

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

**BUKOB A DISTRICT REGISTRY**

**AT BUKOB A**

**MISC. ECONOMIC APPEAL NO. 01 OF 2022**

*(Originating from Economic Case No. 02 of 2018 of District Court of Biharamulo at Biharamulo)*

**AVIT GENADIO-----1<sup>ST</sup> APPELLANT**

**GERAD JOHN-----2<sup>ND</sup> APPELLANT**

**VERSUS**

**REPUBLIC----- RESPONDENT**

**JUDGEMENT**

**Date of Last Order: 01/09/2022**

**Date of Judgment: 09/09/2022**

**A. E. Mwipopo, J.**

The appellants namely Avit Genadio and Gerald John were arraigned in Economic Case No. 02 of 2018 at the Biharamulo District Court for four counts. In the first count, the appellants were charged for the offence of unlawful entry into a game reserve contrary to section 15 (1) and (2) of the Wildlife Conservation Act, Act No. 5 of 2009. In the second count the appellants were charged for the offence of being in unlawful possession of weapons into a Game Reserve contrary to section 17 (1) and (2) (c) of the Wildlife Conservation Act, Act No. 5 of 2009. In

the third Count the appellants were charged for the offence of unlawful hunting into a Game Reserve contrary to section 19 (1) and (2) (b) of the Wildlife Conservation Act, Act No. 5 of 2009. In the fourth count the appellants were charged for the offence of being in unlawful possession of government trophy contrary to section 86 (1) and (2) (c) of the Wildlife Conservation Act, Act No. 5 of 2009.

The particulars of the offence in the charge sheet shows that appellants on 10<sup>th</sup> May, 2018 at about noon hours at Burigi Game Reserve within Biharamulo District in Kagera Region, unlawful entered into Burigi Game Reserve and were found in the possession of weapons to wit two knives and one man made gun known as gobore without permission of the Director of Wildlife and were found in the possession of two zebra's meat valued at Tshs. 5,476,800/= the property of the Government of United Republic of Tanzania.

When the charge sheet was read over to appellants, they pleaded guilty to all counts and also they admitted that the facts narrated by the prosecutions are correct. The trial District Court convicted the appellants on all four offences and in the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Counts the appellants were sentenced to pay fine of Tshs. 100,000/= for each count or in default to serve 6 months imprisonment. In the 4<sup>th</sup> count the appellants were sentenced to pay a fine of Tshs. 54,768,000/= or in default to serve a term of twenty (20) years imprisonment. The sentence were to

run consecutively in case of fines and to run concurrently in case of failure to pay for the said fines. The Court gave order for the gobole and two knives to be forfeited by Government.

The appellants were not satisfied with the decision and filed the present appeal. In the petition of appeal the appellant has five grounds of appeal as follows hereunder:-

- 1. That, the trial Court Magistrate erred in law and fact to convict and sentence the appellants without certificate of seizure to prove the said admitted exhibit (gobole and knives).*
- 2. That, no facts of the case ever mentioned, read and explained to appellants after they have entered into a plea of guilty.*
- 3. That, there was no charge which was read over and explained to appellants before they allegedly entered a plea of guilty according to the Court record.*
- 4. That, the appellant signed no where after he admitted to the facts of the case contrary to the law.*
- 5. That, the trial Court Magistrate leaves a lot of doubts as the case was not proved to the required standard of the law.*

On the hearing date, the appellants were present in person and the respondent was represented by Mr. Amani Kirua, State Attorney. The Court invited both sides to make their submissions.

The 1<sup>st</sup> appellant in his submission prayed for the Court to consider their joint grounds of appeal found in the petition of appeal. The 2<sup>nd</sup> appellant when

given opportunity to make submission he prayed for their grounds of appeal in the joint petition of appeal be considered by this court.

The counsel for the respondent oppose this appeal as the grounds of appeal found in the petition of appeal have no merits. The counsel responded by jointly considering all grounds of appeal as they are found in the petition of appeal. He said that the Criminal Procedure Act provides in section 360 (2) that where the accused person was convicted of his own plea of guilty the accused person is allowed to appeal on sentence only. The evidence available in record shows that the sentence imposed by the trial court was proper. Otherwise, the appeal will be determined if the appeal is against their plea that it was not unequivocal.

The counsel said that the proceedings of the trial court in page 11 shows that on 02.10.2020 the charge sheet was read over to the appellants and they admitted to all 4 offences they were charged with. The appellants admitted that the facts narrated to them by the prosecution was correct. In the narrated facts, the prosecution tendered the weapons found in appellants' possession, inventory, certificate of seizure and certificate of evaluation. The appellants did not object the tendering of the said exhibit. The appellants even pleaded to the trial court to forgive them which proves that it is true that they have committed the offence. The appellants signed in the memorandum of facts to prove that they are agreeing to what was narrated by the prosecutions in the facts.

