IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

CRIMINAL APPEAL NO 64 OF 2022

(Arising from Serengeti District Court at Mugumu Original Economic Case No 31 of 2021)

WANKURU S/O NYAGANA @ SIRA .....APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

JUDGMENT

4th October & 24th October 2022

F. H. Mahimbali, J.

The appellant was convicted of two economic offences of unlawful possession of weapons within the National Park and unlawful possession of trophy and one defesne of unlawful entry into the National Park. These are offences under Section 103 of the Wildlife Conservation Act, Act No. 5 of 2009 read together with Paragraph 14 of the First Schedule to and section 57 (1) and 60 (2) of the Economic and Organized Crimes Control Act, Cap 200 R.E 2019 and Section 86(1) and (2) of the Wildlife Conservation Act, Act No. 5 of 2009 read together with Paragraph 14 of the First Schedule to and section 57 (1) and 60 (2) of the Economic and

Organized Crimes Control Act, Cap 200 R.E 2019 for 2nd and 3rd counts. As regards for the first count of unlawful entry into the National park, it is an offence under section 21 (1), (a), (2) and section 29 (1) of the National Park Act, Cap 282 R. E. 2019 as amended by Written Laws (Miscellaneous Amendments) Act No 11 pf 2013 read together with GN 235 OF 1968.

It was alleged by the Prosecution that the appellant on the 11th day of May, 2021 at Lembisye area in Serengeti National Park within the District of Serengeti in Mara Region National Park, the appellant was found unlawfully being in the National Park (Serengeti) and was in possession of weapons to wit: one spear, one panga, and two animal trapping wires in the circumstances which raised reasonable presumption that that he used, or intended to use the same for purposes of commission of an offence.

In the third count, it was alleged that on the same date, place and time, the appellant was found being in possession of Government trophy to wit, one hind leg of zebra equivalent to Tshs. 2,760,000/= the properties of the United Republic of Tanzania.

The appellant pleaded not guilty to the charge which then necessitated the Republic to summon a total of four witnesses and

tendered three exhibits. Upon hearing of the case, the appellant was convicted and sentenced to one year jail imprisonment each for the first and second counts and 20 years jail imprisonment for the third count.

The appellant has been aggrieved by both conviction and sentence, thus this appeal based on three grounds of appeal, namely:

1. *That, the trial magistrate erred in law and facts to convict and sentence the appellant on a wrongly admitted evidence from PW1 and PW3, PW1 and PW3.*
2. *That, the trial magistrate erred in convicting and sentencing the appellant by admitting wrong evidence from PW2 which evidence was contradictory with the evidence that testimony by PW1 and PW3.*
3. *That the trial magistrate erred in convicting and sentencing the appellant because during of disposing of Government trophies he was not there.*

During the hearing of the appeal, the appellant appeared in person while the respondent was represented by Mr. Frank Nchanilla, learned state attorney.

On his part the appellant just prayed that this Court to adopt his grounds of appeal and consider them as his submission to the appeal.

Mr. Frank Nchanila learned state attorney upon thorough scrutiny of the trial court's proceedings, evidence and the offenses charged, he

conceded with the appeal on the first and second counts but resisted it on the third count of unlawful possession of the government trophy.

Submitting in the first count, he argued that the appellant was wrongly charged and convicted with the offence that does not exist as the charging section does not create such an offence.

With the second count of being unlawful possession of weapons within Serengeti National Park, he also supported the appeal as it has not been established whether Lembisye area which is the point of arrest is within Serengeti National Park. In the absence, of concrete evidence on that the offence is hardly established as per law.

Submitting on the third offence, he resisted the appeal relying on the the testimony of PW1 and PW3 it is clear that the appellant was arrested with the said trophy (Exhibit PE1). In totality, the testimony of PW1 and PW3 corroborate with the testimony of PW2. The latter identified it as government trophy and valued it accordingly. The skin of that leg which had been in black – white colour he identified it clearly as being that of zebra. He issued PE3 exhibit which is identification and valuation report.

