

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(MOROGORO SUB-REGISTRY)**

**AT MOROGORO**

**(APPELLATE JURISDICTION)**

**CRIMINAL APPEAL NO. 21 OF 2022**

*(Originating from Economic Case No. 14 of 2022; in the District Court of Kilombero, at  
Ifakara)*

**JASTINE KIBENDU..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**JUDGEMENT**

**5<sup>th</sup> December, 2022**

**CHABA, J.,**

The appellant, Jastine Kibendu was charged with the offence of unlawful possession of Government Trophy contrary to section 86 (1) & (2) (b) of the Wildlife Conservation Act No. 5 of 2009 read together with para 14 of the First Schedule to Section 57 (1) and Section 60 (2) and (3) of the Economic and Organized Crimes Control Act [Cap. 200 R. E, 2002] as amended by Section 16 of the Written Laws (Miscellaneous Amendment Act No. 3 of 2016).

He was consequently sentenced to serve twenty (20) years imprisonment or to pay fine in the tune of ten times the value of a trophy he was found with, to

wit; TZS. 18,400,000/= . Dissatisfied, the appellant preferred this appeal contesting both conviction and sentence.

To challenge the impugned decision, the appellant lodged his petition of appeal armed with seven (7) grounds of appeal. Upon scrutiny of all these grounds of appeal, I noted that the major complaint is to the effect that, the prosecution side failed to prove their case beyond reasonable doubt to warrant his conviction and sentenced as well.

At the hearing of this appeal, the appellant appeared in person, and unrepresented while the Respondent / Republic was represented by Ms. Theodora Mielwa, learned State Attorney.

Arguing in support of his appeal, the appellant had nothing useful to contribute to his grounds of appeal. He only prayed the court to consider his grounds of appeal and find him not guilty of the offence he stands charged before the court. He further asked this court to set him free from prisons.

On her party, the Respondent / Republic through Ms. Mielwa supported the appellant's appeal. She averred that the case against the appellant was not proved beyond reasonable doubt. Giving the reasons, the learned State Attorney squarely discussed the procedural irregularities conducted by the trial court specifically on disposal of exhibits, consideration of the chain of custody and admission of exhibits as so rightly stated by the appellant in his grounds of appeal.

Arguing on aspect of disposal of exhibits, the learned State Attorney enlightened that the Exhibit PE4 was disposed of in absence of the appellant and the appellant also did not append his signature on the inventory form which is against the law. To reinforce her argument, Ms. Mlelwa referred this court to the case of **Kurwa Limbu @ Musha v. Republic** (Criminal Appeal 279 of 2018) [2022] TZCA 436 (18 July 2022); (Unreported), where the Court at p. 14 of the typed judgment held inter-alia that: -

*"The absence of the appellants signature suggests that the appellant was not present when the disposal was conducted."*

Ms. Mlelwa stressed on the procedural requirements regarding the issue of disposal of exhibits and insisted that the presence of the appellant during disposal of the Exhibit PE4 was vital because in the circumstance would have afforded with an opportunity to see the actual trophy and perhaps would have raised an objection at any time. She was of the view that since the trial court record shows that alleged government trophies were seized from the hands of the appellant on the 29/09/2019 and immediately disposed of on 30/09/2019, no doubt that the appellant's presence was so important because would have seen and observed the whole exercise of disposing of the Exhibit PE4 or otherwise.

As regards to the chain of custody, the learned State Attorney accentuated that the trial court did not consider it as required by the law. She amplified three

reasons to the effect that, PW1 who arrested the appellant did not recount and mention the names of a person who collected the Exhibits for custody as Exhibited at p. 13 - 14 of the typed trial court proceedings, Again, the evidence of PW2 shows that though he received the exhibits but he neither mentioned the names of the person who received the said exhibits nor explained the mode in which the exhibits were kept/placed for safety custody. Even the testimony of PW3 is silent as to how he managed to identify the exhibits and how he got it and later handed it over to another.

In view of the above piece of evidence, Ms. Mlelwa highlighted that it obvious that the chain of custody was broken in particular how the Exhibit PE4 was seized from the appellant and then channeled to the key witnesses until the same landed into the Exhibits room for safe custody.

Concerning admission of the Exhibits, the learned State Attorney argued that Exhibits PE1 (Certificate of Seizure), Exhibit PE2 (Handing over Certificate) and Exhibit PE3 (Trophy Valuation Certificate) were not read out/audibly before the court soon upon cleared for admission and actually admitted as Exhibits.

