IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

CRIMINAL APPEAL NO 99 OF 2021

(Arising from Economic Case no 113/2020 in the District Court of Serengeti at Mugumu)

SAMWEL S/O MANYENGO @ MCHONGWE .....1ST APPELLANT

BENSON S/O BARU @ MARWA .....2ND APPELLANT

JULIUS S/O WAMBURA @ CHORWA ..... 3RD APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

JUDGMENT

16th August & 23rd September, 2022

F. H. Mahimbali, J.

The appellants in this case were jointly charged with three offences. Out of the three offences, two of them (the 1st and 2nd counts) involved offences of entry into the National Park and unlawful possession of weapons in the National Park. In the third offence, they were jointly charged with the offence of unlawful possession of Government trophies.

It was alleged by the prosecution in the first offence that on 27th day of September, 2020 at Itaro area into Serengeti National Park within Serengeti District in Mara Region, entered into the Serengeti National Park, without permission sought and obtained which is to be an offence contrary to section 21 (1) a and 29 (1) of the National Park Act, Cap 282 R. E. 2002 as amended by the written laws (Miscellaneous Amendments) Act No 11 of 2003.

In the second offence, it was alleged that, the appellants on 27th day of September, 2020 at Itaro area into Serengeti National Park within Serengeti District in Mara Region, were found in unlawful possession of weapons to wit, one knife, one panga, one spear, and four animal trapping wires, without permit and failed to satisfy an authorised officer that the same were intended to be used for purposes other than hunting, killing, wounding or capturing of wild animals which is contrary to section 24 (1) (b) and (2) of the National Parks Act, Cap 282 R. E. 2022.

In the third court, it has been alleged by the prosecution that on 27th day of September, 2020 at Itaro area into Serengeti National Park within Serengeti District in Mara Region, were found in unlawful possession of Government Trophies to wit: three pieces of dried meat

and two dried skins both of wildebeest valued Tsh 2,9990,000/= the property of the United Republic of Tanzania which is an offence contrary to section 86 (1) and (2) (c) (iii) of the Wildlife conservation Act No 5 of 2009 as amended by the written laws (Miscellaneous Amendment) (No. 2) Act 2016 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.

The three (appellants) pleaded not guilty to the charge (for all three offences)

In establishing the guilty of the appellants, the prosecution paraded a total of four witnesses and four exhibits whereas the appellants each fended himself and had no witnesses to call neither exhibits to tender.

PW1 and Pw2 to testified how on the 27th day September 2020 they arrested the appellants at Itaro area allegedly an area within Serengeti National Park unlawfully as they had no any permit authorising them to be within Serengeti National Park. During the said arrest, they saw them with weapons unlawfully to wit: one knife, panga, spear and trapping wires which were collectively admitted as PE2 exhibit. They further found them with government trophies, namely three pieces of

dried meat, two skins, all identified to be of wildebeest (exhibit PE3 and PE4). As they had no permit, they seized and recorded in certificate of seizure (PE1).

PW3 who is wildlife warden, testified how on 30th September, 2020 had identified the said trophies to be wildebeest. They were trophies of wildebeest because of the following features: *"dried skins", "general colours slightly grey to dark brown", "hairs have cherry red/yellow color"* and the three pieces of dried meat have a *"bit grey to dark brown colour meat fibre".* He valued them as being 2,990,000/= as equal to two wildebeest (Pe3).

PW4 testified how he was assigned to investigate the case (MUG/IR/2688/2020). That in the said investigation he had also prepared inventory form for court's order of disposal as it was not easily preservable pending trial. He presented the said trophies (PE3) to resident magistrate of Serengeti together with the appellants. Inventory proceedings were commenced and eventually he got disposal order. All this was done in the presence of the trio appellants. After the court order (PE4), the said trophies were destroyed.

The appellants on their side, each denied to have been in possession of the said trophy but admitted to have been arrested by the

game rangers being in the village but denied to have been within the National Park. As regards to the alleged trophies, they denied to have been in possession with and that they were just forced to sign the certificate of seizure and the inventory certificate (PE1 and PE4).

Upon hearing this evidence, the trial court convicted them and sentenced each as follows: 2 years for the first and second counts (each). For third count, each was sentenced to a custodial sentence of 20 years.

The findings on guilty, conviction and sentence aggrieved the appellants thus the basis of this appeal based on four ground appeal namely:

1. *That the trial magistrate had erred in law and in facts to convict and sentence the appellant by the admitted the wrong evidence PW3 and PW4 and exhibits PE3.*
2. *That the trial magistrate erred in law and in facts to enter conviction and sentence the appellants because during of destroying the three pieces dried meat and two dried skins both of wildebeest as they were not in the National Park as alleged.*
3. *That the trial magistrate erred in laws and fact to enter conviction and sentence the appellants by admitted wrong evidence which tendered at the court by prosecution side by admitted wrong exhibit because there was no any exhibit which tendered at the court this case but those exhibit like one panga, one knife four animals trapping wires one spear and three*

pieces dried meat and two dried skin those this exhibit was produced during hearing this case on the trial magistrate.

