

**IN THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
SUMBAWANGA DISTRICT REGISTRY
CRIMINAL APPEAL NO. 21 OF 2022**

(Original Economic Case No. 23 of 2020 at Mlele District Court)

BENI KAFILIKA @ LONGINO1ST APPELLANT
JOHN PETER KISIA @ RAPHAEL 2ND APPELLANT
SOKI ALPHONCE KAMFIKWA 3RD APPELLANT
STEVEN VENANCE @ JOHN4TH APPELLANT
SHIJA ADAU @ KAKWESA5TH APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

Date of Last Order: 20/09/2022

Date of Judgement: 01/11/2022

NDUNGURU, J

The appellants in this criminal appeal Beni Kafilika @ Longino, John Peter Kisia @ Raphael, Soki Alphonse Kamfikwa, Steven Venance @ John and Shija Adau @ Kakwesa were arraigned before the Mlele District Court

along with offences comprised of three counts. For the first count, all accused persons, were charged with **unlawfully possession of Government Trophy contrary to section 86(1) and (2) (c) ii of the Wildlife Conservation Act No. 5 of 2009 read together with paragraph 14(d) of the first schedule and section 57(1) and 60(2) of the Economic and Organized Crime Control Act, Cap 200, RE 2019.**

For the second count, 2nd, 3rd, 4th and 5th accused persons were charged with **unlawful possession of fire arms without license contrary to section 20 (1) (a) and (b) and section 20(2) of Fire Arms and Ammunitions Control Act No. 2 of 2015 read together with paragraph 31 of the first schedule, section 57 and 60 (2) of the Economic and Organized Crime Control Act, Cap 200, RE 2019.**

For the third count 3rd, 4th, 5th accused persons were charged with **unlawfully possession of ammunition without license contrary to section 21(a) and (b) of the firearm and ammunition Control Act No. 2 of 2015 read together with paragraph 31 of the first schedule, section 57(1) and 60 (2) of the Economic and Organized Crime Control Act, Cap 200, RE 2019.**

It was alleged for the first count that, on 28th day of December, 2020 at Mwadui area within Rukwa/Lwafi game reserve area in Mlele District within Katavi Region, Beni Kafilika @ Logino, John Peter Kisia @ Raphael, Soki Alphonse @ Kamfikwa, Steven Venance @ John and Shija Adau @ Kakwesa were found in possession of five kilograms (5kg) of puku meat, one piece puku skin and one puku horn all valued at USD 800 equivalent to one million eighty hundred fifty six thousand Tanzania Shillings (1,856,000Tshs.) the property of the Government of Tanzania without permit from the Director of Wildlife.

Again, it was claimed on the same day in respect of the 2nd count that, Soki Alphonse @ Kamfikwa, Steven Venance John and Shija Adau @ Kakwesa at Mwadui area within Rukwa/Lwafi game reserve in Mlele District within Katavi Region were found in unlawfully possession of two muzzle loader guns without license.

Lastly, with regard to 3rd count it was claimed on the same day that, Soki Alphonse @ Kamfikwa, Steven Venance John and Shija Adau 2 Kakwesa at Mwadui area within Rukwa/Lwafi Game Reserve area in Mlele District within Katavi Region were found in possession of twenty (20) round ammunitions without license.

All the accused persons denied charges against them and to prove the allegations, prosecution called eight witnesses along with six exhibits tendered while the appellants defended themselves. Trial Court found all the accused persons had a case to answer during closure of prosecution case. After full trial, the trial court found the accused persons guilty of all the three counts and thereafter convicted them as charged and consequently sentenced to serve a custodial sentence of twenty years for each count and the sentences were ordered to run concurrently.

Aggrieved by the conviction and sentence, appellants have preferred the present appeal based on three grounds of appeal, which are quoted hereunder namely:

- 1. That the trial court erred at law by ordering disposal of puku skin and puku horn which are not subject to speedy decay hence denying the appellants the chance to cross examine on the issue.*
- 2. That the trial court erred at law by convicting and sentenced the appellants for offences which were*

not proved beyond reasonable doubt as required by law.

3. That the trial court erred at law by convicting the appellant on the weakness of the evidence of the defence instead of the strength of the prosecution evidence.

When the appeal was called for hearing the appellant appeared in person unrepresented whereas the Republic was represented by Ms. Marietha Maguta, learned state attorney.

The appellants being laypersons each prayed for his grounds of appeal be adopted and considered and consequently their appeal be allowed.