Based on the above shortcomings, the learned State Attorney submitted and prayed the court allow the appellant's appeal.

Having heard oral submissions advanced by the two sides and upon considered the grounds of appeal in the light of the trial court proceedings, I am

of the view that despite the fact that the learned State Attorney did not seek to oppose the appellant's appeal, I find it prudent to ascertain whether the appellant's complaints which got support from the Respondent / Republic have merits.

Starting with the disposal of the exhibits, Ms. Mielwa submitted that Exhibits PE4 were disposed in absence of the appellant and the court record is clear that the appellant didn't sign the inventory form. On this facet, the learned State Attorney submitted that the Court of Appeal in a number of cases has dealt with the matter and laid down the position of the law. She contended that the Court had an opportunity to discuss and consider the relevant procedures in respect of disposing the exhibit(s) subject to a speed decay under paragraph 25 of Police General Orders (PGO) No. 229 through the case of **Mohamed Juma @ Mpakama vs. R**, Criminal Appeal no. 385 of 2017, CAT (Unreported) where the Court stated the need of hearing the accused before disposing the exhibit(s). The Court observed that: -

*"This paragraph 25 in addition emphasizes the mandatory right of an accused (if he is in custody or out of police bail) to be present before the magistrate and be heard....."*

As correctly submitted by the learned State Attorney, the appellant did not append his signature on the inventory form something which vitiated the trial court proceedings. On this facet, I subscribe to the findings of the Court of Appeal in the

case of **Kurwa Limbu@ Musha v. Republic** (Supra) that, absence of the signature of the appellant on the inventory form, suggests that the appellant was not present at the material time when the disposal of the Exhibits took place. No doubt that he was denied his rights to be heard and fended for himself before the trial magistrate.

Regarding the issue of the chain of custody, I had time to perused the original court record. Truly I am in agreement with the learned State Attorney that the chain of custody was broken. It is settled that improper or absence of a proper account of the chain of custody of an Exhibit(s) to a serious charge of an offence like unlawful possession of government trophy against the appellant, it tantamount to acquittal of the appellant.

On the last issue, yet again I had ample time to revisit the trial court record. The court record incontestably unveils that when the Exhibits PE1, PE2 and PE3 were cleared for admission and finally admitted as Exhibits in court, yet the same were not audibly read over in court and possibly to the appellant as required by the law. It is settled law that reading out documentary Exhibit(s) before they are admitted in evidence is wrong and prejudicial.

On reviewing the trial court record, I noted that the appellant was convicted and sentenced on the basis of Documentary Exhibits, which was not aware. In the case of **Robinson Mwanjisi and Three Others vs. Republic**, (2003) TLR 218, CAT – DSM, the Court extracted the following principle: -

*"Whenever it is intended to introduce any document in evidence, it should first be cleared for admission and be actually admitted, before it can be read out. Reading out document before they are admitted in evidence is wrong and prejudicial."*

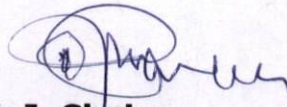
From the foregoing observations, it is clear that the following anomalies are clearly apparent on the court record and the following are my observations. **One;** It is my holding that reading out Documentary Exhibit(s) before they are admitted in evidence is against the rules of procedure and it renders the Exhibits invalid and its remedy is to be expunged from the record, of which I hereby do. **Two;** The Exhibit PE4 was disposed of in absence of the appellant and the worse thing is that the appellant did not append his signature on the inventory form, and **Three;** The chain of custody was broken as discussed above.

Having exhibited the irregularities found in the court record, and taking all factors into consideration, in my considered view, the answer is obvious that truly the prosecution side totally failed to prove the offence of unlawfully possession of government trophy levelled against the appellant beyond reasonable doubt.

Accordingly, I allow the appellant's appeal, quash the conviction and set aside the sentence meted out against the appellant. The appellant is to be released forthwith from the prison unless he is otherwise lawfully held. **I so order.**

**DATED at MOROGORO** this 05<sup>th</sup> day of December, 2022.





**M. J. Chaba**

**JUDGE**

**5/12/2022**

**Court:**

Judgment delivered at my hand and Seal of the Court in Chambers this 5<sup>th</sup> day of December, 2022 in the presence of Ms. Theodora Mlelwa, Learned State Attorney for the Respondent / Republic and the Appellant who appeared in person, unrepresented.




**M. J. Chaba**

**JUDGE**

**5/12/2022**

Rights to the parties fully explained.



**M. J. Chaba**

**JUDGE**

**5/12/2022**

