

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

CRIMINAL APPEAL NO. 103 OF 2021

*(Arising from the Decision of the District Court of Serengeti at Mugumu in Economic
Case No. 29 of 2020)*

PAUL S/O STEPHANO @ SKAZWE..... APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

JUDGMENT

A. A. MBAGWA J.:

This is an appeal against both conviction entered and sentence meted by the District Court of Serengeti in Economic Case No. 29 of 2020.

The appellant, Paul Stephen Skazwe was on 29th May, 2020 brought before the District Court of Serengeti on a charge containing three counts namely, unlawful entry into the national park contrary to section 21(1)(a),(2) and 29(1) of the National Park Act, unlawful possession of weapons in the national park contrary to section 24(1)(b) and (2) of the National Park Act and 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 filing of consent to prosecute and certificate conferring jurisdiction on the trial court, the appellant pleaded not guilty to the charge hence a full trial commenced.

In a bid to prove the charge, the prosecution side called four witnesses namely Wilson Adam (PW1), Venance Muhomi (PW2), Wilbroad Vicent (PW3) and G.4209 D/CPL Steven (PW4). In addition, the prosecution tendered four exhibits to wit; certificate of seizure (PE1), one panga (PE2), Trophy Valuation Report (PE3) and inventory form (PE4).

It is the prosecution account that on 27th day of May 2020 while on official patrol at Mto Grumeti area within Serengeti National Park, the park rangers namely, Wilson Adam (PW1) and Venance Muhomi (PW2) saw human footprints. They thus pursued them until they located the appellant who was hiding himself in the bush. According to PW1 and PW2, the appellant was in possession of a machete and a piece of dried meat of Thomson Gazelle. The duo interrogated the appellant who admitted that he had no permit to enter in the national park nor was he authorized to possess the said government

trophy. As such, PW1 and PW2 seized the weapon and government trophy and listed the same in the certificate of seizure (PE1). The said exhibit PE1 was signed by both the arresting officers and the appellant. Thereafter, the appellant was submitted to Mugumu Police Station where a case file No. MUG/IR/1351/2020 was opened and later assigned to G.4209 D/CPL Steven (PW4) to continue with investigation.

It was the evidence of PW4 that on 28th May, 2020 he called PW3 Wilbroad Vicent, a wildlife officer who came and valued the said trophy at TZS 1,150,000/=. PW3 tendered a trophy valuation report and the same was admitted and marked PE3.

PW4 then prepared an inventory form and submitted it along with appellant and trophy to the magistrate for disposal order as the dried meat of Thomson Gazelle was subject to speedy decay. PW4 told the court that the magistrate ordered disposal of the said trophy in front of the appellant.

In defence, the appellant denied the accusations. He stated that he was arrested along the main road when he was coming from his farm. He said that, while on his way, a boy requested for help to pass by cattle and as he was helping the boy, the park rangers who were aboard the car suddenly

stopped and asked him as to why he was grazing in the national park. The appellant continued that the park rangers just warned the boy not to return the cattle in the national park but surprisingly they arrested and put him (appellant) in their car. Then they took him to unknown place after they passed by Lamadi Police Station.

In the end, the trial District Court found the appellant guilty and convicted him of unlawful entry in the national park and unlawful possession of government trophies in the 1st and 3rd counts. The trial court held that the 2nd count of unlawful possession of weapons in the national park was not sufficiently proved. Consequently, the appellant was sentence to imprisonment for one year and twenty (20) years for the 1st and 3rd count respectively.

The appellant was aggrieved by both conviction and sentence hence he appealed to this court. He lodged the petition of appeal containing complaints which can be paraphrased as follows;

1. That, the trial magistrate erred in law and facts to convict the appellant basing on the evidence of G.4209 D/CPL Steven (PW4).

2. That, the trial magistrate erred in law and facts to convict and sentence the appellant without taking into account that the appellant was not present during disposal of the said government trophy
3. That the trial magistrate erred in law and fact by denying him the opportunity to call his key witnesses

At the hearing of the appeal, the appellant appeared in person, unrepresented whereas the respondent Republic enjoyed the service of Nimrod Byamungu, learned State Attorney.

The appellant adopted his grounds of appeal and proceeded to beseech the court to consider them and finally allow his appeal. He essentially prayed the court to quash conviction and set aside the sentence imposed by the trial District Court.

While responding, at the very outset, Mr. Byamungu told the court that he supported the appeal in respect of conviction and sentence on the 1st count of unlawful entry into the national park while he opposed the appeal with regard to the 3rd count of unlawful possession of government trophies.

