

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

CRIMINAL APPEAL NO.76 OF 2020

(Originating from Economic Case No. 4 of 2018 of the Meatu District Court)

MASANJA BAHAME..... APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

11th & 18th February 2022

MKWIZU J:

Appellant **MASANJA BAHAME** was before the district court of Meatu at Meatu charged with an Economic Case with two counts all for Unlawful Possession of Government Trophy c/s 86 (1) and (2) (c) (ii) of the Wildlife conservation Act No. 5 of 2009 read together with paragraph 14 (a) of the first schedule to the Economic and Organized crime Act (Cap 200 RE 2002).

He instantly pleaded not guilty to the 1st count and returned a plea of guilty to the 2nd count. He was convicted on his plead of Guilty on the 2nd count and accordingly sentenced. Immediately thereafter, prosecution

withdrew the 1st charge against the appellant under section 98 (a) of the **Criminal Procedure Act.**

Appellant is not happy with the plea. He has preferred this appeal on five grounds of appeal that *(i) the plea of guilty was involuntary as he was promised acquittal by the park rangers due to his old age, (ii) that the trial court misdirected himself to find that he was found with government trophies (iii) he was severely sentenced due to his extreme old age and that (iv) the whole proceedings are tainted with procedural irregularities.*

Appellant appeared in person at the hearing, He prayed to be acquitted. Mr Jukael Jairo learned State Attorney represented the Republic, respondent and was in support of the appeal. He contended that the plea by the appellant was equivocal plea for the facts narrated by the prosecution and on which the trial court based its conviction did not show if the appellant was found with the Government Trophy without permit. He therefore prayed the court to allow the appeal.

I am aware of the provisions of section 360 (1) of the Criminal Procedure Act Cap 20 RE 2019 that;

*No appeal shall be allowed in the case of any accused person who has pleaded guilty and has been convicted on such plea by a subordinate court except **as to the extent or legality of the sentence***

However, the Court of Appeal had in **Lawrence Mpinga v. Republic** (1983) TLR 166 pronounced circumstances under which an appeal against conviction on a plea of guilty can be entertained that: -

- (i) *An appeal against a conviction based on an unequivocal plea of guilty generally cannot be sustained, although an appeal against sentence may stand.*
- (ii) *an accused person who has been convicted by any court of an offence "on his own plea of guilty" may appeal against the conviction to a higher court on any of the following grounds;*
 - 1. *That, even taking into consideration the admitted facts, his plea was imperfect,*

ambiguous or unfinished and, for that reason the lower court erred in law in treating it as a plea of guilty.

2. That he pleaded guilty as a result of mistake or misapprehension.

3. That the charge laid at his door disclosed no offence known to law; and

4. That upon the admitted facts he could not in law have been convicted of the offence charged.

And in **Khalid Athumani V R** [2006] T.L.R. 79 the Court held: -

*"The Courts are enjoined to ensure that an accused person is convicted on his own plea where it is certain that he/she understands the charge that has been laid at his/her door discloses an offence known under the law and that he/she has no defence to it. **A plea of guilty having been recorded, a Court may entertain an appeal against conviction If it appears that the appellant did not appreciate the nature of the charge or did not intend***

to admit that he was guilty of it; or that upon the admitted facts he could not in law have been convicted of the offence charged” (emphasis added)

In his first ground appellant challenges the nature of the plea that it was induced by the park rangers who had promised acquittal due to his extreme old age. I will therefore evaluate the proceedings to see the legality of this complaint and whether his appeal is tenable or not.

I have cautiously perused the record. On 15/5/2019 appellant was brought before the court after the completion of investigation and filing of the concert and certificate conferring jurisdiction to the subordinate courts by the DPP. The charge was read over and explained to the appellant to which he, as stated in the preceded paragraphs pleaded guilty to the 2nd count which is subject of this appeal. Appellant was recorded to have said, “it is true”. Prosecution expressed their readiness to proceed with narration of facts of the case to the appellant. The facts were recorded thus:

1. Name and address of the accused as per charge sheet
2. On the 2nd count the accused was nabbed on 23.06.2018 at 0600HR while at Makao Game reserve within Meatu District in Simiyu having

warthog meat, piece value at Tshs. 1,023,885/= the government of Tanzania

3. On the same date accused was taken to the police station Meatu where he was booked under caution statement, he confessed.
4. On 25.06.2018 the accused was arraigned prior to this court for the first time, because this court was not yet conferred with jurisdiction to entertain this case, he was not asked to plea thereto.
5. Today, after this court being conferred with jurisdiction to conduct this case, accused is asked to plea whereby he pleaded guilty on the 2nd count.
6. Also, all facts are read over to the accused."

The above facts were admitted by the appellant and was thereafter convicted and consequently sentenced for unlawful possession of government trophies. The issue here is whether the plea was complete. My reading of the facts above reveal that, they are deficiency of the elements or ingredients of the offence. The facts admitted by the appellant cover the arrest of the appellant at makao game reserve with two pieces of wathong meat. That he was taken to the police and his arraignment to the

court. The said facts failed to include the element of unlawful possession which is key in establishing the offence with which the appellant was charged. In **Adan V R** (1973) IEA.443 the court held :

"the charge and all the ingredients of the offence should be explained in his language, or in a language he understands".

Faced with a similar matter, the court in **Munisi Marco Nkya vs. R.** [1989] T.L.R, No. 59 observed.

- i. *An accused's plea should as near as possible be recoded as the accused says it. A plea of "It is true" without amplifications is unsatisfactory as it may not amount to admission of every constituent element of the charge (s)*
- ii. *Appellant's plea was not remedied by the applicant's admission of the facts read over to him by the prosecution because the said facts did not disclose that the appellant was found in unlawful possession of government trophy.*

Gleaned from the above authorities is that for a complete and unequivocal plea, admitted facts must include all ingredients of the offence. In this case, as stated earlier on, the important ingredient of unlawful possession was omitted. The plea was for that reason equivocal.

There is also another faulty in this case, apart from an oversight to include in the facts the element of unlawful possession of Government trophies, the said trophies were neither tendered in court nor its valuation report and inventory form made part of the narrated facts. The facts do not bring to the court's mind the connection between the alleged trophies in the charge sheet and the appellant in court. It should be stressed that, in an offence of this nature, conviction is intolerable without proof of the ***unlawful possession of the trophy*** and to have the facts complete, prosecution ought to have tendered the alleged trophies, its valuation report and inventory or include in the facts, statement on how the same were obtained and disposed of to have the appellant well informed of what he is admitting of. This omission is fatal, it renders the entire accusations against the appellant groundless.

That said, the plea by the appellant is declared equivocal. A retrial order is also unjustified under the circumstances of this case. In the upshot, I allow the appeal, quash the conviction, and set aside the sentence. Appellant is to be released from prison forthwith unless otherwise held for other lawful cause.

It is so ordered.



DATED Shinyanga this 18th day of **February** 2022.

E.Y. Mkwizu
E.Y. MKWIZU
JUDGE
18/02/2022

COURT: Right of appeal explained. *E.Y. Mkwizu*

E.Y. MKWIZU
JUDGE
18/02/2022