IN THE HIGH COURT OF THE UNITED REPUBIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

CRIMINAL APPEAL NO. 57 OF 2020

(Originating from Economic Case No. 5 of 2018 at Babati District Court)

PIRI MAASAI SIKAI @ SOLO MANINGE ..... APPELLANT

VERUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

17/2/2022 & 13/5/2022

ROBERT, J:-

The Appellant, Piri Maasai Sikai @ Solo Maninge, was charged and convicted at the District Court of Babati with the offence of Unlawful Possession of Government Trophy contrary to section 86 (1) (b) of the Wildlife Conservation Act, No. 5 of 2009 read together with paragraph 14 of the schedule to and section 57 (1) and 60 (2) of the Economic and Organized Crime Control Act [Cap. 200 R.E 2002] as amended by sections 16 (a) and (b) respectively of the Written Laws (Miscellaneous Amendments) Act, No. 3 of 2016. After a full trial, he was sentenced to

twenty years imprisonment. Aggrieved, he preferred the present appeal challenging both the conviction and sentence of the trial Court.

A brief background of this matter reveals that, on 23rd day of July, 2018 at the village of Hallu within the District of Babati, the appellant was found in possession of Zebra meat worth TZS 2,733,600/= and a panga. He was arrested by one Frank Nahamu (PW1) who was the Chairman of security at the village of Hallu who informed the village chairman about the incident. Thereafter, the village Chairman arrived at the scene and saw the Appellant with the said meat. He called the park rangers who arrived at the scene and continued to put the appellant under custody. A certificate of seizure was then filled and signed and the Appellant was taken to police station together with the exhibits. He was later taken to court where he denied to have committed the alleged offence. He alleged that the whole case was cooked up because on the material day he was taken from his home and handed to police station due to a conflict between him and PW1 and PW3. After a full trial, the trial Court made a finding that the charge against him was proved to the required standard. Consequently, he was convicted and sentenced to 20 years imprisonment. Aggrieved, he preferred an appeal to this Court armed with the following grounds:-

1. *That, the trial Court erred in law and in fact when it convicted the appellant on poor and suspicious identification of the said government trophy by PW5;*
2. *That the trial Court erred in law and in fact convicting the appellant with long sentence term of twenty (20) years imprisonment compared to value of the said government trophy (2,733,600/=);*
3. *That the trial Court erred in law and in fact when it failed to analyse and evaluate evidence in records hence reaching unwanted judgment.*

On 22/7/2021, the Appellant filed three additional grounds to the effect that:-

1. *That the learned trial Magistrate erred as she failed to see that the chain of custody of the alleged trophy was broken by PW6 CPL MONDU as he never said whether he sealed and labelled the parcel allegedly seized from the appellant after he received it until when he handed it to PW5 for identification purpose. This breaks the chain of custody which was therefore not fool-proof, and is fatal.*
2. *That the Honourable Magistrate erred in believing that the parcel allegedly found with the appellant on 23/7/2018 at 12:45hrs and suspected to be zebra meat was the very same one which was handed to PW5 at 17:00hrs and found to be government trophy despite the apparent difference between the bag allegedly found with the appellant and the handed to PW5 for identification. According to PW1, PW2 and PW3 the parcel found with the appellant was green bag with white strips whereas PW5 testified that he was given a parcel in a white sulfate (sic) bag with green strips. These are two different parcels and it is fatal to the case.*
3. *That the learned trial Magistrate failed to comply with s.231 and 210 of CPA. This is fatal.*

At the hearing of this appeal, the Appellant appeared in person without representation whereas the Respondent was represented by Eunice Makala, learned State Attorney.

When the Appellant was invited to amplify on his grounds of appeal, he simply addressed the Court that he had no explanation to back up his grounds of appeal and prayed for the court to determine the fate of this appeal based on filed grounds of appeal.

Responding to this appeal, Ms. Makala resisted the appeal and supported both the conviction and the sentence given by the trial Court. Submitting on the first ground of appeal, she argued that PW5 had testified at page 43 of the proceedings that he is a valuer with experience of seven years in identification of various types of meat. He stated that he identified the meat in question to be of Zebra due to its yellowish colour and strong smell. That said, he maintained that the first ground of appeal has no merit.

Coming to the second ground, she submitted that, section 60 (2) of Cap. 200 imposes the sentence of 20 to 30 years imprisonment or compensation, therefore, the sentence of 20 years imprisonment imposed by the trial magistrate was not excessive.

