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

**MUSOMA DISTRICT REGISTRY**

**AT MUSOMA**

**CRIMINAL APPEAL NO. 150 OF 2021**

*(Arising from the decision of the District Court of Serengeti at Mugumu in Economic Case No. 116 of 2020)*

**BETWEEN**

**NGUSA s/o YOHANA @ KITERI ..... APPELLANT**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**

**JUDGMENT**

**A. A. MBAGWA, J.:**

This is an appeal against both conviction entered and sentence imposed by the District Court of Serengeti.

The appellant one Ngusa Yohana @ Kiteri was arraigned before the trial court and charged with three counts namely, Unlawful Entry into the National Park contrary to 21(1)(a) and 29(1) of the National Parks Act, Unlawful Possession of Weapons in the National Park contrary to section 24(1)(b) and (2) of the National Parks Act and Unlawful Possession of Government Trophies contrary to section 86(1) and (2)(b) of the Wildlife Conservation Act 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.

It is was alleged by the prosecution that on 9th day of October, 2020 the appellant was found at Milima ya Nyamuma area within Serengeti National Park while in possession of government trophies to wit, fifty pieces of fresh meat of buffalo and two weapons namely, one machete and knife.

The appellant denied the charge hence the matter went through a full trial.

To prove the charge, the prosecution marshaled four witnesses namely, the arresting officers, Deus Kisabo (PW1) and Kibichi Suma (PW2), wildlife officer Wilbroad Vicent (PW3) and an investigator of the case F. 5834 D/C JAMES (PW4). Concomitantly, the prosecution produced five exhibits to wit, seizure certificate (PE1), knife and machete (PE2), one bicycle (PE3), trophy valuation certificate (PE4) and inventory form (PE5).

PW1 and PW2 testified that on 9th day of October, 2020 at about 01:30hrs, while on patrol, at Milima ya Nyamuma area within Serengeti National Park they saw the accused with a bicycle, knife and machete and fifty pieces of fresh meat of buffalo. Upon interrogation, PW1 claimed that, the appellant replied that he had no permit to enter in the National Park. As such, the duo along with other park rangers

seized the government trophies, weapons and bicycle from the appellant. Thereafter they filled the seized items in the seizure certificate (exhibit PE1) which was signed by both the arresting officers and the appellant. Subsequently, the appellant along with the seized items was submitted to Mugumu Police Station for further investigation measures. PW1 tendered a seizure certificate (PE1), one machete and knife (PE2) and a bicycle (PE3).

At Mugumu Police Station, PW4 F. 5834 DC James was, on 12th day of October, 2020, assigned the case file to carry on the remaining part of the investigation. PW4 therefore interviewed and recorded the caution statement of the appellant in which, according to PW4, the appellant denied the allegations. Thereafter, PW4 called PW3, a wildlife officer to identify the type and value of the government trophies of which the appellant was found in possession. PW3 Wilbroad Vicent identified the trophies to be fresh meat of two buffalos. Further, PW3 valued the government trophies at Tanzanian shillings eight million seven hundred forty thousand (8, 740,000/=).

When all this had been done, PW4 took the appellant together with the trophies before the magistrate for disposal order. As the government trophies (fresh meat of buffalo) were subject to speedy

decay, the magistrate, after affording the opportunity to be heard to the appellant, proceed to order destruction of the buffalo meat. PW4 tendered in evidence the inventory order (exhibit PE5) whereas PW3 produced the trophy valuation certificate (exhibit PE4) to buttress their testimonies.

In defence, the appellant disputed the accusations. He testified that he was arrested on 9th October, 2020 at around 06:00hrs in his farm which is near to Serengeti National Park. The appellant stated that he went to his farm to remove the cattle which had entered his farm and all of the sudden, he saw the park rangers coming and finally arrested.

At the end of trial, the trial magistrate was satisfied that the prosecution case was proved beyond reasonable doubt. As such, she found the appellant guilty and convicted him of all the three offences he stood charged. Consequently, the appellant was sentenced to one year imprisonment for the 1st and 2nd counts of unlawful entering into the National Park and unlawful possession of weapons, and twenty (20) year imprisonment for the 3rd count of unlawful possession of government trophies.

The appellant was dissatisfied with the verdict and sentence imposed on him. He has thus appealed to this court. In the petition of appeal,

raised four complaints but which essentially challenge the trial court for entering conviction against the appellant based on insufficient prosecution evidence.

When the appeal was called on for hearing, Mr. Nimrod Byamungu, learned State Attorney appeared for the Republic whereas the appellant prosecuted his appeal in person.

Mr. Byamungu resisted the appeal in respect of 2nd and 3rd count whereas he conceded the appeal on the 1st count.

