

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(SUMBAWANGA DISTRICT REGISTRY)
AT SUMBAWANGA
DC CRIMINAL APPEAL NO. 57 OF 2021**

(Originating from Mlele District Court at Mlele in Economic Crimes Case No. 14/2020)

GEORGE S/O MICHAEL 1st APPELLANT

ISSA S/O RASHID 2nd APPELLANT

SABAS S/O JACKSON @ FARANGA 3rd APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

21 & 24/02/2022

JUDGMENT

NKWABI, J.:

The appellants were charged and convicted before the District Court of Mlele at Mlele in Economic Crimes Case No. 14/2020 with unlawful possession of Government Trophy contrary to section 86(1) and (2) (c) (ii) of the Wildlife Conservation Act No. 5 of 2009 as amended by section 59 (a) and (b) of Act No. 4 of 2016 read together with paragraph 14 of the First schedule to and sections 57(1) and 60(2) of the Economic and Organized Crimes Control, Act [Cap. 200 R.E. 2019].

It was claimed that on 12th June 2020 the appellants were arrested while in Inyonga Forest Reserve in possession of Mongoose meat valued at T.shs 138,840/= the property of the government of the United Republic of Tanzania without a permit from the Director of Wildlife. The prosecution was

able to get hold of four witnesses and four exhibits. The appellants defended themselves denying to have committed the offence. The appellants were, all the same, found guilty as charged and ultimately sentenced to pay each one of them T.shs 1388,400/= in default to serve 20 years imprisonment.

Indignant of the decision of the trial court, the appellants lodged this appeal to this court with three grounds of appeal, which for reasons that will be apparent shortly, I do not reproduce them. The appellants are, nevertheless, now invoking this Court to allow this appeal, quash the conviction, set aside the sentences and that they be set free.

When the matter came for hearing, the appellants appeared in person while the respondent was duly represented by Ms. Marietha Maguta, learned State Attorney. The appellants supplicated their reasons of appeal be adopted as their submissions on the one hand. On the other hand, Ms. Maguta, learned State Attorney, subsidized the appeal and submitted that they back the appeal for the following irregularities in the trial court's proceedings: -

- (1) On the 1st page of court proceedings the prosecutor tendered exhibit under section 353 Criminal Procedure Act for disposal. At that time the trial court had no jurisdiction as it had not obtained a certificate and consent to prosecute. Section 353 is used when the hearing has commenced.

Further, it was wrong for a prosecutor to tender the exhibit, see **Athumani Almas Rajabu V. Republic, Criminal Appeal No. 416/2019** (CAT) of Dar es Salaam at page 10. For those reasons we support the appeal. They cannot pray for retrial as the exhibit cannot be retrieved. The appellants had nothing in rejoinder.

I have meticulously considered the argument of Ms. Maguta in respect of the procedural irregularities she has pointed out. The irregularities are obvious and fatal to the case. Indeed, the impot of section 26 (1) of the Economic and Organized Crime Control Act [CAP. 200 R. E. 2019] (EOCCA) was violated. The section stipulates as hereunder:

"Subject to the provisions of this section, no trial in respect of an economic offence may be commenced under this Act save with the consent of the Director of Public Prosecutions."

In addition, section 12 (4) of the Economic and Organised Crimes Control Act requires for certificate conferring jurisdiction to subordinate court to try an economic crimes case and it provides as follows:

"The Director of Public Prosecutions or any State Attorney duly authorised by him, may, in each case in which he deems it necessary or appropriate in the public interest, by certificate under his hand order that any case instituted or be instituted

before a court subordinate to the High Court and which involves a non-economic offence or both an economic offence and a non-economic offence, be instituted in the Court.”

Admittedly, the exhibit was tendered and admitted on 16/06/2020 when the trial court had not yet been conferred with the requisite jurisdiction to try the economic crimes case. That is contrary to the law.

Further to that, the exhibit which is mongoose meat was tendered by the prosecutor one A/insp. Mashayo in contravention of the law. In **Athumani Almas Rajabu V. Republic, Criminal Appeal No. 416/2019**, (CAT) it was held that:

“... the prosecutor is not a witness sworn to give evidence, he cannot assume the role of a witness. ... is not competent to tender exhibits because he cannot be both a prosecutor and a witness at the same time.”

The exhibit P1 therefore has to be expunged from the court record. I proceed to do so.

The outcome of the above deliberation, I allow the appeal. I quash the entire proceedings and conviction of the appellants and set aside the sentence

imposed upon them. I order the immediate release of the appellants from custody unless they are held therein for another lawful cause.

It is so ordered.

DATED at SUMBAWANGA this 24th day of February, 2022.



J. F. NKWABI

Judge