IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

CRIMINAL APPEAL NO. 63 OF 2021

(Originating from Economic Case No. 1 of 2019 District Court of Rombo at Mkuu)

MARIA COSMAS IDD ---------- APPELLANT

VERSUS

THE REPUBLIC ---------- RESPONDENT

JUDGMENT

28/2/2022 & 21/4/2022

SIMFUKWE, J.

Before Rombo District Court, the appellant, Maria Cosmas Iddi was charged with the offence of unlawful possession of Government Trophy contrary to **section 86(1) and (2) (c)(ii) of Wildlife Conservation Act, No.5 of 2009** read together with **paragraph 14(d)** of the first Schedule and **section 57(1) of the Economic and Organised Crimes Control Act, Cap 200 R.E 2002.** She was convicted on her own plea of guilty and sentenced to serve 20 years in prison. Aggrieved, he preferred this appeal.

It was the prosecution's case at the trial that on 13/6/2019 at about 16:00hrs at Indonet-Rongai village within Rombo District in Kilimanjaro

region the appellant was found in unlawful possession of one (1) kilogram of bush big meat valued at Tshs 972,300 the property of the United Republic of Tanzania.

During the hearing of this appeal, the appellant was represented by Mr. Julius Focus learned counsel while the respondent/Republic was represented by Ms. Grace Kabu, learned State Attorney. In her Memorandum of appeal, the appellant advanced seven grounds of appeal as follows:

1. *That, the trial magistrate grossly erred in law and in fact for treating the unfinished and ambiguous plea of appellant as unequivocal plea of guilty.*
2. *That, the trial magistrate grossly erred in law and in fact for convicting the appellant while there was (sic) procedural irregularities on the whole proceedings and documents tendered by the prosecution.*
3. *That, the trial magistrate erred in law for giving the decision without complying with the requirement of law.*
4. *That, the trial magistrate erred in law and fact in admitting the facts produced by the prosecution side, hence convicting the appellant without putting into consideration that there was an error in the provision of law which the accused was charged as there was wrong citation of the relevant provision of law.*
5. *That, the trial magistrate erred in law and fact in admitting the facts by public prosecutor hence convicting the appellant as there was an error in the power of search and arrest, as it was carried out improperly.*

6. *That, the trial magistrate erred in law and fact in sentencing the appellant to serve twenty years imprisonment as there is illegality on the sentence passed.*
7. *That, the sentence is excessive in the circumstances of this case.*

On the first ground of appeal that the trial magistrate grossly erred in law and in fact for treating the unfinished and ambiguous plea of the appellant as unequivocal plea of guilty; the learned advocate for the appellant argued that they are aware that **section 360 of the Criminal Procedure Act, Cap 20 R.E 2019** prohibits one to appeal when he has pleaded guilty to the charge. However, he stated that there are case laws which show circumstances under which one can appeal against conviction on plea of guilty. He referred to the case of **Lawrence Mpinga vs Republic [1998] TLR 166** in which **His Lordship Samatta J** (as he then was) outlined the following circumstances: ***First,*** where the plea was imperfect, ambiguous or unfinished and, for that reason, the lower court erred in law in treating it as a plea of guilty; ***Second,*** where one pleaded guilty as a result of mistake or misapprehension; ***Third,*** that the charge laid at his door disclosed no offence known to law and **lastly,** that upon admitting the facts, he could not in law have been convicted of the offence charged.

In respect of these criteria, the learned advocate argued that according to the appellant's explanation, she said that she was found in possession of pork meat and so she misapprehended the facts before the trial court. Mr. Focus thus prayed this court to find that the plea of the appellant was equivocal and unfinished.

On the 4th ground of appeal, the appellant's advocate submitted to the effect that, according to the charge sheet, the appellant was charged under **section 86(1)(2) (c) (iii) of the Wildlife Conservation Act** (supra) read together with **paragraph 14 of the 1st Schedule and section 57(1), section 60(2) of the Economic and Organised Crimes Control Act** (supra). Basing on these provisions he stated that, **section 86(2) (c)** has no roman (iii) since the section ends by roman (ii). For that reason, Mr. Focus called upon this court to find that the appellant was charged under the law which does not exist and allow this appeal. He added that the consent of the DPP and certificate conferring jurisdiction were issued under the same provision of the law which do not exist.

Regarding the 6th and 7th grounds of appeal, the appellant's advocate opted to submit them together. It was Mr. Focus's contention that, the sentence which was issued against the appellant is excessive compared to the offence of which the appellant was convicted of. The meat which was believed to be wild meat its value was below Tshs 1,000,000/= whereas **section 86 (2) (c) (i) and (ii) of the Wildlife Conservation Act**, (supra) provides for the sentence which can be passed against the person under the said section. He thus commented that, since in this case the value of the alleged trophy was below Tshs 1,000,000/- then the sentence imposed to the appellant is excessive.

In conclusion, the appellant's advocate prayed the court to quash conviction and sentence against the appellant.

On part of respondent/Republic the learned State Attorney supported this appeal on the 1st ground of appeal which to her suffices to dispose of the appeal.

However, the learned State Attorney had a different opinion in respect of ground No.4, 6 and 7.

Starting with the 1st ground of appeal, Ms. Grace referred the court to page 14 of the trial court proceedings where the appellant replied that: *Accused reply: It is true I was found with bush pig meat."*

Basing on this reply the learned State Attorney stated that the reply of the appellant did not suffice to find that the plea was unequivocal.