On her part, Ms. Magutha submitted that she supported the appeal for the first and second appellants, however resisted the appeal for the 3rd, 4th and 5th appellants.

Ms. Maguta submitted that as regards the first and second appellants submitted in respect of the second ground that the case against the first and second appellants was not proved. She argued that at page 19 of the

proceedings provides that PW1 told the trial court to have found the first and second appellants on the bicycle carrying the trophy of puke meat and puku skin. But at page 20 PW1 showed the GPS in which showed that the appellants were in the game reserve, However PW2 has different GPS location which is 36MO336331, UTM9170069. She submitted that the two GPS coordinate differ but the two witnesses were the arresting officers, such difference goes to the root of the case as whether the two were arrested together on the same date.

Further, she submitted that the two arresting officers when crossed examined they failed to identify who had which type of bicycle between the two and who had a meat and skin between the two. It is trite law that the prosecution is duty bound to prove the case. But due to those doubt which goes to the root of the case, she finds the case against the first and second appellants was not proved.

With regard the same ground two of the appeal to 3rd, 4th, and 5th appellants she found that the case against them was proved. According to PW1 and PW2 who were game rangers arrested 3rd, 4th, and 5th appellants corroborate each other, as they arrested them camped in the game reserve while possessing the horn of puku, 20 round ammunition and one gun

made gobore. That after arrest certificate of seizure was filled and the same were tendered as exhibit in court. Thus, she submitted that the case against the 3rd, 4th, and 5th appellants was proved to the standard required. Thus, 2nd ground is devoid of merit.

As regards the 3rd ground, she submitted that the judgement analyzed the evidence of both sides and gave reasons for the decision. She prayed for the dismissal of the ground.

As regards the first ground, she submitted that inventory was given in court and the chain of custody was also given. The appellants were given opportunity to cross examine the witness. She concluded that for 3rd, 4th, and 5th appellants the case against them was proved beyond reasonable doubt.

In rejoinder, 1st appellant had nothing to say, 2nd appellant conceded to the submission of the learned state attorney while the 3rd, 4th, and 5th appellants prayed their appeal be considered.

The court having heard the submission of both sides, and the fact that the respondent/Republic support the appeal for the first and second appellants, that the case against them was not proved beyond reasonable

doubt, it found that it is no prudent to keep on holding them in this case to the judgement date to be fixed. Consequently, the court quashed conviction and set aside sentence against them. It further ordered immediate release of the first and second appellants unless lawfully held.

Now the question for determination before me is whether the appeal by the 3rd, 4th and 5th appellants has merit.

It is a settled law that the duty of the first appellate such as what it is now, is to reconsider and evaluate the evidence and come to its own conclusions bearing in mind that it never saw the witnesses as they testified (See **PANDYA v Republic** (1957) EA 336. I will try to re-evaluate the evidence of witnesses.

I have carefully re-examined the evidence adduced by prosecution in line with the duty of the first appellate court, which this court is. PW1 Priva Yona testified that to the effect that on the fateful date, that is 28/12/2020 he was on duty at Rukwa game reserve with John Nyakihoja, Smart Mwakyusa and Jackson Kusiga. He saw traces of bicycle and they followed them and found two people with bicycles. He arrested them while with wild meat. The meat was in the sack loaded on bicycle. He filled the certificate of seizure and arrested the accused. He asked accused to take them where

they got such meat. The accused took them to the place where they managed to arrest other three accused. It was a small camp. Upon his search he found two local firearms (gobore), 20 local ammunitions (gololi) and one horn of puku. He filled the certificate of seizure and it was signed by those three accused and witnesses namely Jackson Kusiga and John Nyakihoga. Accused slept in reserve camp and the following day on 29/12/2021 the accused were sent to Inyonga Police Station. PW1 also tendered certificate of seizure (exhibit P2) showing items seized from 3rd, 4th and 5th accused which are ammunitions, the firearms and bicycle.

Connected to the above testimony, PW2 testified that on 28/12/2020 he was on patrol in Rukwa game reserve with John Nyakihiga, Priva Yona and Smart Mwakyusa, and while on patrol he saw traces of bicycles and he followed them and found two people with two bicycle each had a load on it. Those people were Ben kafilika and John Peter. He found the accused with puku meat and bicycle. He stated that the accused took him to the place they got meat. They divided into two group, there he found three people sleeping and the firearms were on their side, he arrested them within the reserve and managed to seize two firearms (gobore) and 20 local ammunitions, one horn of puku. He, as witness signed certificate of

seizure prepared by PW1, also accused signed it. He took the accused to their camp and on the following day, he took the accused to Inyonga Police Station.

