IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

CRIMINAL APPEAL NO 142 OF 2021

(Arising from the District court Serengeti at Mugumu in Criminal Case no 56 of 2020)

KIJA S/O SHABI KADINDA ..... 1ST APPELLANT

SABASABA S/O NYAMHANGA @ MATARA .....2ND APPELLANT

VERSUS

THE REPUBLIC .....RESPONDENT

JUDGMENT

16th August & 30th September, 2022

F. H. Mahimbali, J.

The appellants in this case were convicted and sentenced of four offences at the trial court. Aggrieved by both conviction and sentence meted by the trial court, have preferred this appeal.

It was originally alleged by the respondent/Republic that on 10th day of July, 2020 at Kitungi area into Serengeti National Park which is within Serengeti District in Mara Region, the appellants had entered into the Serengeti National Park unlawfully. This was an offence contrary to

section 21 (1) b and (2) of the National Parks Act, Cap R. E. 2019 and section 29 (1) as amended by written Laws (Miscellaneous amendments) Act No 11 of 2003.

In the second count, they were charged being of unlawful possession of weapon within Nationa Park. In this offence the appellants were acquitted, but it was an offence contrary to section 24 (1) b and 2 of the National Parks Act.

In the third, fourth and fifth counts, they were charged for being in unlawful possession of Government Trophies contrary to section 86 (1) and (2) (c) (iii) of the Wildlife Conservation Act, No 51 of 2009 as amended by the Written Laws (Miscellaneous Amendments) Act No 2 of 2016, read together with paragraph 14 of the First schedule to and sections 57 (1) and 60 (2), of the Economic and organised crime control Act [Cap 200 R. E. 2019]. The said trophies involved in the said charge are: buffalo meat (3rd count), wildebeest meat (4th count) and one piece of dried meat of Warthog. The appellants had pleaded not guilty to the charge of all the charged offences. The prosecution summoned a total of four witnesses and four exhibits.

On the proof that the appellants had entered into Serengeti National Park area, it was the evidence of PW1 and PW2 who testified

that they found them at Kitungi area which is alleged to be within Serengeti National Park. That when they were arrested had been in possession of the following: Two knives, panga, four trapping wire, one piece of dried meat – Buffalo, two fresh limbs of wildebeest meat and one piece of dried meat of warthog. The seizure certificate (PE 1 exhibit) was admitted in court.

With the said weapons, they were collectively admitted as PE2 exhibit.

The PW3-Game Warden, had identified the said trophies as being of Buffalo, wildebeest and warthog. He collectively tendered the value certificates for buffalo, wildebeest and warthog as exhibit PE3.

As the said trophies were perishable goods, inventory proceedings were preferred before honourable Ginene (Resident Magistrate) of Serengeti in the presence of the appellants. The inventory proceedings were conducted and eventually the destruction order was issued.

However, in the said proceedings as well as during trial the appellants denied to have been in entry in the National Park, possession of weapons within the National Park and unlawful possession of the alleged trophies.

Upon hearing of the case, the trial court (Semkiwa Resident Magistrate) convicted the appellants in the first, third, fourth and fifth counts/offences but acquitted them in the second count.

The appellants were then each sentenced to two years in the first count, 20 years in the third, fourth and fifth counts. Sentences were ordered to run concurrently.

The appellants have not been amused with both conviction and sentences by the trial court thus this appeal, propped on five grounds of appeal namely:

1. *That the trial Magistrate erred in laws and fact to convict and sentence the appellants by wrong evidence because PW1 and PW2 on testimone his evidence at the court that they arrested both of the accused person while on their daily routine patrol at about 14:00 of 10 day of July 2020 at KITUNGI AREA, but the court on support this evidence testimone that I have gone through the evidence as adduced by both sides. I support the evidence from PW1 and PW2 was collaborated each other that they arrested the accused persons hiding into the bush at KITUNGIA, so from that evidence who told the truth evidence about the area that arrested the accused persons.*

2. *That the trial Magistrate erred in laws and fact to convict and sentence the appellants by wrong evidence of PW4 D/CPL DANIEL, his evidence to he took the accused persons together with their exhibit to the magistrate, the trophies were ordered to be destroyed after the accused persons being heard, this*

evidence was wrong because during destroying the G/T we was not there because there was no evidence that shown that during perishable the trophies we was at the car like the photographed before disposal.

3. *That the trial magistrate erred in law and fact to convict and sentence the appellants because PW4 testimone that he filed the inventory from and then signed it, this evidence was not true because we did not signed that eventory form.*

4. *That, the trial magistrate erred in law and fact to convict and sentence the appellants without giving a chance to calling the key witness who was there during the park rangers was arresting us.*

5. *That the trial Magistrate erred in law and fact to convict and sentence the appellants without prove beyond all reasonable doubts.*

On the strength of these grounds, the appellants have prayed for acquittal that conviction be quashed and sentences be set aside as they are not responsible.

