

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

ECONOMIC APPEAL NO. 07 OF 2021

(Originating from Economic Case No.9 of 2019 of Biharamulo District Court)

BASANGWA NDAHIBILE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

10th June & 24th June 2022

Kilekamajenga, J.

The appellant, together with another person, were jointly charged in the District Court of Biharamulo with nine counts relating to economic offenses. Generally, it is alleged that, on 3rd June 2019, the appellant was arrested in the game reserve of Burigi. After the search of his camp, the appellant was found in possession of government trophies and locally manufactured gun (Gobole) contrary to the law. The full trial of the case led to the conviction and sentence of the appellant and his accomplice. Thereafter, the appellant appeared before this Court challenging the decision of the District Court. He was armed with five grounds of appeal coached thus:

- 1. That, the trial court erred in law and on facts to sentence and convict the appellant without considering the fact that the case against the appellant was not proved beyond reasonable doubt.*
- 2. That, the trial court erred to admit and rely on exhibit P1 which had been biasedly executed for lacking neutral witness it in order to avoid my*



possibility of fabrication victimization of the appellant who did not know to write and read.

- 3. That the trial court did not consider the defence evidence.*
- 4. That, the trial court erred both in law and facts by not explaining the charge against the appellants so as to afford reasonable information to the appellant prepare for defence.*
- 5. That, the trial court did not comply with section 312 of the Criminal Procedure Act, Cap. 20 RE 2019.*

During the hearing of the appeal, the counsel for the appellant, Mr. Danstan Mujaki abandoned the 2nd, 3rd, 4th and 5th grounds of appeal and submitted on the first ground. He argued that, the District Court of Biharamulo had no jurisdiction to determine this case. Under the law, the District Court can only try this case only when there is a consent from the Director of Public Prosecutions as per **section 26 (2) of the Economic and Organised Crime Act**. In this case, the Director of Public Prosecutions did not issue a certificate under section 12(4) of the same Act. Even if it was issued, it is not reflected in the proceedings of the trial court. He argued further that, this case had both economic and non-economic offences. Therefore, the trial court had no jurisdiction to try this case. He urged the court not to order the retrial of the case because the prosecution will get an opportunity to fill the gaps in the case.

Mr. Mujaki further argued that, the prosecution evidence did not show whether there was clear boundaries between the national park and where the appellant was found. The prosecution evidence shows that the appellants were found in

the game reserve but their defence shows that they were found at home. These two contradicting evidence creates doubts. The prosecution were supposed to prove that the appellants were found in the game reserve. Also, the evidence ought to show the distance from the boundary of the national park to the place where the appellants were found. On the rationale of ascertaining the distance from the boundary of the National Park to where the appellants were found, the counsel invited the Court to consider the case of **William Kilunga v. The Republic, Criminal Appeal No. 447 of 2017** CAT at Shinyanga.

When responding to the submission, the learned State Attorney, Mr. Mwasimba also insisted that the consent and certificate from the office of the Director of Public Prosecutions were supposed to be reflected in the proceedings something which was not done. Hence the trial court lacked jurisdiction to try the case.

The rejoinder submission stressed further the doubt on whether the appellants were found in the game reserve. The counsel further insisted on the rationale of establishing the boundary between the game reserve and where the appellants were arrested.

The competing arguments from both sides prompted this Court to determine the ground advanced by the appellant on whether the prosecution case was proved beyond reasonable doubt. In addressing this ground, I wish to revisit the evidence adduced during the trial; the prosecution summoned four witnesses.

PW1 testified that, on 3rd June 2019, while on patrol with his fellow officers, he noticed fire smoking from Burigi National Park. He followed-up the fire and found the appellant and his accomplice in the National Park. They searched their camp and found several government trophies and some weapons used for hunting. PW2 also testified that, while on patrol with other rangers, they saw fire in the National Park, they traced the fire and managed to arrest the appellant and his accomplice. The appellant and his accomplice were found in possession of government trophies and locally made weapons used for hunting. PW3 evaluated the government trophies and prepared the evaluation report which was admitted in court. PW4 prepared the form for chain of custody for the exhibits. Thereafter, the prosecution closed its case allowing the defence case to proceed.

DW1, who was the appellant's accomplice, stated that his house, where he spent his night with the appellant, was stormed by unknown people who arrested and handcuffed him. At his house, they acquired a bow and arrows. They were ferried to Biharamulo Police Station using a car which had the alleged government trophies. His testimony corresponds to that of DW2 (appellant) who testified that, he visited DW1 who was sick and their house was invaded and he was arrested. The invaders also managed to find some traditional weapons within the house. He also insisted that the alleged government trophies were in the car driven by the invaders. DW3 was just informed that his father (DW1) was arrested and his things robbed. He went to her father's house and found shoe marks of the police. DW4 also confirmed that the house of DW1 was invaded

and things robbed and destroyed. DW5 stated that, on 3rd June 2019, at 2 am, he saw torch lights at the house of DW1. He went to his neighbour and they decided to report the incident to the hamlet leader. He confirmed that the house of DW1 was arrested on that night while at home and taken to Biharamulo Police Station.

When I juxtapose the prosecution evidence with that of the defence side, it seems the appellant, who had just visited the house of DW1, was arrested at home. There is clear doubt on whether the appellant was arrested in the game reserve as alleged by the prosecution evidence. What seems to be evident is, the appellant and his accomplice were invaded at their home and finally arrested. Their houses were searched and some of their properties destroyed. The arrest was done at around 2 am and witnessed by DW5 who even went further reporting the incident to the hamlet leader. DW1 further confirmed that, in his house there was the bow and some arrows but, in my view, not necessarily for hunting. The defence evidence puts doubt on whether the appellant and his accomplice were found in the game reserve with the alleged government trophies. If the appellant was real arrested in the National Park and found with the alleged government trophies, why did the game ranger again search their houses at that night. Furthermore, the evidence of DW3, DW4 and DW5 does not suggest that, the house of DW1 was located in the National Park. It seems, the prosecution witnesses wanted to hide the fact that they searched the house of DW1 at night. Without going too far, I find doubt in the prosecution evidence

proving that the appellant and his accomplice were found in the National Park in possession of the government trophies and the weapons. I find merit in the appeal and therefore allow it. The appellant should be released unless held for other lawful reasons. It is so ordered.

Dated at Bukoba this 24th Day of June 2022.



Ntemi N. Kilekamajenga.
JUDGE
24/06/2022

Court:

Judgment delivered this 24th June 2022 in the presence of the appellant present in person and his counsel present, Mr. Danstan Mujaki (Adv). The learned State Attorney, Mr. Joseph Mwakasege was present for the respondent. Right of appeal explained.



Ntemi N. Kilekamajenga.
JUDGE
24/06/2022