

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

CRIMINAL APPEAL NO. 53 OF 2022

(Arising from Serengeti District Court at Mugumu Economic Case no 112 of 2019)

BENARD S/O MAKONDO @ GAMBACHARAAPPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

04th August & 04th October, 2022

F. H. Mahimbali, J.

The appellant was convicted being in unlawful possession of Government Trophy Contrary to section 86 (1) and (2) (b) 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 organised Crime Control act (Cap 200 R. E. 2022) as amended by the Written Laws (Miscellaneous Amendments) Act No 3 of 2016 and accordingly sentenced to 20 years imprisonment in jail.

It was alleged by the prosecution that on 14th day of September, 2019 at Robanda village within Serengeti district in Mara Region, was

found in unlawful possession of Government Trophies to wit: Twenty-seven pieces of Fresh Zebra meat valued at Tshs 5,400,000/=-, the property of the United Republic of Tanzania.

The appellant pleaded not guilty to the charge, thus necessitated the prosecution to summon a total of five witnesses.

Upon hearing of the case, the trial court was satisfied that the prosecution fully discharged its duty as it established the charge beyond reasonable doubt.

On that finding, the appellant was convicted and consequently sentenced to 20 years jail imprisonment.

Being dissatisfied with the said findings of guilty, conviction and sentence, the appellant preferred this appeal to this court, armed up with a total of four grounds of appeal.

During the hearing of the appeal, the appellant was unrepresented whereas for the respondent/Republic, Ms. Monica Hokororo Sineor State Attorney took an active role.

On his part, the appellant had nothing to submit but just prayed that his grounds of appeal dully lodged, be adopted by the Court to form

his submission. He therefore invited the Republic to respond first and if need be will make his rejoinder submission.

Ms. Monica Hokororo on her part, conceded with the appeal on the basis that the inventory proceedings didn't take its proper course as per law. As there is no proof that the appellant was present and dully involved, that was an irregularity that has affected the justice of the case. On this, she prayed that the appeal be allowed, conviction quashed and sentence be set aside and that the appellant be set free.

In consideration to the submissions made in support of the appeal, and the position of the Court of Appeal in the case of **Mosi Chacha Iranga and Makiri Chacha vs Republic**, Criminal Appeal No 508 of 2018, CAT at Musoma, I agree as that is the proper position of the law.

As regards to the offence of unlawful possession of government trophies it is trite law that a trophy has to be dealt with for it to be worth court's exhibit is tantamount to legal procedures. The exhibit PE3 is silent on the manner the appellant was involved in the dealing of the said trophy. The inventory proceedings are not establishing his involvement but just a destruction order by the magistrate. Other than this, there is nothing further exhibited by the said PE3 exhibit. What then is the legal value of this? In the case of **Mohamed Juma**

Mpakama vs Republic, Criminal appeal No 785 of 2019, CAT at Mtwara provided appropriate directives on what to be done by the magistrate for the procedure to be in legal compliance prior to the issuance of destruction order of the said inventory exhibit. The Court on this had this to say:

"According to paragraph 2 (a) of the Police General Orders (PGO), the Police Force recognizes the above duty to protect every exhibit, perishable or otherwise, which comes into their possession:

2.(a) The police are responsible for each exhibit from the time it comes into the possession of the police, until such time as it is admitted by the Court in evidence, or returned to its owner, or otherwise disposed of according to instructions; [Emphasis is added].

The above paragraph 25 envisages any nearest Magistrate, who may issue an order to dispose of perishable exhibit. This paragraph 25 in addition emphasizes the mandatory right of an accused (if he is in custody or out on police bail) to be present before the Magistrate and be heard. In the instant appeal, the appellant was not taken before the primary court magistrate and be heard before the magistrate issued the disposal order (exhibit PE3). While the police investigator, Detective Corporal Saimon (PW4), was fully entitled to seek the disposal order from the primary court magistrate, the resulting Inventory Form (exhibit PE3) cannot be proved against the appellant because he was not given the opportunity to be heard by the primary court Magistrate. In addition, no photographs of the perishable

Government trophies were taken as directed by the PGO”.

My conclusion on evidential probity of exhibit PE3 in this case ultimately coincides with that of Ms. Monoica learned Senior State Attorney. Exhibit PE3 cannot be relied on to prove that the appellant was found in unlawful possession of Government trophies mentioned in the charge sheet. If the appropriate legal procedure is not followed then the said exhibit lacks evidentiary legal value and is subject to disregard, as I hereby do.

All said and done, this court holds that since all the three counts were not proved beyond reasonable doubt, this appeal is allowed and the trial court's conviction on all charged offences is quashed, and the sentences meted out are set aside.

This court orders the immediate release of the appellant from custody unless he is lawfully held for another cause.

It is so ordered.

DATED at MUSOMA this 4th day of October, 2022.



F. H. Mahimbali

Judge

Court: Judgment delivered this 04th day of October, 2022 in the presence of the Appellant, Monica Hokororo senior State Attorney for the respondent and Mr. Gidion Mugo.

Right of appeal is explained.



F. H. Mahimbali

JUDGE