During the hearing of the appeal, the appellants fended themselves whereas the respondent fully enjoyed the legal services of Ms. Monica Hokororo learned Senior State Attorney, who actually resisted the appeal in the third, fourth and fifth counts, but only supported the appeal on the first count.

The appellants only prayed that this court to adopt their grounds of appeal to form part of their submission, and then prayed for their appeal to be allowed.

On the other hand, Ms Monica Hokororo, without replying the appeal in the order of grounds of appeal, she started her submission first by contending that conviction and sentence in respect of the first count was unjustified, as per law there is no offence of unlawful entry into the National Park as charged. She amplified that the offence is none-existent.

As in the second offence the appellants were acquitted, she could not submit on that as she didn't oppose it.

With the third, fourth and fifth offence in the charge sheet, she generally submitted that the evidence in record is water tight, and thus the appellants were rightly convicted and sentenced as per law. She said all this, relying on the evidence of PW1, PW2 (arresting officers) and exhibits PE1 and pe2. Further, she gave credence to what PW3 and PW4 had testified and the tendered exhibits PE3 and PE4. She was of the view that all went well and established the charged offences.

She then specifically responded to the 4th ground of appeal, denouncing that there was no important witness who was not called. The ones called and testified (PW1 –PW4) were the more important witnesses and none had been more important than them, and that they established well all the remaining offences in counts no 3, 4, and 5. On this, she prayed that the appeal on offences in the 3rd, 4th and 5th counts be dismissed in its entirety. However, for reasons submitted above she urged that the appeal in the first count be allowed, conviction quashed and sentence be set aside.

In digest to the grounds of appeal, I am of the view that all can boil into one main ground that the prosecution case was not proved beyond reasonable doubt. I say so, because, all the grounds of appeal mainly challenge on issues of facts which is the domain of evidence.

With the offence in the first count, I agree that the same is non-existent. I say so basing on the wording of the charging section and the decision of the Court of appeal in the case of **Mosi Chacha @ Iranga and Another vs The Republic,** Criminal Appeal No 508 of 2019, CAT at Musoma.

With offences in counts 3, 4, and 5, the main issue is whether the alleged trophies were dully established as per law?

According to section 85 (1) of the Wildlife conservation Act, 2009, lists what are wild animals. I have no contest with the listed animals.

Regarding the value of the said Government Trophy, the law is that a certificate signed by the Director or Wildlife officers stating the value of any trophy involved in the proceedings, shall be admissible evidence and shall be prima facie evidence of the matters stated – therein (Section 86 (4) of the Wildlife conservation Act 2009)

My interest has been one, whether the charge on unlawful possession of government trophy has been proved beyond reasonable doubt.

For the said offence to be established, first and foremost it must be established that what is alleged, is actually trophy. According to law, trophy means any animal alive or dead, any horn, ivory, tooth tuish, bone, claw, hool skin, meat hair, feather, egg or other portion of any animal and includes a manufactured (section 3 of Act 5, 2009).

By the phrase that the matter stated in certificate by the Director of Wildlife officer shall be primafacie (section 86 (4), does not mean it that it is conclusive proof. What I can construe is this, what is stated

there in is subject to scientific explanation that the same is government trophy.

According to the evidence of PW1 which is supported by the testimony of PW2, the appellants were arrested being in possession of two knives, one panga, four animal trapping wire, one piece of dried meat of Buffalo, two fresh fore limbs of wildebeest and one of dried meat of warthog. As who exactly was holding what weapon and what piece of trophy is not stated. It is a general statement. It was expected for one to be relied, exactly to state who held what. Otherwise it is a suggestion that both were holding in hummock in which there is no that evidence.

Secondly, whether the said alleged trophy were real ones. PW3 at page 38 of the typed proceedings state. "*The buffalo meat has whitish oil, meat fibres were large, skin colour was black, One piece of dried warthog, was pear, colour mine less like white meat fat was thick cover and two fresh forelimbs have skin coloured slightly grey to dark brown and hairs were yellow to cherry red.* "

How these descriptions differ from the features of domesticated animals resembling to buffalo such as oxen cow. I am of the view that,

prosecution side should have gone beyond when giving the scientific explanation/features of the wild animal from the domesticated animals.

All this said and done, the appeal succeeds on the ground that there has not been proof beyond reasonable doubt on the alleged offences.

I thus allow the appeal quash conviction and, set aside sentence. Consequently, I order release of the both appellants unless lawfully held by other causes.

I so find and order

DATED at MUSOMA this 30th day of September, 2022.

F.H. Mahimbali

JUDGE

Court: Judgment delivered 30th day of September, 2022 in the presence of Appellants, Mr. Frank Nchanila, state attorney for the respondent and Mr. Gidion Mugoa, RMA and Appellant being absent.

Right of appeal is explained.

F. H. Mahimbali

JUDGE