Submitting on the third ground, which faulted the trial Magistrate for coming up with unwanted judgment due to failure to analyse and evaluate evidence on record, Ms. Makala submitted that, the trial court Magistrate raised issues and dealt with them based on the evidence adduced by prosecution and defence side. Hence, he maintained that there is no merit on this ground of appeal.

Coming to the last three additional grounds of appeal, I will start with the first ground which alleges that the chain of custody of the Government trophy was broken by PW6 CPL MONDU as he never revealed whether he sealed and labelled the parcel sealed from the Appellant. She submitted that, at page 57 of the trial court proceedings PW6 stated that he received exhibits from Pw2 and numbered it as BAB/IR/1795/2018 and signed the chain of custody. On the same day the said exhibit was taken by Samwel Bayo, valuer who signed the chain of custody and later on returned it. More so, on 24/7/2018 at 9:00hrs PW4 (CPl. Masanja) went to measure the exhibit and then returned it, the said chain of custody was received before the court as exhibit PE7. The said document clarified the movement of the said exhibit, thus the chain of custody did not break. She also maintained that, in a case of **Issa Hassan Uki vs Republic** Criminal Appeal No. 129 of 2019 it was

held that chain of custody maybe broken yet the exhibit will be admitted and relied on.

The second additional ground alleges that the trial Magistrate did not consider that there is a difference between the parcel found in possession of the Appellant which was described by PW1, PW2 and PW3 as green bag with white strips and the white sulphate bag handed to PW5 which was found to have zebra meat. In her response, the learned State Attorney simply argued that the contradiction in the two bags does not go to the root of the case.

The third additional ground faults the trial Magistrate for failure to comply with s. 231 and 210 of the CPA. Submitting on this ground the learned State Attorney argued that, section 231 of the CPA requires the Magistrate to explain to the accused person the substance of the charge and inquire from him how he prefers to bring his defence. She maintained that, in the present case at page 60 of the proceedings the appellant was given his right as required under Section 231 of the Criminal Procedure Act, Cap 20 R.E 2002.

With regards to the allegation that section 210 of the Criminal Procedure Act was not complied with, the learned State Attorney submitted that, non-compliance with the cited section is curable under

section 388 (1) of the Criminal Procedure Act. To support her argument, she referred the Court to the case of **Hassan vs Republic (Criminal Appeal No. 84 of 2013** (Unreported).

Based on her submissions, she prayed for the appeal to be dismissed and sentence to be upheld.

Having heard submissions from the learned state Attorney in response to the grounds of appeal submitted by the Appellant and examined the impugned judgment and proceedings of the trial Court, I will now proceed to determine the merit of this appeal.

Starting with the first ground of appeal, the question for determination is whether the alleged government trophy (zebra meat) was properly identified. The Appellant alleged that identification of the government trophy done by PW5 was poor and suspicious. Since the Appellant did not amplify on his grounds of appeal it is not clear why he considers the said identification poor and suspicious. I have looked at the proceedings of the trial Court and noted that there was no issue with regards to identification of the alleged government trophy. PW5, Samwel Daniel Bayo, who assessed the trophy informed the trial Court that he was a game officer with a diploma in wildlife management. His duties included identification and valuation of government trophy and he

had seven years' experience in doing that. According to him, he examined the said meat and identified it as zebra meat due to its yellow colour ("mafuta yenye njano juu ya mnofu") and a strong smell. He valued the said meat to be equivalent to TZS 2,733, 600/= and filled the trophy valuation certificate (exhibit P6). The said certificate is a prima facie evidence of matters stated therein. Further to that, his testimony is supported with that of PW2, Hamisi Maguya, a park ranger who identified the said meat as zebra meat right at the scene where the Appellant was arrested and filled a certificate of seizure (exhibit P2). Similarly, the evidence adduced by PW1, Frank Nahamu, the Chairman of security in the village of Hillu, who arrested the Appellant, reveals that the Appellant admitted to him that the luggage in his possession was a meat from a wild animal (nyama pori). In the circumstances of this case, this Court is satisfied that there was sufficient evidence to identify the alleged government trophy as zebra meat.

Coming to the second ground, the Appellant faulted the trial Court for imposing a long sentence term of twenty (20) years imprisonment compared to the value of the alleged government trophy which is TZS 2,733,600/=. The charge against the Appellant was preferred under section 86(1) and (2)(b) of the Wildlife Conservation Act, No. 5 of 2009 read together with Paragraph 14 of the First Schedule to and sections 57(1) and 60(2) of the Economic and Organised Crimes Control Act,

Cap. 200 (R.E.2002) as amended by section 16(a) and 13(b) respectively of the Written Laws (Miscellaneous Amendments) Act, No. 3 of 2016.