He submitted that PW2 prepared inventory and sent it to Resident Magistrate in the presence of the appellant who participated in the said inventory proceedings. The trial court's judgment on PE4 exhibit as per page 6 and 7. Therefore, the argument in the first ground of appeal is baseless. PW2 in his testimony sufficiently described the said Zebra as had its skin not removed, thus the black to whitish strips were easily identified as per its uniqueness. Therefore, it was undisputed that the said testimony of PW2 being Wildlife officer, described it well and that as per page 28 of the typed proceedings, there has not been contest on that.

With the second ground of appeal, it is closely connected with ground no 1. It is clear that putting the testimony of PW1 and PW3 together it is clearly collaborated by the testimony of PW2.

With the third ground of appeal that the appellant was not there during inventory proceedings, it is not true. The proceeding on inventory (Exhbit PE4) is clear and self-explanatory.

He concluded his submission by urging this Court to allow the appeal in offence 1 and 2 but with the 3rd offence, he prayed that the appeal be dismissed.

In his rejoinder submission, the appellant added that in essence there has not been proof that he was arrested being in possession of the alleged trophy. For the said allegations to be truthful, it was important at least there was evidence by photograph establishing possession on that respect when he was arrested.

In consideration to the submission by the respondent's counsel (state attorney), it is true that the first offence of unlawful entry into the National Park is none existent and the second offence to be valid, there ought to have been proof by prosecution's evidence at the point of his arrest, the appellant was really within the coordinate points of Serengeti National Park. Short of that, it remains as a mere assertion in which this Court finds it as not established (see the reasoning and position of the Court of Appeal in the case of **Mosi Chacha Iranga and Makiri Chacha vs Republic,** Criminal Appeal No 508 of 2018, CAT at Musoma).

Now with the evidence in record, the main issue for consideration is whether there has been proof of the said charge on unlawful possession of government trophy (third count). On this, the testimony of PW1 and PW3 comes into play as arresting officers. Their testimony is to the effect that on the material date of the 11th day of May, 2021 at

Lembisye area the appellant was found being in possession of Government trophy to wit, one hind leg of zebra equivalent to Tshs. 2,760,000/= the property of the United Republic of Tanzania. PW2 in his testimony stated that when he was invited to identify the said trophy, he established it as zebra. As to why it is Zebra animal, according to page 28 of the lower court's typed proceedings, he stated:

> *"Feature of Zebra in scientific name is "Equuis Burchenn", medium sized, has skin black to white strips colour, triangular upper carnal teeth are special to crop and grid grasses, has no horns"*

The challenge with this evidence is one, whether the a trophy allegedly arrested with the appellant at the point of his arrest is the same which resurfaced before the Resident Magistrate for disposal order of destruction. I say so, because there is a breakdown of nexus between the arrest of the appellant by PW1 and PW3 at Lembisye area being with the said trophy (PE1 exhibit) and the evidence of PW2 how he came to identify it as trophy and the valuation. The evidence is silent as to where did the said trophy go after the arrest of the appellant. Which Police officer at Mugumu Serengeti was handled with the said exhibit. Is it then the same trophy identified by PW2 as per exhibit PE3 with the one arrested at the point of arrest (PE1 exhibit). In the absence of

explanations on how the said trophy (exhibit) exchanged hands from one person to another, the position of the law is, the evidence is hardly reliable for want of authenticity (See **Paulo Maduka and 4 others vs Republic**, Criminal Appeal No 110 of 2007 CAT at pages 18-19 and **DPP vs Steven Gerald Sipuka**, Criminal Appeal No 373 of 2019, CAT at Dar es Salaam). Though this exhibit is a physical one, yet it is important to establish who handled it from point A to point B, C and D and finally its presentation in Court even if in the absence of paper tray but there ought to be direct evidence on the manner of its handling.

That said, I find this appeal is meritorious and is allowed as there has not been proof beyond reasonable doubt that the appellant is responsible with the alleged government trophy.

That said, conviction and sentence meted out by the trial court are hereby quashed and set aside. The appellant is thus set free unless lawfully held by other causes.

It is so ordered.

DATED at MUSOMA this 24th day of October, 2022.

F. H. Mahimbali

Judge