

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

**MUSOMA SUN REGISTRY**

**AT MUSOMA**

**CRIMINAL APPEAL NO 157 OF 2021**

(Arising from the judgment of the District Court of Serengeti at Mugumu in Economic Case NO 45 of 2018)

**PETER S/O KASUKA @ NYANDA ..... APPELLANT**

***VERSUS***

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

**JUDGMENT**

2<sup>nd</sup> August & 2<sup>nd</sup> August, 2022.

**F. H. Mahimbali, J.**

The appellant in this case Peter Kasuka @ Nyanda was charged, convicted and sentenced to jail for three economic offences namely; Unlawful entry into game reserve contrary section 15(1) and (2) of the Wildlife Conservation Act No. 5 of 2009, on the second count, Unlawful Possession of weapons in Game Reserve contrary to section 17 (1) and (2) of the Wildlife Conservation Act No. 5 of 2009 read together with paragraph 14 of the First Schedule of the Economic Organised Crime Control Act (Cap 200 R.E 2002 as amended by Act No. 3 of 2016 and on third count: Unlawful Possession of Government Trophies contrary to 86 (1) and (2) c (iii) of the Wildlife Conservation Act No. 5 of 2009 as amended by Act No. 2 of 2016 read together with paragraph 14 of the

First Schedule of the Economic Organized Crime Control Act (Cap 200 R.E 2002) as amended by Section 13 and 16 of Act. No. 3 of 2016.

It was alleged by the prosecution that on the 29<sup>th</sup> day of June, 2018 at Mto robanda area in Korongo Game Reserve within Serengeti District in Mara Region, the appellant was found to have entered therein without permission of the Director thereof previously sought and obtained. In respect of the second count, it was alleged by the prosecution side that on the same date and place, the appellant was found being in unlawful possession of weapon, to wit: one knife and one panga without permit and failed to satisfy to the authorised officer that the said weapons were intended to be used for purpose other than hunting, killing, wounding or capturing of wild animals. And in respect of the third count, it was alleged that on the same date and place, the accused person was found in unlawful possession of fifteen pieces dried meat of Wildebeest valued Tsh. 4,251,000/=, the properties of the United Republic of Tanzania.

The appellant pleaded not guilty to all offences charged with whereby a total of four witnesses testified for the prosecution and the appellant had testified for himself. Upon hearing of the prosecution witnesses, the trial court convicted the appellant in all three offences

and sentenced him to serve one year for first and second offences and whereas for the third offence, he was sentenced to serve 20 years in jail. He has been aggrieved by that decision, thus the basis of the current appeal armed up with a total of 6 grounds of appeal.

During the hearing of the appeal, the appellant represented himself whereas the respondent was dully represented by Mr. Frank Nchanilla, learned state attorney who supported the appeal on two reasons:

*First,* in establishing the offences of unlawful entry into game reserve and unlawful possession of weapons as per the decision of the Court of Appeal on **Mosi Chacha Iranga and Makiri Chacha vs Republic**, Criminal Appeal No 508 of 2018, the Court of Appeal made a position that in establishing such charges, there must be established boundaries of the said point of arrest if it is within the statutory boundaries of the Wildlife Conservation Area (see page 15 of the CAT's decision). With this, the first and second counts collapse as none of the prosecution's witnesses established the legal boundaries or coordinates of the said point of arrest of the appellant.

*Second,* with the inventory tendered as exhibit PE3, the trial court records (at page 23 of the typed proceedings) don't state if the

appellant was fully involved but only the trial magistrate ordered its destruction. On that basis, he prayed that the appeal be allowed.

On the other hand, the appellant had nothing more to add. He thus prayed that the appeal be allowed.

In consideration to the submissions made in support of the appeal, and the position of the Court of Appeal in the case of **Mosi Chacha Iranga and Makiri Chacha vs Republic**, Criminal Appeal No 508 of 2018, CAT at Musoma the Court of Appeal, I agree as that is the proper position guiding Courts and investigative machineries/prosecution as far as offences of entry into Wildlife Conservation Area/ and possession of weapons therein, there must be a clear establishment that the point of arrest is actually within the geographical points /coordinate points of the established Wildlife Conservation, National Park, etc. With this case, there is none of that evidence.

As regards to the offence of unlawful possession of government trophies (third count), it is trite law that a trophy has to be dealt with for it to be worth court's exhibit is tantamount to legal procedures. The exhibit PE3 is silent on the manner the appellant person was involved in the dealing of the said trophy. The inventory proceedings are silent on that. It has not established his involvement but just a destruction order

by the magistrate. Other than this, there is nothing further exhibited by the said PE3 exhibit. What then is the legal value of this? 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. The Court on this had this to say:

*"According to paragraph 2 (a) of the Police General Orders (PGO), the Police Force recognizes the above duty to protect every exhibit, perishable or otherwise, which comes into their possession:*

*2.(a) The police are responsible for each exhibit from the time it comes into the possession of the police, until such time as it is admitted by the Court in evidence, or returned to its owner, or otherwise disposed of according to instructions; [Emphasis is added].*

*The above paragraph 25 envisages any nearest Magistrate, who may issue an order to dispose of perishable exhibit. This paragraph 25 in addition emphasizes the mandatory right of an accused (if he is in custody or out on police bail) to be present before the Magistrate and be heard. In the instant appeal, the appellant was not taken before the primary court magistrate and be heard before the magistrate issued the disposal order (exhibit PE3). While the*

*police investigator, Detective Corporal Saimon (PW4), was fully entitled to seek the disposal order from the primary court magistrate, the resulting Inventory Form (exhibit PE3) cannot be proved against the appellant because he was not given the opportunity to be heard by the primary court Magistrate. In addition, no photographs of the perishable Government trophies were taken as directed by the PGO”.*

My conclusion on evidential probity of exhibit PE3 in this case ultimately coincides with that of Mr. Nchanilla learned state attorney. Exhibit PE3 cannot be relied on to prove that the appellant was found in unlawful possession of Government trophies mentioned in the charge sheet. If the appropriate legal procedure is not followed then the said exhibit lacks evidentiary legal value and is subject to disregard, as I hereby do.

I entirely agree with the respondent's counsel that with all the prosecution witnesses, none testified that the place of arrest was within the boundaries of Game Reserve. For not mentioning/establishing the legal coordinate points where the appellant had been arrested is within the said protected area of Wildlife Management Area, then the offences of being present there in or being found with unlawful possession of weapons therein is wanting.

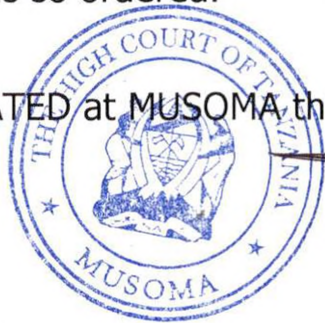


All said and done, this court holds that since all the three counts were not proved beyond reasonable doubt, this appeal is allowed and the trial court's conviction on all charged offences is quashed, and the sentences meted out are set aside.

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 2<sup>nd</sup> day of August, 2022.



F. H. Mahimbali

Judge

**Court:** Judgment delivered this 2<sup>nd</sup> day of August, 2022 in the present of the appellant, Mr. Frank Nchanial, state attorney for the respondent and Mr. Gidion Mugoia, RMA.

Right of appeal is explained.

F. H. Mahimbali

Judge

2/8/2022