IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

CRIMINAL APPEAL NO. 154 OF 2021

(Arising from the decision of the District Court of Serengeti at Mugumu in Criminal Case No. 85 of 2020)

BETWEEN

SHADRACK CHACHA @ MWITA ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

JUDGMENT

A. A. MBAGWA, J.

This appeal is against both conviction and sentence meted against the appellant by the District Court of Serengeti in Criminal Case No. 85 of 2020.

The appellant was arraigned before the District Court of Serengeti with three counts of Unlawful Entry into the National Park, Unlawful Possession of Weapon in the National Park and Unlawful Possession of Government Trophy. The offences were contrary to sections 21 (1) (a) and (2), 29 (1), 24 (1) (b) and (2) of the National Park Act [Cap 282 R.E 2002] and section 86 (1) (2) (c) (iii) of the Wildlife Conservation Act, No. 5 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 Organized Crime Control Act [Cap 200 R.E 2019].

The particulars of offence alleged that, on 15th August, 2020 at Korongo la Mchanga area within Serengeti National Park in Serengeti District the appellant was found in the National Park while in possession of one panga and government trophies to wit; three pieces of wildebeest meat valued at Tshs. 1,495,000/=, the properties of the government of Tanzania without having a permit from the Director of Wildlife.

The prosecution story which led to the conviction of the appellant can briefly be narrated as follows; That on 15th August, 2020 at 08:00 hours the appellant was arrested at Korongo la Mchanga area within Serengeti National Park by park rangers who were on their daily routine patrol. When the appellant was searched, he was found in possession of one panga and three pieces of wildebeest dried meat. Upon further probe the appellant told the park rangers that he did not have the permit to do the same.

As such, the park rangers seized the trophies and machete and listed the same in the seizure certificate. Thereafter, the appellant together with the seized exhibits were taken to Mugumu police station where the case No. MUG/IR/2213/2020 was opened. On the same date the trophy valuer was

called to identify and value the alleged trophies. After that, the appellant and the alleged trophies were taken to the magistrate who heard the appellant and subsequently ordered the disposal of the trophies.

In a bid to prove the case against the accused person, the prosecution marshalled four witnesses and tendered four exhibits to wit; Certificate of Seizure (PE 1), one panga (PE 2), Trophy Valuation Certificate (PE 3) and Inventory Form (PE 4).

Ezekiel Kulwa (PW1) and Wilson Adam (PW2), the park rangers testified on how they arrested the appellant within the National Park. Wilbroad Vicent (PW3) identified the government trophies found in possession of the appellant to be dried meat of wildebeest and valued it at USD 650/= the equivalent of Tshs. 1,495,000/=. PW4, G. 3694 D/CPL SHABAN, the police officer, testified on how he proceeded with the case after the appellant was brought to his duty station, Mugumu police station.

On his side, the appellant stood a solo witness and testified that on 14th August, 2020 together with his wife, child and neighbor went to cut grass adjacent to the National Park. Suddenly, park rangers appeared and asked him about the person who was grazing cattle in the park. The appellant replied them that he did not know him. The park rangers slapped him and forcefully took him to their camp. On the following day, they gave

him pieces of meat and told him that it is the exhibit they found him with. The appellant stated that the park ranger decided to fix him with the exhibits because he refused to tell them the person who was grazing within the National Park.

After a full trial, the District Court of Serengeti found the appellant guilt of all the three counts he was charged with. Consequently, the appellant was convicted and sentenced to serve two (2) year imprisonment for first and second counts and 20-year imprisonment for third count. The sentence was ordered to run concurrently.

Being aggrieved by the trial court decision, the appellant filed an appeal to this court. He advanced four grounds to challenge the decision which can summarized as follows;

1. The prosecution failed to establish chain of custody of the tendered exhibits.
2. The trial court failed to call the independent witness.
3. The trial court did not consider his defence.
4. The prosecution failed to prove their case beyond reasonable doubt.

When the appeal was called before me for hearing, the appellant appeared for himself while the respondent was represented by Mr. Nimrod Byamungu, the learned State Attorney.

While submitting in support of his appeal, the appellant prayed the court to consider his grounds of appeal and allow the appeal.

Responding, Mr. Byamungu argued in support of the appeal with regard to the first and second counts. In respect of the first count of unlawful entry in the National Park, he contended that as per the decision in **Maduhu Nihandi @ Limbu vs the Republic,** Criminal Appeal No. 419 of 2017, CAT at Mwanza, section 21 (1) (a) of the National Parks Act does not create the offence hence it was not proper for the trial court to convict the appellant based on the said provision.

As to the second count of unlawful possession of weapons in the National Parks, Mr. Byamungu argued that the offence was not established beyond reasonable doubts. He averred that PW1 and PW2, the arresting officers, did not prove offence. He proceeded further that, the witnesses said that they found the appellant at Korongo la Mchanga, however, in his defence, the appellant denied to have been found within the National Park rather he said that he was found near the National Park cutting grass. Referring to the case of **Maduhu (supra),** Mr. Byamungu was of the view that the prosecution ought to bring demonstrative evidence, a duty which they failed to discharge.

