

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY OF MTWARA)

AT MTWARA

CRIMINAL APPEAL NO.35 OF 2022

*(Originating from Economic Case No.1 of 2018 of Ruangwa District
Court at Ruangwa)*

AYUBU RASHID MEMBE.....APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

JUDGMENT

Muruke, J.

At the District Court of Ruangwa at Ruagwa, the appellant Ayubu Rashid Membe, was charged with two offences. **One**, unlawful possession of Government trophy contrary to section 86(1) and (2) (d) (ii) of Wildlife Conservation Act, No. 5 of 2009 as amended by Act No. 3 of 2013 read together with paragraph 14 of the 1st schedule to and sections 57 (1) and 60(2) of the Economic and Organized Crime Control Act, Cap 200 R.E 2002 as amended by Act No. 3 of 2016. **Two**, unlawful possession of Government trophy contrary to section 86(1) and (2) (d) (i) of Wildlife Conservation Act, No. 5 of 2009 as amended by Act No. 3 of 2013 read together with paragraph 14 of the 1st schedule to and sections 57 (1) and 60(2) of the Economic and Organized Crime Control Act, Cap 200 R.E



2002 as amended by Act No. 3 of 2016. He was convicted and sentenced to pay fine Tshs. 2,791,200 or 15 years' imprisonment for the first count, and pay fine Tshs. 1,163,000/= or 15 years' imprisonment for the second count. Being dissatisfied, he filed present appeal raising six (6) grounds in the main petition of appeal and one (1) additional grounds of appeal.

On the date set for hearing, respondent was represented by Wilbroard Ndunguru, Senior State Attorney, while appellant appeared in person, he thus prayed for his grounds to be received as his submission in chief, and reserve his right to make rejoinder if any, prayer which was not objected by respondent counsel. Court then, asked learned State Attorney to submit, replying grounds of appeal. Counsel for the respondent supported the appeal, he first consolidated ground one in the main petition and ground one in the additional grounds, and submitted that, exhibit P2 seizure certificate, exhibit P3 caution statement, exhibit P4 trophy valuation report, were all received but not read in court. Legally, they are supposed to be expunged from the court records and evidence. The two irregularities lead to the three exhibits be expunged. After expunging the three exhibits, there is no any other evidence credible to ground conviction. Looking at evidence of PW4 Rashid Musa Chamwingo did not explain in details how he identified the trophies. In totality let the appeal be allowed, the trophies to be confiscated, insisted learned State Attorney.

It is a settled principle of law that, once a document is intended to be relied upon in court, after being admitted, the contents of that document should be read over loudly in court to the extent that the accused can hear and understand the contents of that document. The rationale



behind is to afford an accused an opportunity to know the contents of such document so that he can understand the case and prepare his defense. Failure to do so it is fatal. Relevant document need to be expunged from the court records as well stated in various decisions including in the case of **Gode Cleophance Vs. The republic, Criminal Appeal No. 41 of 2019**(unreported), the court stated that;

“Apart from the prosecution witnesses who testified in court, there were three exhibit which when tendered before trial court and admitted namely, the certificate of seizure, valuation form and inventory form. However, all these documents were tendered but not read in court to allow the appellant to know the contents and challenge them. This procedure error is contrary to the agreed principles of laws which have been stated by the higher court.”

A similar aspect occurred in the case of **Mathias Dosela@Adriano Kasanga Vs. The republic, Criminal Appeal No. 212 of 2019**(unreported) at Mwanza, the court stated that;

“With respect to miss. Lazaro, as correctly submitted by Mr. Mutalemwa, the stand of the law as elaborated in the two cases authorities cited by Mr. Mutalemwa makes it a necessity for the document admitted in evidence to be read in court.....”

The remedy of failure to read the contents of the document(s) admitted in court is to expunge the said document from court records. This position was pronounced in the case of **Mbaga Julius Vs. The republic, Criminal Appeal No. 131 of 2015** (unreported) at Bukoba, court stated that;

“Failure to read out documentary exhibit after their admission renders the said evidence contained in that documents, improperly admitted, and should be expunged from the record.”



Prosecution tendered exhibits P2, P3 and P4 as reflected at page 12, 14 and 17 of the trial court typed proceedings. Exhibit P2 seizure certificate, exhibit P3 **caution statement** and exhibit P4, trophy valuation report.

Appellant complained that although the exhibits were admitted, but they were not read over to the accused to afford him to understand the contents and nature of his case, to be able to prepare his defense. It is true, according to the record, the said exhibits were admitted by trial court but they were not read. Failure to read the contents of exhibits during admission is fatal and the remedy is to expunge the exhibits(documents) from court record. Thus, exhibits P2, P3 and P4 are expunged from court records. Having expunged exhibits P2, P3 and P4, there is nothing left to ground conviction. This appeal has merits, it is allowed. Conviction is quashed and sentence set aside. Appellant to be released from custody, unless lawful held.




Z.G. Muruke

Judge

25/10/2022

Judgment delivered in the presence of Florence Mbamba learned State Attorney for the Respondent and Appellant in person.




Z.G. Muruke

Judge

25/10/2022