Submitting in respect of unlawful entry, Mr. Byamungu said that the section cited does not create an offence in that it does state the actus reus of the

crime. Citing the case of **Maduhu Nihandi @ Limbu vs the Republic**, Criminal Appeal No. 419 of 2017, CAT at Mwanza, Byamungu submitted that the court clearly pronounced that section 21(1)(a) of the National Parks Act does not create the offence.

Regarding the complaints against PW4 that he disposed of the trophies i.e., dried meat of Thomson Gazelles whereas the same could have been kept, the learned State Attorney candidly submitted that the Magistrate saw the said trophies and was satisfied that it was subject to speedy decay.

Mr. Byamungu further replied the complaints concerning absence of the appellant during disposal of the government trophy. The learned State Attorney said that according to the case of **Juma Mohamed Mpakama vs the Republic**, Criminal Appeal No. 385 of 2017, CAT at Mtwara, it is only during the prayer to disposal the trophy where the accused is mandatorily required to be present and not during destruction. He continued that through PW4 and exhibit PE4, it is clear that the accused's rights were considered as he was present and has occasion to give his opinion.

On the ground that the appellant was not given opportunity to call his witnesses, Mr. Byamungu dismissed the complaint stating that after the

appellant was found with a case to answer he told the court that he would defend himself without calling a witness. He expounded further that, at page 44 of the proceedings, after the appellant had given his testimony, he prayed to close his case.

Mr. Byamungu continued to submit that PW3 Wilbroad Vicent was a competent witness to tender a trophy valuation report (PE3) in those sections 114(1) and 86(4) of the Wildlife Conservation Act (WCA) provide that identification of government trophy is done by the wildlife officer recognized by this law. Byamungu proceeded that the wildlife officer is well defined under section 3 of WCA to cover PW3.

Byamungu concluded that appeal in respect of the 3rd count is devoid of merits hence it should be dismissed.

Having heard the submissions by the parties and upon appraisal of the record, the germane question for determination of this appeal is whether the appeal is meritorious in the sense that whether the case was proved not beyond reasonable doubt as contended by the appellant. As such, in answering the issue, I will look at the evidence vis a vis the counts of which the appellant was convicted.

To start with the first count in respect of unlawfully entry in the National Park, without much ado, I am in full agreement with the learned State Attorney that section of law under which the appellant was charged and later convicted does not establish the offence of unlawfully entry in the National Park. This was clearly settled in the case of **Maduhu Nihandi @ Limbu vs the Republic (supra)**. Therefore, it was not proper for the trial court to convict the appellant based on the non-existing offence.

Concerning the offence of unlawfully possession of government trophy, I am inclined to hold 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 dried meat of Thomson Gazelle. PW3, the wildlife officer and through trophy valuation report (exhibit PE3) proved to the court that the alleged trophies were dried meat of Thomson Gazelle valued at TZS 1,150,000/=. The appellant attacked the evidence of PW3 one Wilbroad Vicent that he was incompetent witness to identify and value the trophies. These complaints are without any merits for, as rightly submitted by the learned State Attorney, in terms of sections 114(1) and 86(4) Wildlife Conservation Act, a wildlife officer like PW3 is a competent person to identify and value trophy.

Besides, PW4 and through (exhibit PE4) proved that the trophies were ordered to be disposed by the Magistrate and that the appellant was availed with the right to be heard before issuing of the order. As rightly submitted by the State Attorney, the appellant's right of audience is necessary during application and hearing of disposal order before the magistrate and not during destruction exercise.

Moreover, the appellant complained that he was denied the rightly to call witnesses to testify in his favour. However, I find the complaint baseless as the record clearly speaks against him. It is clear that on 9th June, 2021, after he had testified, the appellant prayed to close his defence case. Thus, the offence of unlawfully possession of government trophy was duly proved.

In the event, I found the appeal with merits in respect of the first count. As such, I quash conviction and set aside the sentence in respect of the first count of unlawful entry in the national park. In the meantime, I uphold conviction and sentence in respect of the third count of unlawful possession of government trophies. The appellant shall continue to serve his imprisonment sentence of twenty (20) years

The appeal is partly allowed to the extent indicated.

It is so ordered.

Right of appeal is explained.



A handwritten signature in blue ink, appearing to read "A. A. Mbagwa", with a horizontal line underneath.

A. A. Mbagwa

JUDGE

12/10/2022

Court: Judgment delivered in the presence of Nimrod Byamungu, learned State Attorney for the Republic and the appellant this 12th day of October, 2022

A handwritten signature in blue ink, appearing to read "A. A. Mbagwa", with a horizontal line underneath.

A. A. Mbagwa

JUDGE

12/10/2022