

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

RM. CRIMINAL APPEAL NO. 74 OF 2021

(C/O Economic Crimes Case No. 13 of 2018 Resident Magistrate Court of Katavi)
(Gosper B. Luoga, RM)

FRANK S/O MLOWEZI APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

04/11/2021 & 07/01/2022

JUDGMENT

Nkwabi, J.:

Twenty years imprisonment is the punishment meted out by the trial court against the appellant for unlawful possession of Government trophies contrary to section 86(1) and (2) (c)(iii) of the Wildlife Conservation Act No. 5 of 2009 as amended by section 59(a) and (b) of the Written Laws (Miscellaneous Amendments) (No. 2) 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 Crime Control, Act [CAP. 200 R.E. 2002 as amended by section 16(a) and 13(b) of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016.

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Indignant of both conviction and sentence the appellant lodged this appeal to this court seeking this court's grace to find fault in the proceedings, conviction and sentence of the trial court. The petition of appeal is comprised of six motives of appeal as follows:

1. The case against the appellant was not proved beyond reasonable doubt.
2. That the appellant was denied his right to cross-examine PW1 as such the conviction and sentence were unlawful.
3. By failing to tender the reception book, the prosecution failed to prove that the appellant was arrested at Mobeia guest house room number 20.
4. The ten-cell leader of the area was not called to certify that the appellant was arrested in possession of government trophies.
5. No independent witness was procured by the prosecution to prove the allegations, which contravened the law.
6. The trial court unlawfully failed to consider his defence.

It was the prosecution evidence, which was denied by the appellant in this appeal and his colleague accused person in the trial court, that the appellant was arrested at Mobeia guest house on 18/02/2019. PW2 A/Inspector

Ndangala received information about the offence during noon and waited for evening to arrest the suspects for selling elephant tusks. PW2 went to the lodge with his colleague police officers. At the lodge, they were sent to room number 20 and arrested the occupants therein and told them of his mission. The appellant was holding a red bag and on being opened, they found four pieces of hippopotamus tusks. The tusks were seized, a certificate of seizure filled in, signed by PW2, the guest house attendant, the appellant and other witnesses. The certificate of seizure was admitted as exhibit P2. The government trophies were admitted as exhibit P. 3. The chain of custody of the trophies was admitted as exhibit P4.

The only independent witness who came to confirm the case is PW3 Veronica, the guest house attendant. She confirmed that the appellant when he went to the guest house was in hold of a red bag and she sent them to room number 20. She witnessed the bag opened and some items mentioned as hippopotamus tusks were seized, she signed on a paper which was prepared. PW4 Ezekiel, a game warden at Katavi National Park witnessed too the seizure of the government trophies. PW1 Shaban, a game warden identified the trophies. Filled in the trophy valuation report whereby he

valued the trophies at T.shs 3,282,000/=. The trophy valuation report was admitted as exhibit P1. However, PW1 did not describe the trophies prior to his identifying the same in the trial court.

In his defence, the appellant denied to have committed the offence and claimed that he was arrested in Mpanda and was found with nothing. He was arrested by the police officers when he was from gold mine when he rode on a motorcycle which had more than one passenger (mshikaki). He was put in police custody for 20 days prior to being charged in court.

At the hearing of the appeal, the appellant appeared in person while the respondent was represented by Mr. John Kabengula, learned State Attorney. In his submission, the Appellant merely adopted his grounds appeal as part of his submissions.

Mr. John Kabengula –Senior State Attorney objected the appeal while insisting that they proved the case beyond reasonable doubt. He disputed

the claim of the appellant that he was not given opportunity to cross – examine.

Submitting on the 3rd ground of appeal on failure to tender a receipt, Mr. Kabengula argued that is baseless as there is PW3 Veronica who came to give evidence. The court trusted the witness, he added. The claim that no local leader of the place was called to give evidence, there was an independent witness who testified, therefore no need of local leaders, Mr. Kabengula maintained.

On the 6th ground that the appellant’s evidence was not considered, Mr. Kabengula responded that the trial court magistrate considered the evidence of both accused persons and dismissed their defence. He prayed the appeal be dismissed.

In rejoinder, the Appellant pressed that the arguments of the State Attorney be found to have no merits. He prayed that his grounds of appeal be accepted and the appeal be allowed and he be released. Exhibit P2 was not

signed by a local leader. The prosecution failed to bring the guest register as per the laws, the appellant amplified.

There are contradictions in the evidence of the prosecution in the name of the guest house while the date, time and the room to be the same, the appellant reinforced.

On my own evaluation of the evidence, I am convinced that the prosecution did not prove the case against the appellant beyond reasonable doubt for the reason that the alleged trophies were not correctly identified as per requirement of the law. PW1 did not describe the same as per the requirement of the law prior to their being shown to him. The position was promulgated in **Nassor Mohd v. Republic [1967] HCD 446:**

The proper identification of property in court is that the complainant should describe the property before it is shown to him so that when it is eventually tendered and the description confirmed it can be clear to the court that the identification was impeccable or not.

PW1 had these in describing the trophies prior to later being tendered/shown:

PW1 continues.

If I am shown the said trophies I can identify them as they are four pieces, I is the lower tooth and the other is the upper tooth.

PW2 who tendered the alleged trophies is a police officer who is not expert in identifying government trophies.

Since an accused ought not to be convicted on the weakness of his defence but on the strength of the prosecution, the position was taken in **Christian Kale and Another v. Republic [1992] TLR 302** (CAT), I hold that the charge was not proved beyond reasonable doubt.

I therefore, allow the appeal as it is worth it. I am wooed by the appellant's argument that the respondent failed to prove her case beyond reasonable doubt. In the circumstance of this case conviction has to be quashed and sentence set aside. The appellant is to be set free unless he is otherwise held for other lawful cause(s).

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It is so ordered.

DATED at **SUMBAWANGA** this 7th day of January 2022.



J. F. Nkwabi

Judge

Court: Judgment is delivered in camera this 07th day of January, 2022 in the presence of **Ms. Safi Kashindi**, learned State Attorney for the respondent and the appellant present in person.



J. F. Nkwabi

Judge

Court: Right of appeal is explained.



J. F. Nkwabi

Judge

07/01/2022