The testimonies of PW1 and PW2 who arrested the 3rd, 4th, and 5th appellants corroborated with the testimonies of PW3, PW4, PW5, PW6, PW7 and lastly PW8. In his testimony PW3 G.5443D/C MARWA testified that on 30/12/2020 he was on duty at Inyonga Police Station was assigned by OC-CID of Mlele to investigate this case and also, he received exhibits related to this case which were two muzzle loader gun, 20 ammunitions, two bicycles and wild meat of Puku, horn of puku and skin of puku. He took the meat to a valuer of trophy while observing chain of custody. He stated that valuer by the name of Gasper Conlad identified and valued the trophy and the trophy valuation certificate was prepared. He prepared inventory form, and he took the trophies together with the accused persons to the court, where disposal order for the destruction of the meat, horn and skin was granted. PW3 tendered inventory form and admitted in court exhibit P3. The 3rd appellant did not object to its tendering, while 4th and 5th appellants did not directly object to it rather to the allegations against them, thus, even the complaint by the appellants that they were denied a

chance to cross examined on the issue is afterthought as they were afforded that chance but did not cross examine.

Also, PW4 WP 9800 DC ELIZABETH testified to have been involved in taking exhibits namely two muzzle loader gun, 20 ammunitions, two bicycles to the court for identification. The testimony of PW4 resembles to that of PW5 G.5488 D/CPL HAMADI. PW6. H.9874 testified to have tendered in court two muzzle loader guns, two bicycles, 20 pieces of iron balls which were collectively admitted as exhibit P 4 and as well inventory form which was admitted as exhibit P5. PW7 GASPER CONRAD a Wildlife Officer who testified to have identified wild meat to be of puku and prepared trophy valuation certificate which he tendered in court as exhibit P.6. Lastly is PW8 F. 4003SGT NYAMROLA who testified to have prepared a chain of custody in respect of the exhibits tendered in court.

Also, I have read the trial court judgement. The learned trial magistrate considered the defence of 3rd, 4th, and 5th appellants in respect of the possession of local made weapons, and made a conclusion that the appellants had no permit/license in respect of the same. Thus, the ground three that the learned trial magistrate convicted the appellants based on weakness of the defence evidence instead of the prosecution side is

inaccurate. The learned trial magistrate correctly assessed the credibility of the prosecution witnesses as credible starting with PW1 and PW2 whose evidence was corroborated with that of PW3, PW4, PW5, PW6, PW7 and PW8 with several exhibits admitted and came to a conclusion that the case was proved beyond doubt against 3rd, 4th, and 5th appellants.

It is my finding that the testimonies on record as re-examined as above sufficiently proved the three counts of unlawful possession of government trophy, unlawful possession of firearm and unlawful possession of ammunition against the 3rd, 4th, and 5th appellants. Therefore, the 3rd, 4th and 5th conviction and sentence in the trial court is correct. This appeal is therefore dismissed, conviction and sentence are upheld.

It is so ordered.


D. B. NDUNGURU

JUDGE

01/11/2022

Date - 1/11/2022
Coram - Hon. M.S. Kasonde - DR
3rd Appellant - Present
4th Appellant - Present
5th Appellant - Present
Respondent - Mr. Kapengula – State Attorney
B/C - Zuhura

Mr. John Kapengula – State Attorney: This matter is scheduled for judgment today we are ready.

3rd Appellant: I am ready.

4th Appellant: Me too.

5th Appellant: Me too.

M.S. KASONDE

DEPUTY REGISTRAR

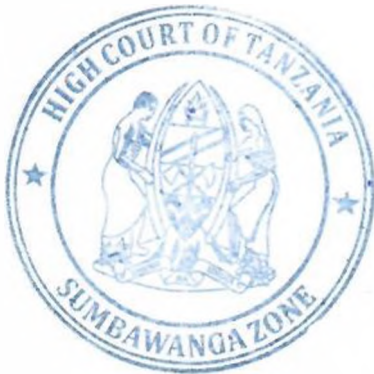
01/11/2022

Court: Judgment delivered this 1st day of November, 2022 in the presence of Mr. Kabengula, State Attorney for the respondent (Republic) and in the presence of all three Appellants.



M.S. KASONDE
DEPUTY REGISTRAR
01/11/2022

Right of further Appeal to court of Appeal fully explained.



M.S. KASONDE
DEPUTY REGISTRAR
01/11/2022

ORIGINAL