Under section 86(2)(b) of the Wildlife Conservation Act, No. 5 of 2009 where the value of the trophy which is the subject matter of the charge exceeds one hundred thousand shillings the person convicted is liable to a fine of not less than ten times the value of the trophy or imprisonment for a term of not less than twenty years but not exceeding thirty years or to both. In the present case, the value of the trophy according to the trophy valuation certificate (exhibit P6) is TZS 2,733, 600/= which falls under section 86(2)(b) of the Act.

It should be noted that this offence is designated as an economic offence under Cap. 200(R.E.2002) as amended by Act No. 3 of 2016 and the penalty imposed is not greater or lesser than the penalty imposed for economic offences under section 60(2) of the Economic and Organised Crimes Control Act, Cap. 200 (R.E.2002) as amended by section 13(b) of the Written Laws (Miscellaneous Amendments) Act, No. 3 of 2016 which provides that:

> *"Notwithstanding provision of a different penalty under any other law and subject to subsection (7), a person convicted of corruption or economic offence shall be liable to imprisonment for a term of not less than twenty years but not exceeding thirty years, or to both that imprisonment and any other penal measure provided for under this Act;*
>
> *Provided that, where the law imposes penal measures greater than those provided by this Act, the Court shall impose such sentence."*

That said, it is clear that the sentence of twenty years imprisonment imposed by the trial magistrate was correct and cannot be faulted

On the third ground of appeal, the appellant alleged that the trial court failed to analyse and evaluate the evidence on records hence reaching to an erroneous judgment. However, there was no explanation on specific evidence which the trial Court failed to analyse properly.

This Court is aware that, it is the duty of the trial court to evaluate the evidence adduced by each witness as well as his credibility and make a finding on the contested facts in issue (see **Stanslaus Rugaba Kasusura and Another vs. Phares Kabuye** [1982] TLR 338). However, as a first appellate Court, this court is entitled to re-evaluate the entire evidence on record by reading it together and subjecting it to a critical scrutiny and if warranted, arrive at its own decision.

Having read the proceedings and the impugned decision of the trial court, it is clear that the trial court gave a well-deserved consideration to the evidence adduced by both parties. PW1 testified how he arrested the Appellant while in possession of the alleged government trophy and a panga (exhibit P1) having admitted that he was in possession of meat from a wild animal. PW2 told the trial Court that the Appellant informed him that he was in possession of the zebra meat and he was in his way

to sell it. He also looked at the meat and identified it as zebra meat. PW3 tendered the bag where the alleged meat was kept at the time of arresting the Appellant. The bag was admitted in evidence as exhibit P3. PW4 is the one who investigated the case, he obtained a Court order for disposal of the said meat and drew a sketch map of the scene. The inventory of perishable exhibit and sketch map were admitted as exhibit P4 and P5 respectively. PW5 was the expert who examined and identified the alleged government trophy as zebra meat. He recorded a statement and tendered the trophy valuation certificate which was admitted as exhibit P6. Lastly, PW6 was the custodian of exhibit, he explained how the alleged government trophy was kept until its disposal by the Court order.

On his part, the Appellant generally denied commission of the alleged crime and alleged that there was a conflict between him and PW1 and PW3 and therefore the case against him was framed. However, he had no witnesses to prove the said allegations.

This Court is in agreement with the trial Court that the prosecution mounted a strong case against the Appellant and managed to prove their case to the required standard. Hence, I find no reason to fault the trial Court's analysis of evidence on record.

With regards to the additional grounds, the question for determination in respect of the first ground is whether the chain of custody for the seized government trophy was broken. The Appellant alleged that the chain was broken because PW6 did not disclose if he sealed and labelled the seized parcel from the moment it was seized to the moment it was handed over to PW5 for identification and valuation.

In the case of **Paulo Maduka and Four Others v. Republic**, Criminal Appeal No. 110 of 2007 (unreported), the Court of Appeal gave an elaboration as to what is a chain of custody by stating that:

> *"...chain of custody is the chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis, and disposition of evidence, be it physical or electronic. The idea behind recording the chain of custody ... is to establish that the alleged evidence is in fact related to the alleged crime - rather than, for instance, having been planted fraudulently to make someone guilty. The chain of custody requires that from the moment the evidence is collected its very transfer from one person to another must be documented and that it be provable that nobody else could have accessed it."*

In the present case, evidence reveals that, PW1 (Village Security Chairman) having arrested the appellant with the alleged zebra meat, PW2 arrived at the scene where he arrested the appellants and seized the alleged zebra meat (see certificate of seizure – exhibit P2) and took

the Appellant together with the exhibit to Babati Police station where the alleged zebra meat was handed over to exhibits keeper, CPL Mondu (PW6). The testimony of PW6 and exhibit PE7 explains how the custody of the alleged zebra meat took place from the moment it was brought for safe keeping until it was removed for disposal. His testimony is also supported by the testimony of PW4 and PW5. At page 57 of the trial court proceedings PW6 stated that the said exhibit was kept in their store. All witnesses who testified about the said exhibit indicated that the alleged meat was kept in what they referred to as a sulphate bag with green and white colours.

