should succeed, Ms. Maguta pointed out that there were illegalities in the proceedings of the trial court. She noted

that the Consent for trial for economic crimes offences missed enabling provisions which are paragraph 14 of 1<sup>st</sup> schedule and sections 57 and 60 (2) of the Economic and Organized Crimes Control Act, as they have not been cited in the consent and the certificate conferring jurisdiction to the Resident Magistrates' Court of Katavi.

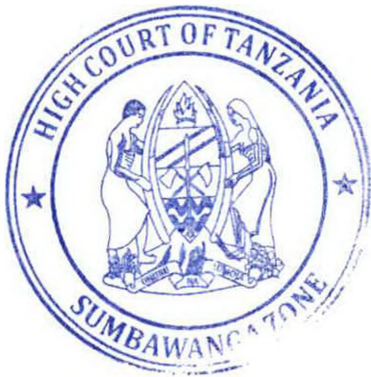
Further, Ms. Maguta added that in the proceedings of the trial court on the 1<sup>st</sup> and 2<sup>nd</sup> pages, it is indicated that exhibits were admitted as exhibits P1 and P2. At that time, noted Ms. Maguta, the trial Court had no jurisdiction and the one who tendered the exhibits is a State Attorney. Also, the order for disposal of the exhibits was issued by the same magistrate who heard the matter up to its finality. In the circumstances, Ms. Maguta contended, she supported the appeal.

I have gone through the proceedings of the trial court, I am satisfied that the irregularities pointed by Ms. Maguta are apparent on the face of the record. The same vitiate the whole proceedings and fatally affect the convictions entered against the appellant. In the circumstances, I allow the appeal as it has merits though on different reasons, quash the convictions

and set aside the sentences imposed on the appellant. He is to be released from prison unless he is otherwise held therein for another law cause.

It is so ordered.

**DATED** at **SUMBAWANGA** this 25<sup>th</sup> day of July 2022



  
J. F. NKWABI  
**JUDGE**