4. *That the trial magistrate erred in law and fact to conviction and sentences the appellant by admitted wrong evidence from PW3 and Exhibit PE which was not tendered by an expert from the Government chemist on the ground that is impossible to trophy by colour only on the dried meat.*

During the hearing of the appeal, the appellants represented themselves whereas for respondent, appeared Ms. Hokororo learned Senior State Attorney. The appellants had prayed for their grounds of appeal to be adopted to form submissions of their appeal and had nothing more to add. They then prayed for acquittal.

On her part, Ms. Monica Hokororo, first addressed the court that as per law the first offence of unlawful entry into the National Park contrary to section 21 (1) a (2) and 29 (1) of the National Parks Act, is none-existent. She submitted that the appellants were thus wrongly charged and consequently wrongly convicted and sentenced. On this, she prayed that conviction and sentence meted out on this first offence be quashed and set aside.

On the second count, she submitted that for an offence of being in unlawful possession of weapons within the National Park to stand, the arresting officers must clearly establish that the point of arrest is actually

within the National Park area. As no boundaries were stated and established for the said satisfaction in this case, if the point of arrest was within the specified boundaries of Serengeti National Park area. For one to be charged with such an offence within the National Park or Wildlife Conservation Area unlawfully, the arresting officers (PW1 and PW2) had to establish that at the point of arrest, he was really within the coordinates of the said National Park or Wildlife Conservation Area. She submitted that, equally in this count, the appellants were wrongly convicted for lack of such evidence establishing the said coordinates/points of arrest as actually being within the established boundaries of Serengeti National Park.

Coming to the central issue of the case, is on the third offence which is unlawful possession of government Trophies. On this, Ms. Monica Hokororo was of the view that as per available evidence from PW1 and PW2 (arresting officers), and that of PW3 (expert witness – valuer and Game Warden) with PE3 exhibit and PW4 (PE4 exhibit), she is of the view that the offence of unlawful possession of government trophy has been dully established. On this, she prayed that conviction and sentence on the third offence be unheld by this court as the offence thereof has been fully established.

As regards to the position of Ms. Monica Hokororo learned Senior State Attorney on the wrongfulness of the charges in offence one and two, I have no reservation. I am in agreement that section 21 (1) (a), (2) and 29 (1) of the National Parks Acts does not create the offence of unlawful entry therein. Likewise the offence in the second count (section 24 (1) and 92) of the National Parks Act, ought to have been dully established. There was no such evidence that the point of their arrest was really within the geographical statutory boundaries of the Serengeti National Park (see **Mosi Chacha Iranga vs Republic,** Criminal Appeal No 508 of 2019, CAT at Musoma).

Having digested the submissions of the parties and evidence in record, the vital question is whether the appeal is merited.

From the digest of grounds of appeal no 1, 2 and 4 of the petition of appeal, what can be gathered are three things. That the appellants were involved during the inventory proceedings, that as the said trophy was dry then is ought not to be destroyed as opposed to raw exhibit. Thirdly whether the said trophy (wildebeest) being dried, it features were fully identified as wildebeest in the absence of chemists report.

Unfortunately there is no specific submission by the respondent on these issues. Nevertheless in my considered view, as to why the said

alleged trophies were sought orders for destruction despite being dried, I think the Republic was justified for taking that recourse. I say so because, dried meat as well cannot stay in that form longer/perpetual. They just exist longer than raw meat but does not mean that they will stay in that form perpetual. As if this is enough, it was ordered to be destroyed because of hygienic and its accommodation as well. Therefore, destruction of it was inevitable.

On the scientific description features of the said alleged trophies I am also in dilemma. I am in dilemma because PE4 being in dried form yet PW3 says he was able to identify it to be wildebeest because of the following features:

> *"dried skins have general colors slightly grey to dark brown, hairs have cherry red/yellow colour and three pieces of dried meat have bit grey to dark brown colour meat fibre".*

I wonder if this description squarely fits for a scientific description as opposed to raw meat. It is doubtful if dried meat can have skin with hairs described in colours and its meat fibres in colour. Moreover, there is no specific explanations if the said description cannot belong to any other domestic save wildebeest animal. Materially, PW5 had not discharged his duty well. Otherwise, the appellants are justified to have a chemist report to state if the said samples belong only to wildebeest.

With this shortfall description, I am in agreement with the appellants that the prosecution's evidence that the alleged trophies belonged to wildebeest trophy fell short of clear scientific description for one to get satisfied that it is nothing but wildebeest as charged or say wild meat.

All this said and considered, the appeal is allowed conviction and sentence meted out are hereby quashed and set aside. Unless lawfully held by other causes, the appellants are hereby ordered to be released forthwith.

DATED at MUSOMA this 23rd day of September, 2022.

F. H. Mahimbali

JUDGE

Court: Judgment delivered 23rd day of September, 2022 in the presence of the Appellant, Ms. Hokororo, Senior State Attorney, for the respondent and Mr. Gidion Mugoa – RMA.

Right of appeal is explained.

F. H. Mahimbali

JUDGE