That said, this court finds no evidence to establish that the chain of custody was broken as alleged by the Appellant. As a consequence, I find no merit in this ground of appeal.

As to the 2nd additional ground of appeal, the question for determination is whether there was a difference between the parcel allegedly found with the appellant on 23/7/2018 and the one handed to PW5. The concern raised by the Appellant is based on the fact that while PW1, PW2 and PW3 said it was green bag with white strips, PW5 said it was a white sulphate bag with green strips. This court finds no difference in the description of the said bag. Both sides noticed in their

description of the said bag that it had the white and green colours. I therefore find no merit in this ground of appeal.

Coming to the last additional ground, the Appellant alleged that the trial court failed to comply with section 210 and 231 of the Criminal Procedure Act. The Respondent, on the other hand, maintained that the said provisions were complied with, and even if it wasn't that omission is not fatal as it can be cured under section 388 (1) of the Criminal Procedure Act.

Section 210 of the CPA provide that:

> 1. *In trials, other than trials under section 213, by or before a magistrate, the evidence of the witnesses shall be recorded in the following manner-*
>
> *(a) the evidence of each witness shall be taken down in writing in the language of the court by the magistrate or in his presence and hearing and under his personal direction and superintendence and shall be signed by him and shall form part of the record; and*
>
> *(b) the evidence shall not ordinarily be taken down in the form of question and answer but, subject to subsection (2), in the form of a narrative.*
>
> 2. *The magistrate may, in his discretion, take down or cause to be taken down any particular question and answer.*
>
> *3. The magistrate shall inform each witness that he is entitled to have his evidence read over to him and if a witness asks that his evidence be*

read over to him, the magistrate shall record any comments which the witness may make concerning his evidence.

Further to that, section 231 of the CPA provides that;

> *(1) At the close of the evidence in support of the charge, if it appears to the court that a case is made against the accused person sufficiently to require him to make a defence either in relation to the offence with which he is charge or in relation to any other offence of which, under the provisions of sections 300 to 309 of this Act, he is liable to be convicted the court shall again explain the substance of the charge to the accused and inform him of his right-*
>
> *(a) to give evidence whether or not on oath or affirmation, on his own behalf; and*
>
> *(b) to call witness in his defence, and shall then ask the accused person or his advocate if it is intended to exercise any of the above rights and shall record the answer; and the court shall then call on the accused person to enter on his defence save where the accused person does not wish to exercise any of those rights.*
>
> *(2) Notwithstanding that an accused person elects to give evidence not on oath or affirmation, he shall be subject to cross-examination by the prosecution.*
>
> *(3) Where the accused, after he has been informed in terms of subsection (1), elects to remain silent the court shall be entitled to draw an adverse inference against him and the court as well as the prosecution shall be permitted to comment on the failure by the accused to give evidence.*

(4) *Where the accused person states that he has witnesses to call but that they are not present in court, and the court is satisfied that the absence of such witnesses is not due to any fault or neglect of the accused person and that there is likelihood that they could, if present, give material evidence on behalf of the accused person, the court may adjourn the trial and issue process or take other steps to compel attendance of such witnesses.*

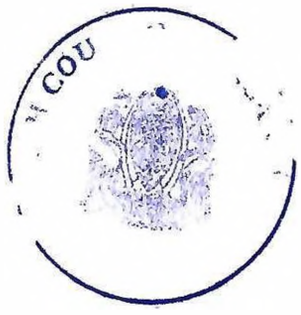
Having gone through the trial court records, this Court noted that after the trial court had delivered its ruling that a case had been made against the Appellant to require him to present his defence, the trial court dutifully addressed him on his rights and manner to present his defence in terms of the above-cited provision. This is fortified by the fact that the Appellant was recorded to have replied to the court that:

> *"Accused: I will have my defence. I pray for a time. I do not have any witness to call".*

In the circumstances, I find no merit on the issue raised by the Appellant in this last ground of appeal.

As a consequence, this Court finds no merit in this appeal and dismisses it accordingly.

It is so ordered.



K.N.ROBERT
JUDGE
13/5/2022