

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

CRIMINAL APPEAL NO. 160 OF 2021

*(Arising from the decision of the District Court of Serengeti at Mugumu in
Economic Case 160 of 2021)*

MARWA s/o MWITA @ MTATIRO.....1ST APPELLANT

MARWA s/o MWITA @ CHACHA.....2ND APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

A. A. MBAGWA, J.:

The appellants herein Marwa Mwita Chacha and Marwa Mwita Mtatiro who stood as the 1st and 2nd accused respectively in the trial court were arraigned in the District Court of Serengeti on an indictment containing three counts. In the first count they were charged with unlawful entry into the game reserve contrary to section 15(1) and (2) of the Wildlife Conservation Act. In the second court they stood charged with unlawful possession of weapons in game reserve contrary to section 17(1) and (2) of the Wildlife Conservation Act 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. In the third count, the appellants were charged with unlawful possession of government trophies contrary to section 86(1) and (2)(c)(iii) of the Wildlife Conservation Act 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.

Upon their arraignment, both appellants pleaded not guilty to all the three counts as such, the matter inevitably proceeded to a full trial. The prosecution paraded four witnesses along with four exhibits to wit, seizure certificate (exhibit P1), a machete and knife (exhibit P2), trophy valuation certificate (exhibit P3) and an inventory form (exhibit P4).

It was the testimony of PW1 Utenda Rashid Kabuchenda and PW2 Kibichi Suma, both Game Wardens that on 27th November, 2019 at Mto Risiriba area within Ikorongo/Grumeti Game Reserve, while on patrol, at around 06:40hrs met two appellants in the game reserve and arrested them. The two witnesses explained that the appellants were in possession of two hindlimbs and two fresh heads of Impala. Upon probing them whether they had a permit to enter the reserved area and possess government trophies, the appellants answered in the negative. Consequently, they seized the said

trophies and weapons by filing a seizure certificate which PW1 tendered in evidence as exhibit P1. Thereafter, they surrendered the appellants together with the seized items to Mugumu Police Station where an investigation file was opened and assigned reference number MUG/IR/3523/2019.

Later on, PW4 G.3694 DC Shaban was assigned to investigate the case. He thus called PW3 Wilbroad Vicent, a wildlife officer who identified the trophies to be two hindlimbs and two fresh heads of Impala and valued them at Tanzanian shillings 1, 794,000/=. PW3 filled in the trophy valuation certificate which he tendered as exhibit P3.

After valuation of trophies, PW4 took the appellants and the trophies before the magistrate who, upon satisfaction that they were subject to natural decay, issued a disposal order in front of the appellants. PW4 tendered an inventory order and the same was admitted and marked as exhibit P4. As the exhibit P4 tells it all at the back, the appellants signed on the form and admitted that they were found in possession of the alleged trophies. When all that had been done, the appellants were arraigned in court and charged accordingly.

In defence, the appellants refuted the allegations. DW1 Marwa Mwita Chacha stated that he was arrested by the game officer in his farm at Bonchugu village at around 18:00hrs while doing his farming activities. He contended that he was with his wife Mniko Matinde but the game officers let his wife go. He continued that he was taken to the game camp and on the following day he was arraigned in court.

DW2 Marwa Mwita Mtatiro averred that he was arrested on 27th November, 2019 at around 08:30hrs while cutting trees at Mbilikiri village. He said that, while continuing to cut trees, all of the sudden, the game officers emerged and put him, under restraint claiming that he had entered the game reserve. DW2 told the court that he was with his friend Mwita Marwa Werema but he (Mwita Werema) managed to run away. He said that he did not know whether he was within the game reserve.

Upon hearing of the evidence from both parties, the trial court was unreservedly satisfied that the prosecution case was proved beyond reasonable doubt. It therefore convicted the appellants of all three counts and sentenced them to imprisonment of one year, two years and twenty

years for the 1st, 2nd and 3rd counts respectively. The sentences were ordered to run concurrently.

Aggrieved with both conviction and sentences, the appellants appealed to this court. They filed a joint petition of appeal containing several complaints which can be reduced to three meaningful grounds of appeal namely;

1. That the trial court erred in law and fact to convict the appellants based on insufficient prosecution evidence
2. That the trial court erred in law to deny the appellants their right to be heard
3. That the trial court erred in law and fact to convict the appellant of unlawful possession of government trophies whereas the appellants was not present during disposal of the said government trophies.

At the hearing of appeal, the appellants appeared in person from prison through teleconference whilst the respondent Republic was ably represented by Nimrod Byamungu, learned State Attorney.

The appellants requested the court to consider their complaints in their petition of appeal and ultimately allow their appeal.

On the contrary, Mr. Byamungu resisted the appeal. He said that there was overwhelming evidence to ground conviction. He thus supported both conviction and sentences meted out by the trial court.

Having canvassed the record, grounds of appeal and submissions by both parties, the key issue for deliberation is whether the appellants were rightly convicted of all three offences.

To start with the first and second counts which relate to entering into game reserve and unlawful possession of weapons within the game reserve, this need no detain me. It is now established position of law that to hold that someone was found within the reserved area there should be demonstrative evidence to prove before the court that the accused was truly within the precincts of the reserved area. See **Maduhu Nihandi @ Limbu vs the Republic**, Criminal Appeal No. 419 of 2017, CAT at Mwanza. In this case, there is no such evidence hence it cannot be said that the appellants, for sure, were found within the game reserve.

Since the 1st and 2nd counts were predicated on being found within the game reserve, which element was not sufficiently proved, I quash convictions in respect of the 1st and 2nd counts and set aside the attending sentences.

With regard to the 3rd count of unlawful possession of government trophies, there is sufficient evidence proving the same. There is seizure certificate (P1) on which the appellants signed to have been found in possession of government trophies. Also, through trophy valuation report (P3) and PW3 Wilbroad Vicent proved that the seized items were government trophies namely, two hindlimbs and two fresh heads of Impala and valued them at Tanzanian shillings 1, 794,000/=. Besides, inventory order to which the appellants signed and admitted to have been found in possession of the said trophies. Indeed, all this evidence proves that the appellants were found in possession of the government trophies. Further, there is unshaken evidence of PW1 and PW2 who arrested the appellants with the said trophies. Admittedly, the defence evidence could not raise reasonable doubt rather it supported the prosecution evidence in a way. DW2 said that at the time of his arrest he was with his friend Mwita Marwa Werema who ran away. This connotes that Mwita Marwa Werema was guilty conscious that is the reason he fled. That said and done, I sustain the conviction in respect of 3rd count and the sentence of twenty (20) years.

In the upshot, I dismiss the appeal save for the 1st and 2nd count as indicated above.

It is so ordered.

The right to appeal is explained.

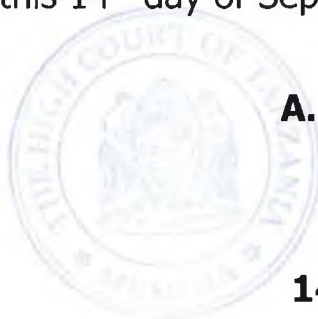



A. A. Mbagwa

JUDGE

14/09/2022

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




A. A. Mbagwa

JUDGE

14/09/2022