In rejoinder, the 1<sup>st</sup> appellant said that he do not know to read or write, as result he signed in a paper which he did not know what was written. The 2<sup>nd</sup> appellant in his rejoinder prayed for the court to have leniency and to consider their grounds of appeal.

From the submissions, grounds in the petition of appeal and available record, the issue for determination is whether the appeal before this Court has merits.

The law provides that a person convicted of an offence on his own plea of guilty is barred from appealing against conviction. The person can only appeal against the extent or legality of the sentence imposed. This is in accordance with section 360(1) of the Criminal Procedure Act, Cap. 20 R. E. 2019 (the CPA). The section provides that:-

*"360.-(1) 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, as it was stated by the State Attorney the appellant may successful challenge his plea of guilty before trial Court in certain circumstances. This is possible when there are circumstances which may render a plea to be equivocal. The Court of appeal in the case of **Karlos Punda vs. Republic**, Criminal Appeal No. 153 of 2005 (unreported), did set four factors which renders the plea

equivocal. The said factors includes that the plea was imperfect, ambiguous or unfinished; That the appellant pleaded guilty as a result of mistake or misapprehension; That the charge laid at the appellant's door disclosed no offence known to law; and That upon the admitted facts the appellant could not in law have been convicted of the offence charged.

In the case of **Michael Adrian Chaki v. Republic**, Criminal Appeal No. 399 of 2019, Court of Appeal of Tanzania at Dar Es Salaam, (Unreported), the Court of appeal illustrated more on the unequivocal plea where it emphasized on the conditions to be met for the plea to be considered as unequivocal. These conditions includes that the appellant must be arraigned on a proper charge; the accused must fully understands what he is actually faced with; the charge is stated and fully explained to the appellant before he is asked to plea or admit each and every particular ingredient of the offence; the facts adduced after recording a plea of guilty should disclose and establish all the elements of the offence charged; and the accused must be asked to plead to each and every ingredient of the offence charged and the same must be properly recorded. The court must satisfy itself without any doubt that the facts adduced disclose or establish all the elements of the offence charged before a conviction on a plea of guilty is entered.

In the present case, the appellants were charged with four offences of unlawful entry into a game reserve , unlawful possession of weapons into a Game

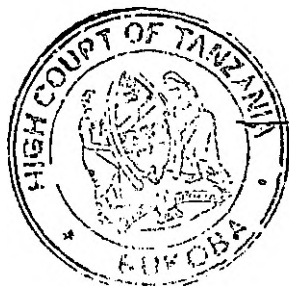
Reserve, unlawful hunting into a Game Reserve and unlawful possession of government trophy. All these offences are known to our laws which is the Wildlife Conservation Act, Act No. 5 of 2009. This prove that the appellants were arraigned to a proper charge.


The proceedings shows that the charge sheet was read over to both accused persons who pleaded to each of the count. Their plea to each of the offence charged proved that they understood each of the offence they were charged with save only for the third count. They properly pleaded to each of the ingredient of the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> counts. In the third count for the offence of unlawful hunting into a Game Reserve, appellants admitted that they were found in unlawful possession of hunting into a game reserve without permit. However, it is not possible to be in possession of hunting into a game reserve. Hunting being the act of chasing or searching for something it could not be possessed. This shows that the appellants did not understood the 3<sup>rd</sup> count.

After appellants admitted the charges they were facing when it was read to them, the prosecution narrated the facts. The facts narrated by the prosecution reveals that the appellants were found by game wardens inside Burigi Game Reserve with weapons without permit and in possession of government trophy to wit zebra meat. The certificate of seizure was filled, valuation of zebra meat was conducted, inventory was filled and all those documents were tendered exhibits

together with weapons as prosecution exhibits. The appellants admitted that the facts are correct and true and both of them did put their thumbprint in the proceedings after admission. Despite the fact that the said tendered documentary evidence were not read over to the appellants, the facts narrated by the prosecution disclosed and established all the elements of all offences appellants were charged with. The said facts proves the offences against both appellants without doubt. For that reason, I find that the appellants' plea was unequivocal.

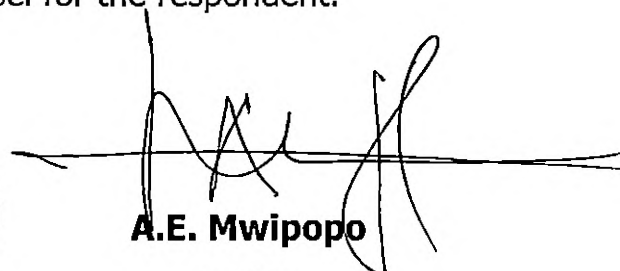
Therefore, the appeal has no merits and it is dismissed accordingly. The trial District Court decision and sentence is upheld.



  
**A.E. Mwipopo**  
**Judge**  
**09/09/2022**

**Court:** The judgment was delivered today 09/09/2022 in the presence of the appellants and the counsel for the respondent.



  
**A.E. Mwipopo**  
**Judge**  
**09/09/2022**