

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**DC CRIMINAL APPEAL NO. 72 OF 2020**

(C/O Economic Crimes Case No. 20 of 2019 Mpanda District Court)  
(A. A. Sachore, RM)

**JUMA S/O CHARLES @ STIVIN SIMBA ..... APPELLANT**

**VERSUS**

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

**JUDGMENT**

29/03/2022 & 27/04/2022

**NKWABI, J.:**

The appellant was convicted 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) and (b) of the Written Laws (Miscellaneous Amendments) (No. 2) Act No. 4 of 2016 read together with paragraph 14 of the First schedule to and sections 57(1) and 60(2) of the Economic and Organized Crime 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 then sentenced to serve twenty years imprisonment.

Indignant of both conviction and sentence the appellant lodged this appeal to this court seeking this court's grace to find fault in the proceedings, conviction and sentence of the trial court. The petition of appeal is comprised of three motives of appeal as follows:

1. The case against the appellant was not proved beyond reasonable doubt.
2. That the appellant was convicted on the weakness of his defence.
3. He was not found in possession of the alleged government trophies.

The prosecution evidence, was that the appellant was found in possession of hippopotamus meat which weighted 80 kilograms which is valued at T.shs 3,453,375. The incidence happened at 2300 hrs on 27/05/2019. The trophy is the property of the Government of Tanzania. The park rangers were accompanied by PW1 Daniel the village executive officer. On the road they found a person holding two sacks which had meat. When questioned, the appellant had no permit to possess the meat. A certificate of seizure was filled in.

PW2 Bartazar, a park ranger, confirmed the incidence and tendered the certificate of seizure as exhibit P1. PW3 Cyprian too as a park ranger confirmed arresting the appellant transporting the trophies. PW4 Grace the game warden Nsimbo Municipal council measured the meat and identified it to be hippopotamus meat and described it. She estimated its value at T.shs 3,453,375/= through the evaluation report which is exhibit P.5.

The defence of the appellant was that he was stopped on the road at Malandani when he was going to Mpanda from Magala village. It was at 21:30 hrs. He was beaten up and shown a luggage he did not recognize. He tendered a PF.3 as exhibit D1. The park rangers were strangers to him.

During the hearing of the appeal, the appellant appeared in person while the respondent was represented by Mr. John Kabengula, learned State Attorney. In his submission, the Appellant argued that the exhibits were seized on the road and he was not in possession of the same. The independent witness was brought after he had been arrested for a long time. He prayed to adopt

his grounds of appeal as his submissions. Lastly, he asked the court to allow the appeal.

Mr. Kabengula advanced the stance of the respondent. He objected the appeal and support the conviction and sentence. He argued the 1<sup>st</sup> and 3<sup>rd</sup> grounds of appeal together. He maintained that the proceedings show that the VEO was in company of the Game Officers and the appellant was found in possession of the Government Trophies. The evidence is clear. The evidence is strong against the appellant. It is not true that the trophies were on the road.

On the 2<sup>nd</sup> ground of appeal, it is not true that the court based its decision on the weakness of the evidence of the defence but the decision is based in the strong evidence of the respondent, Mr. Kabengula argued. He even signed on the certificate of seizure. There was no objection towards the admission of the exhibits, Mr. Kabengula added.

He further maintained that there is evidence that the meat was a meat of hippopotamus as it was described by an expert. The appellant did not challenge the same. He pressed they proved the charge beyond reasonable doubt, and he urged the appeal be dismissed as it has no merits. Let the decision of the District Court be up held.

In rejoinder, the Appellant urged the court to accept his grounds of appeal. He argued that he signed the certificate of seizure after he was beaten up severely. He prayed his appeal be found to have merits and be allowed.

Admittedly, in a criminal trial an accused ought not to be convicted on the weakness of his defence but on the strength of the prosecution, the position was taken in **Christian Kale and Another v. Republic [1992] TLR 302** (CAT). The question in this case is, was the appellant convicted on the weakness of his defence as he tries to allege? Mr. Kabengula disputed the claim. In its judgment the trial court had these to say:

*"I fail to find any evidence in the defence case strong enough to prove that the accused did not belong to the seized sacks of*

*meat. DW1 alleged that the said sacks were on the ground something which do not make any sense."*

In my view, the trial court found the defence unintelligible. It did not accept it. It is difficult to fault the trial court on its findings.

The appellant's main complaint is that the charge was not proved beyond reasonable doubt and maintained that the exhibit were seized on the road and he was not in possession. The independent witness was brought after he had been arrested for a long time. I am of the view that the prosecution proved the case beyond reasonable doubt. In the circumstances of this case even if there was no independent witness the case would have been proved against the appellant, see **Emmanuel Lyabonga v Republic**, Criminal Appeal No. 257 of 2019 CAT (unreported).

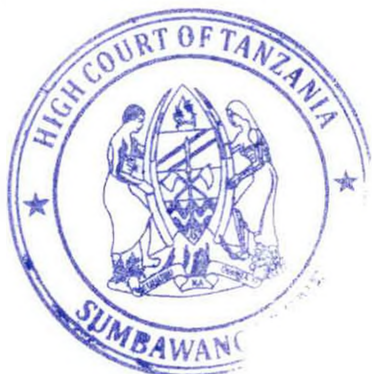
There is clear evidence from PW4 that the meat was hippopotamus meat, as per **Magina Kubilu @ John v The Republic**, Criminal Appeal No. 564 of 2016, CAT (unreported) her testimony is sufficient, it is however supported by the valuation report which was admitted without any objection.


Even though there were some irregularities in the proceedings as the seizure certificate and the chain of custody were not read over in court, but their contents were described clearly by the witnesses prior to their admission. Further, paper trail is not necessary where the chain of custody is clearly explained by witnesses like in this case. In any way the appellant himself admits the trophies to be seized on the road, he only disputes that it was in his possession. I do not see why should the prosecution witnesses tell lies against him.

In the circumstances, the appeal is dismissed for being wanting in merits. I uphold the conviction as well as the sentence imposed on the appellant.

It is so ordered.

**DATED at SUMBAWANGA** this 27<sup>th</sup> day of April 2022.



  
J. F. NKWABI  
**JUDGE**