Submitting in response to the complaint that the prosecution evidence did not prove the time at which the appellant was arrested, the learned State Attorney said that PW1 and PW2 explained it well that they arrested the accused at around 01:30hrs. He continued that, even if they had not mentioned time, it was not fatal.

Pertaining to the complaints against inventory and disposal of the trophies, Mr. Byamungu argued that the complaints were baseless because the disposal exercise was done according to the law as testified on by PW4 and through exhibit P5. The State Attorney said that the accused was present and consulted before the disposal order. He clarified that it is not the legal requirement that an accused should be present at the actual destruction.

Concerning the attack against identification evidence given by PW1 and PW2, the State Attorney said that it is true that these witnesses did not state the distance from which they were standing but hastily remarked that the distance was immaterial in this case because ultimately, they saw and arrested him.

With regard to the contradictions of time of arrest between the evidence of PW1 and PW2 does and the charge, Byamungu submitted PW1 mentioned 01:30hrs whereas PW2 stated that they arrested the appellant at 13:30hrs, the learned State Attorney replied that this was not fatal as it could have been an error of slip of a pen. In support of his proposition, Byamungu referred this court to the case of **Hamis Juma Chaupepo vs Republic**, Criminal Appeal No. 95 of 2018, CAT at Dar es salaam and stressed that the Court of Appeal in that case held that such an error was not fatal.

With regard to the 1st count of unlawful entry, the State Attorney submitted that the section under which the appellant was charged does not create the offence. He thus prayed that conviction and sentence be quashed and set aside in respect of the 1st count.

Apart from the 1st count, Mr. Byamungu supported conviction and sentence stating that the prosecution case was proved beyond

reasonable doubt. He therefore prayed the court to dismiss the appeal save for the 1st count.

The appellant, on his part, insisted that his appeal has merits. He prayed the court to take into consideration his grounds of appeal and consequently allow the appeal by quashing conviction and set aside the sentence imposed on him.

On my part, having gone through the record and upon consideration of the grounds of appeal and submissions by the parties, the germane issue for determination of this appeal is whether the trial court rightly convicted the appellant.

Beginning with the first count of unlawfully entry in the National Park, without further ado, I entirely concur 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. This was clearly settled in case of **Maduhu Nihandi @ Limbu vs the Republic**, Criminal Appeal No. 419 of 2017, CAT at Mwanza. As such, the trial magistrate erred to convict the appellant of nonexistent offence. The conviction and attendant sentence therefore deserve to be quashed and set aside.

As to the second count of unlawfully possession of weapon in the National Park, I wish to party company with the learned State Attorney. Mr. Byamungu, while submitting in support of conviction said that there a seizure certificate (exhibit PE1) which clearly tells that the alleged weapons were seized from the appellant within the National Park. The State Attorney argued that the fact that the appellant signed on the certificate of seizure implies that the appellant was in possession of the weapons within the National Park. I do not agree with the learned State Attorney because in light of the decision in **Maduhu Nihandi @ Limbu (supra)** the prosecution ought to adduce demonstrative evidence sufficiently proving that the appellant was arrested within the boundaries of the National Park. 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 Milima ya Nyamuma area within Serengeti National Park. There is no further evidence to prove the allegation apart from the verbal of the arresting officers. Under these circumstances, I am inclined to hold that the prosecution did not establish to the required standard that the appellant was found with weapons within the National Park. Accordingly, I quash conviction and set aside the sentence with regard to the 2nd count of unlawful possession of weapons within the National Park.

With regard to the 3rd count of unlawful possession of government trophies, it is my considered findings that the offence was sufficiently proved. PW1 and PW2 clearly testified on how they arrested him with the alleged trophies. In addition, PW1 tendered the certificate of seizure (PE1) which was also signed by the appellant. Besides, PW3 Wilbroad Vicent told the court that he identified the alleged trophies to be fifty pieces of fresh buffalo meat and valued them at Tanzanian shillings eight million seven hundred forty thousand (Tshs 8, 740,000/=). Further, I have looked at the inventory order and got satisfied that the procedures for disposal were fully complied with. Exhibit PE5 is clear that the magistrate gave audience to the appellant

and thereafter proceeded to issue an order for disposal. The appellant, in his testimony, did not deny to have signed the seizure certificate nor did he dispute being before the magistrate during issuance of the disposal order. On all this account, I am opined that the offence was sufficiently proved. I therefore I uphold conviction of unlawful possession of government trophies and the resultant sentence of twenty (20) imprisonment.

That said and done, I quash convictions in respect of the 1st and 2nd counts whilst I uphold conviction in respect of 3rd count of unlawful possession of government trophies and the sentence of twenty (20) year imprisonment.

That appeal is therefore partly allowed.

It is so ordered.

The right of appeal is explained.

**A.A. Mbagwa**

**JUDGE**

**26/10/2022**