THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

SUMBAWANGA DISTRICT REGISTRY

AT SUMBAWANGA

CRIMINAL APPEAL NO. 109 OF 2021

(Original Economic Case No. 7 of 2020 of Nkasi District Court at Namanyere)

JUMA JENGA..... APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGEMENT

Date of Last Order: 12/04/2022

Date of Judgement: 22/04/2022

NDUNGURU, J

The appellant in this criminal appeal Juma Jenga was arraigned before the District Court of Nkasi for one count of unlawful possession of government trophy contrary to section 86 (1) and (2) © (ii) of the Wildlife Conservation Act No. 5 of 2009 read together with paragraph 14 (a) of the First Schedule and section 57 (1) and 60 of the Economic and Organised Crime Control Act, Cap 200 RE 2019 as amended by section 16 of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016.

It was alleged that, on 28th day of December, 2018 at King'ombe village within Nkasi District in Rukwa Region, the accused was found in unlawful possession of piece of Bushbuck valued at USD 600 which is equivalent to Tshs. 1,385,958/= the property of the United Republic of Tanzania without a valid license and permit to possess the same.

The accused person denied charge against him and to prove the allegation, prosecution called four witnesses along with seven exhibits while the appellant defended along with his two witnesses. Trial Court found accused person had a case to answer during closure of prosecution case. After full trial, the Trial Court found the appellant guilty of the offence and thereafter convicted him and consequently sentenced the appellant to serve a custodial sentence of twenty years.

Aggrieved by the conviction and sentence, appellant has preferred the present appeal based on six grounds of appeal, namely:

1. *That the Trial Court erred in law in receiving the exhibit P1 which was filled by unqualified person and contrary to the requirement of the law.*
2. *That the Trial Court erred in law and fact by basing its judgement on the cautioned statement which was taken out of statutory time.*
3. *That the Trial Court erred in law and fact by convicting the appellant while the case was not proved beyond reasonable doubts as required by law.*

4. *That the Trial Court erred in law in sentencing the appellant (first offender) to imprisonment only without giving him an opportunity to pay a fine.*
5. *That the Trial Court erred in law in conducting preliminary hearing contrary to the requirement of law.*
6. *That the Trial Court erred in law by conducting unfair trial against the appellant.*

When the appeal was called for hearing the appellant appeared in person unrepresented whereas the Republic was represented by Mr. Simon Peres, learned state attorney.

In support of his appeal, the appellant prayed the court to adopt his grounds of appeal and he had nothing to add.

On other hand, the republic through Mr. Peres supported the appeal by the appellant based on the first ground of appeal. That exhibit P1 was not filled by the qualified person. That the witness who completed the exhibit P1 introduced to be a game warden. According to section 114 (3) of the Wildlife Conservation Act. The person qualified to complete valuation form is a wildlife officer. A game officer is not covered in the definition of wildlife officer. The position was emphasized in the case of **Emmanuel Lyabonga vs. Republic**, Criminal Appeal No. 257 of 2019, unreported. He further submitted that if the certificate is expunged, no evidence is remaining.

Having gone through the trial court's record and the submission of both sides, I have one issue to decide. Whether the case was proved beyond reasonable doubt by prosecution side.

In his endeavor to support the appeal, Mr. Peres, Learned State Attorney attacked PW1's competence in assessing, valuing and issuing the trophy valuation certificate (exhibit P1) because PW1 was a mere game warden. It is undisputed that on 07/10/2018 when giving his evidence, PW1 introduced himself as a game warden, and according to the trophy evaluation certificate (exhibit P1) filled and issued by him on 31/12/2018, his designation was shown to be a game warden grade II. Exhibit PW1, is part of evidence on record and the same was executed before PW1's evidence was recorded. As rightly argued by Mr Peres, under section 114 (3) of the Wildlife Conservation Act (WCA) No. 5 of 2009, a trophy evaluation certificate can only be issued by the Director or a wildlife officer from the rank of wildlife officer, however such provision cited by My Peres is a general provision. The specific provision that provides that is section 86 (4) of the WCA provides that:

> "In any proceedings for an offence under this section, a certificate signed by the Director or Wildlife officers from the rank of wildlife officer, stating the value of any trophy involved in the proceedings shall be admissible in evidence and shall be prima facie evidence of the matters stated

therein including the fact that the signature thereon is that of the person holding the office specified therein."

Further, under section 3 of the WCA, a "wildlife officer" is defined to mean:

"A wildlife officer, wildlife warden and wildlife ranger engaged for purposes of enforcing this Act."

The WCA does not define who is a game warden, and thus PW1, a game warden does not fall within the scope and purview of "Wildlife Officer." I subscribe to the position as stated in the case of **Emmanuel Lyabonga vs Republic** {supra} and I proceed hold that the trophy valuation certificate (exhibit P1) to have no evidential value, thus expunged from the record.

The next to consider is whether the remaining evidence prove the case to the standard required by law.

As regards cautioned statement, the appellant complains that the same was recorded out of statutory time. The evidence on records show that the appellant was arrested on 28/12/2018. PW2 and PW3 both game warden in their testimonies at the trial court testified that while in a normal patrol in the game reserve on 28/12/2018 they arrested the appellant along with his fellows. Also, the charge which made the foundation of this case shows the appellant was arrested on

28/12/2018. However, PW4 a police officer who testified to have recorded cautioned statement of the appellant on 29/12/2018. Thus, the statement was therefore recorded out of the period of four hours as required by section 50 (1) of the Criminal Procedure Code, Cap 11 RE 2012. According to section 50 (1) (a) of the CPA, the basic period available for interviewing a person who is in restraint in respect of an offence is four (4) hours commencing at the time he was taken under restraint in respect of the offence. It is also trite law that violation of section 50 of the CPA is fatal. In **Ramadhan Mashaka vs Republic**, Criminal Appeal NO. 311 OF 2015, unreported, the Court observed that,

> "It is now settled that a cautioned statement recorded outside the prescribed time under section 50 (1) 9a0 and (b) renders it to be incompetent and liable to be expunged."

In the instant case, it is not clear at what time the appellant was arrested on 28/12/2018, while PW4 said the statement he recorded on 29/12/2018 at 07:03 hrs. which to view was recorded out of the prescribed four hours period. The cautioned statement as alleged recorded by PW4 is liable for expunction as I hereby expunge it from the record.

What remaining is the certificate of seizure, which I find cannot suffice to prove the case beyond reasonable doubt.

In the premise, I am satisfied that the prosecution has not sufficiently discharged the burden of proof. The charge against the appellant was not proved beyond reasonable doubt. The conviction and sentence meted out against the appellant are hereby quashed and set aside. The appellant be set at liberty unless otherwise lawfully held in connection with any other criminal offence.

It is so ordered.

D. B. NDUNGURU

JUDGE

22.04.2022