Ms. Grace also referred to page 15 and 16 where the appellant was asked in respect of exhibits which were tendered before the court and she did not object admission of the said exhibits except the inventory form. However, after the admission of the said exhibits the same were not read over, which rendered the appellant not to understand some of the ingredients of the offence which were in the said exhibits.

It was further submitted by learned State Attorney that, among the exhibits was the evaluation report which contained the value of the trophy which is also found in the charge sheet. She thus argued that, the appellant could have understood the value of the trophy if the valuation report had been read over. Also, the value of the trophy determines the type of offence which one can be charged under the Wildlife Conservation Act. The learned State Attorney commented that, the appellant's plea was equivocal.

Concerning the issue that **section 86(2) (c)(iii) of the Wildlife Conservation Act** (supra) does not exist, the learned State Attorney stated that, the appellant's counsel is not updated since the said provision exists after the amendment of the said law by **Written Laws Misc. Amendment Act No.2 of 2016 under section 59**. Moreover, roman (ii) has been renamed as roman (iii).

The learned State Attorney went on to submit that, although the amended section was not indicated in the charge sheet, still wrong citation and non-citation of the provision of the law is not fatal since the charge sheet and ingredients of the offence were read over and explained to the appellant.

On the 6th and 7th grounds of appeal, it was Ms. Grace's view that, on the basis of the first ground of appeal that the plea of the appellant was equivocal, she prayed the court to set aside the conviction and sentence against the appellant and order the matter to be tried de novo.

In rejoinder, the learned counsel for the appellant reiterated the prayer that the appeal be allowed and appellant be released forthwith.

Having studied carefully the memorandum of appeal, submissions of both parties as well as the trial court records, the issue is whether this appeal has merit.

Under **section 360 (1) of Criminal Procedure Act,** (supra) the law provides that, no appeal shall be allowed to the accused person who has pleaded guilty and has been convicted on such plea except as to the extent or legality of the sentence. There are also some exceptions when the accused person can appeal against his own plea of guilty as established in a number of cases. In the case of **Josephat James v. Republic, Criminal Appeal No. 316 of 2010,** the Court of Appeal of

Tanzania stated the circumstances under which one can appeal against plea of guilty that: -

i. The plea was imperfect, ambiguous or unfinished and, for that reason, the lower court erred in law in treating it as a plea of guilty;

ii. An appellant pleaded guilty as a result of a mistake or misapprehension;

iii. The charge levied against the appellant disclosed no offence known to law, and

iv. Upon the admitted facts, the appellant could not in law have been convicted of the offence charged. (See ***Lawrence Mpinga v. Republic, (1983) T.L.R. 166 (HC)*** *cited with approval in* ***Ramadhani Haima's case (Cr. Appeal No. 213 of 2009, CAT, unreported).***

On the 1st ground of appeal, the learned counsel for the appellant stated that the plea was equivocal one for the reason that the same was unfinished since the appellant misapprehended the facts before the trial court. The learned State Attorney conceded that the plea was not unequivocal which suffices to dispose of this appeal. However, she prayed for the matter to be tried *de novo.*

Despite the fact that the State Attorney supports the first ground of appeal, I find it prudent to ascertain if what was contended by appellant's advocate and conceded by the learned State Attorney is correct. For that, I keenly examined the trial court records particularly at page 14 and 15

of the typed proceedings. The records reveal that, when the appellant was called upon to plea, she stated that:

"It is true I was found with bush pig meat."

Also, at page 15 of the typed trial court proceedings when the appellant was asked if she admits the facts which were read over to her by the prosecution, she was quoted to have said:

"It is true that I was found with 1 kilogram of bush pig meat."

As per charge sheet, the appellant was charged with an offence of '**unlawful**' possession of one kilogram of bush big meat. The key element of this offence is **unlawful possession.** Thus, the words which were quoted to have been said by the appellant does not suffice to constitute the offence charged. According to the case of **Josephat James v. Republic,** (supra) if the admitted facts are to the effect that the accused could not in law have been convicted of the offence charged, then the plea is wanting which is subjected to be challenged on appeal. Therefore, I am of a firm view that, the appellant misapprehended the facts before the trial court and the admitted facts did not contain elements of the offence of unlawful possession of government trophy, thus renders the appellant's plea equivocal.

Concerning the contention by the learned counsel for the appellant that the appellant had admitted to have been found with pork meat and not bush pig meat, with due respect, the same is not indicated in the trial court's proceedings. Thus, the same is unfounded and I disregard it accordingly.

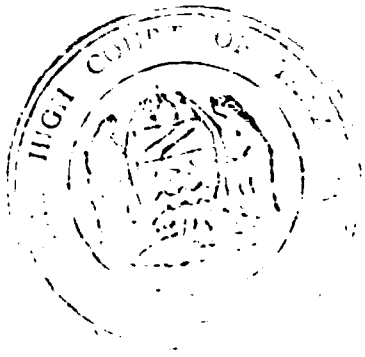
In addition, as correctly stated by the learned State Attorney, the fact that documentary exhibits which were tendered by the prosecution (exhibit P1, P2 and P3) were not read over to the accused person, renders admission of the facts narrated by the prosecution equivocal.

As stated by learned State Attorney, this ground suffices to dispose of the appeal.

On the basis of the above reasons, I find that the plea of the appellant was equivocal. Therefore, the trial court's plea of guilty order and conviction are hereby quashed and the sentence is set aside. The matter is ordered to be tried de novo by taking the plea of the appellant afresh before another Magistrate of competent jurisdiction. Appeal allowed to that extent.

It is so ordered.

Dated and delivered at Moshi this 21st day of April,2022.



S. H. SIMFUKWE

JUDGE

21/4/2022