

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

CRIMINAL APPEAL NO. 84 OF 2021

(Arising from Economic Case No. 20 of 2020 of Bariadi Resident Magistrate Court)

SAMSON MALIMBA..... APPELLANT

**VERSUS
THE**

REPUBLIC.....RESPONDENT

JUDGMENT

10th & 18th February 2022

MKWIZU J:

The appellant, Samson Malima and Matondo Mabula were charged with the offence of Unlawful Possession of Government Property, Contrary to section 86 (1) and (2) of the Wildlife Conservation Act, No. 5 of 2009 read together with paragraph 14 of the First Schedule to and section 57 (1) and 60 (2), of the Economic and organized Crime Control Act, [Cap 200 R:E 2019] . It was alleged that, on 3rd January 2020 at Mbogo Nyasosi Village, within Itilima District in Simiyu Region, the appellant and the said Matondo mabula were found with Government trophies to wit 30 piece of Zebra and fresh tail of Zebra worth 1200 USD equal to Tshs. 2,782,800/= They were

also in addition to the above found possessing one head of warthog, four legs of warthog equivalent to 450 USD equal to Tshs 1,043,550/=.

The facts setting the background of the matter are that on 3//11/2020 the Park Rangers Chacha Magige, Alphonse Medard, David Mtui and Gabriel Giti game reserve officers were in patrol at Maswa Game reserve. While there,they were tipped that Matondo Mabula and Samson Malimba of Mbogo Nyasosi village are possessing government trophy at their homes. They searched the accused's houses and managed to find therein a fresh Zebra tail, two pieces of fresh Zebra meat, 30 pieces of fresh Zebra skin, four legs of warthog and one warthog skull and that accused person failed to show the permit to that effect. Accused were accordingly charged.

PW1, one David Mtui, a wildlife officer said at the 1st accused house they managed to find 30 pieces of Zebra skin, one Zebra tail, one skull of wathong, four wathong legs and two pieces of Zebra meat without a permit They seized the items and filled in a seizure certificate. PW2 and PW4 evidence is in support of PW1's evidence.

Evance Lawrence Nkwama (PW3) explained to the court how he received a call from DC Kalson of Bariadi Police station who wanted him for valuation of the trophies. At the police he was shown the trophies which he mentioned as 30 pieces of zebra skin, two pieces of fresh zebra meat, one zebra tail, four wathongs legs and one skin of wathong all fresh. He identified them professionally and valued the same. He finally filled the trophy identification and valuation certificate. PW3 also said he prepared an inventory. The valuation certificate and inventory form were tendered in court as exhibit P2 and P3.

At the end of the trial, both accused persons were found guilty. First accused was absent so the conviction and sentence proceeded against him in absentia. Dissatisfied, 2nd accused filed this appeal challenging both, the conviction, and the sentence on the following grounds.

1. That, the learned trial magistrate erred in law and in facts by failure to consider my defence
2. That the evidence adduced by the prosecution side was not to the standard required by the law

3. That, the trial magistrate erred in law and in fact while evaluating contradictory prosecution
4. That, the evidence adduced by the prosecution side was not to the standard required by the law.

When the appeal was called for hearing on 10th February 2022 appellant appeared in person (unrepresented) and the republic was represented by Salome Mbughuni and Magreth Mapunda State Attorneys. Appellant had nothing to submit he asked the court to evaluate his grounds of appeal.

The learned State Attorney was in support of the appeal. She was of the firm view that the prosecution failed to prove the case. To her, the chain of custody of exhibits relied upon by the prosecution was not considered. She contended that, PW1 and PW2's evidence was open that appellant was found with the government Trophies mentioned in the charge sheet and both the accused persons and the alleged trophies were taken to the Police where file case with Refence No. BAR. IR/2014/2020 was opened. Their evidence is silent on how the trophies were stored and the person to whom the trophies were handed to at the police station. On the other hand,

PW3, valuer of the trophies was handed the trophies by DC. Kalson. The state attorney contention was that, the prosecution evidence is not certain whether the trophies found with the appellant are the same trophies identified and valued by PW3. The court was urged to allow the appeal.

Incontestably, this appeal is merited. As correctly submitted by the learned State Attorney, the principles governing the chain of custody of exhibits were not adhered to. Prosecution was required to lead evidence detailing the movement of the alleged trophies from where they were recovered, in the accused's residency to when they were tendered in court as exhibit. PW1 and PW2, the arresting officers, failed to tell the court as to whom they handed the trophies at the police station. For instance, at page 10 -11 of the trial court's PW1 said:

" we searched the house of Matondo and found 30 pieces of zebra skin, one tail of zebra, one skull of warthog, legs of warthog, and 2 piece of zebra meat. The accused had no permit to own government trophies. Alphonse filed certificate seizure and signed. Then accused were taken to Bariadi Police station and opened a file Bar. I/2014/2020"

The above statement is silent on whose custody the trophies were entrusted. The rest of the prosecution evidence said nothing about this point. The question arising here is if at all the trophies mentioned were taken to the police, who stored them, how and to whom DC Kalson got the trophies to. Each of the above question needed an answer from the prosecution evidence which are missing in this case. As a result, the integrity, and the evidentiary value of exhibit P2 and P3 is doubtful. They are on that ground expunged from the records.

The remaining evidence on the record is insufficient to ground appellant's conviction as far as the offence of unlawful possession of the government trophy is concerned. Suffices to say, the appellants appeal has merit, trial court failed to properly evaluate the evidence before leading to a wrong decision. This is a criminal case, where prosecution is not only required to list down pieces of evidence, but also to connect the accused, in this case the appellant with that evidence. The prosecution evaded that process in this case.

In the upshot the appeal is allowed, conviction is quashed, and the sentence imposed on the appellant is set aside, the appellant should be released from prison forthwith unless lawful held. Order accordingly.

DATED at 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