Regarding the third count, Mr. Byamungu initially supported the appeal stating that disposition of the government trophies was not conducted properly. However, upon probed by the court on the contents of the inventory form which indicated that the appellant was present and heard by the magistrate when the order for disposal of the trophies was made, Mr. Byamungu made a u-turn and supported the conviction in respect of the third count.

Mr. Byamungu proceeded further that, PW1 and PW2's testimony was not shaken as the appellant did not cross examine in respect of possession of government trophy. He added further that, through PW4 and exhibit PE4, it appears the appellant knew very well of the exhibit because he was present when the court ordered the same to be disposed of. Mr. Byamungu submitted further that there was no reason to frame up the case against the appellant as the witnesses namely, PW1 and PW2 did not know him before. Finally, the learned State Attorney prayed the court to dismiss the appeal in respect of the 3rd count.

Responding to the grounds registered by the appellant in respect of the chain of custody, Mr. Byamungu submitted that PW1 and PW2 testified that they went to Mugumu Police Station on the same day and valuer was called and evaluated the trophies on the same day. Thereafter PW4 took the appellant and the trophies before the magistrate who issued a disposal

order. Thus, there were no chances of interference. He added further that, the government trophy which the appellant was found with is not common such that the witness could easily substitute for it.

In respect of the independent witnesses, Mr. Byamungu briefly submitted that, according to section 106 (1) of the Wildlife Conservation Act the presence of independent witness is required only where a person is searched in the dwelling house.

In rejoinder, the appellant insisted that he was not present when the trophies were disposed of.

Having carefully considered the trial court record, the petition of appeal and parties' submissions, the pivotal issue for determination is whether the prosecution sufficiently proved their case. In resolving the issue, I will consider whether each charged count was proved.

To start with the first count of unlawfully entry in the National Park, without further ado, I am at per with the learned State Attorney that the section 21 (1) (a) of the National Park Act under which the appellant was charged does not establish the offence of unlawfully entry in the National Park. Looking at the said section and in light of **Maduhu Nihandi @ Limbu vs the Republic** (supra), it is apparent that the provision does not create the offence hence it was not proper for the trial court to convict the appellant based on the said provision.

As to the second count of unlawfully possession of weapon in the National Park, again, I concur with the learned State Attorney that the prosecution did not demonstrate if the appellant was truly found within the National Park and not nearby as submitted by the appellant in his defence. In the case of **Maduhu** (supra) the Court of Appeal held that;

> ***'..... we are increasingly of the settled opinion that the prosecution witnesses, that is, PW1 and PW2 were supposed to prove that the appellant and another were arrested in a particular area specified in the First Schedule to the NPA which provides the outline of the boundaries of the Serengeti National Park.'***

In this case it was alleged that the appellant was arrested at Korongo la Mchanga area. The prosecution had to give evidence which is in conformity with the description of the boundaries stipulated in the First Schedule to the National Park Act.

In view of the above, I found that the appellant's defence raised reasonable doubt with regard to the place at which the appellant was allegedly arrested.

Concerning the offence of unlawfully possession of government trophy, I am of the views that the offence was proved beyond reasonable doubt.

Both PW1 and PW2 testified that when they arrested the appellant, they found him in possession of the government trophy to wit three pieces of wildebeest dried meat. PW3, the Wildlife Officer, and Exhibit PE 3 proved that the said trophies were dried meat of wildebeest valued them at Tshs. 1,495,000/=. Also, PW4 and Exhibit PE 4 proved that the said trophies were ordered to be disposed of by the magistrate and that the appellant was availed with the right to be heard before issuing of the order. It should be noted that what is required by law is the presence of the appellant at the time of making a disposal and not during disposal of the exhibit. Thus, the offence of unlawfully possession of government trophy was duly proved.

Coming to the issue of chain of custody, I agreed with Mr. Byamungu that the prosecution evidence sufficiently established chain of custody. It was proved that the incidents happened in a series and all investigative actions were done in one day i.e., from arrest of the appellant up to the issuance of disposal order of the government trophies by the Magistrate. Thus, it cannot be said that there was somewhere the chain of custody was broken.

Regarding the issue of independent witness, section 106 (1) of the Wildlife Conservation Act clearly provides that, the presence of independent witness is required where a person is searched in the dwelling house. In

our case there is no evidence that the appellant was searched in a dwelling house. More so, it was almost impracticable to get independent witness within the National park.

In the result, I found the appeal with merits in respect of the first and second counts. I therefore quash conviction and set aside the sentence in respect of the first and second count. Nonetheless, I uphold conviction and sentence in respect of the third count. The applicant should therefore continue to serve his sentence of twenty (20) year imprisonment.

The appeal is partly allowed as indicated above.

It is so ordered.

Right of appeal is explained.

A. A Mbagwa

JUDGE

14/09/2022

Court: The judgment has been delivered in the presence of the appellant from prison and Nimrod Byamungu, learned State Attorney for the Republic this 14th day of September, 2022.

A. A. Mbagwa

JUDGE

14/09/2022