

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

CRIMINAL APPEAL NO. 62/2020

(Originating from Criminal Application No. 27/2020 of the High Court Bukoba in Economic Case No. 1/2020 of Karagwe)

**1. JANUARY MUSHONGI
2. AKIZIMAN CHRISTOPHER
3. BENETIMAN SEBASTIAN** } ----- **APPELLANTS**

VERSUS

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

JUDGMENT

08th February & 25th February 2022

Kilekamajenga, J.

The appellants appeared before this court challenging the decision of the District Court of Karagwe where they stood charged with ten counts related to hunting in the game reserve. After the full trial of the case, the appellants were convicted and sentence for the longest sentence of 20 years imprisonment for the fourth to the tenth counts. For the first to third counts, the appellants were sentenced to serve one (1) years in prison or pay a fine of Tshs. 200,000/= . For the 5th count, the appellants were sentence to serve a prison term of 5 years or else pay a fine of Tshs. 500,000/=

The appellants were disgruntled with the decision of the trial court hence appealed to this court armed with seven (7) grounds of appeal coached thus:

- 1. That, trial magistrate erred in law and facts to reach its decision as the prosecution failed to tender the seizure certificate to prove seizing of alleged meet from the appellants.*
- 2. That, trial magistrate did wrong to reach its decision basing on report tendered by PW3 as valuation while the prosecution failed to show expertise and permit order when acting in that capacity.*
- 3. That, trial magistrate did wrong to reach its decision basing on contradictory testimony of PW1 and PW3 on issue of arresting the basing the appellants (sic) and when PW3 was assigned to value those trophies to determine whether PW3 was eye witness at the time of arrested.*
- 4. That, the court did wrong to reach its decision by admitting the testimonies of the interpreter of Kinyarwanda to Swahili language without proving his expertism and independence when translating as he was not appellant's choice.*
- 5. That, the trial magistrate did wrong to each its decision basing on contradictory evidence of the prosecution witness who failed even to prove the weight of alleged wild meets from recognized authority when proving their case.*
- 6. That, trial magistrate did wrong to each its decision basing on unfounded value of hunted wild animals without nether tendering the law nor mentioning provision the law underlining those value.*
- 7. That, trial magistrate erred in law and facts to reach its decision basing while the prosecution failed to prove it case on standard required, that is beyond the reasonable.*

The case finally came for hearing; the appellants appeared to defend the appeal without any legal representation. The learned advocate, Ms. Naila Chamba appeared for the respondent, the Republic. In his oral submission, the 1st appellant who is a lay person simply prayed the court to consider the grounds of appeal and deliver justice. The 2nd appellant denied the allegation that he was arrested with wild animal meat and neither did he see the alleged meat at the court as an exhibit. He however admitted that, he was arrested while in the game reserve as he was a herdsman grazing the cows. The 3rd appellant submitted that, he was arrested in the game reserve and the only item he held was a container; he was also a herdsman. He generally denied being found in possession of wild meat in the game reserve.

When the ball of legal battle rolled to the learned State Attorney, she reiterated that, the appellants were charged with ten (10) counts including entering into the game reserve without authorisation. Ms. Chamba averred further that there is no doubt that the appellants were arrested while in the game reserve. However, on the 2nd to 10th count, Ms. Chamba supported their grounds of appeal as the prosecution failed to prove the case to the required standard. **First**, the prosecution failed to tender any certificate of seizure. Therefore, there is no evidence to suggest that the appellants were found with the alleged meat and weapons. **Second**, the exhibits, tendered during the trial, were not read in

court and therefore should be expunged from the records of the trial court. Ms. Naila finally urged the court to set the appellants at liberty because they have already served the sentence for the 1st count (being found in the game reserve).

When invited to rejoin, the appellants simply supported the submission by the learned State Attorney.

In addressing the merits of this appeal, the major issue that crops-up is whether the prosecution proved its case against the appellants on all the ten counts. There is no doubt that the appellants were found in the game reserve which does constitute the 1st count against the appellant. However, the second to the tenth counts were coined to accommodate the offences of hunting wild animals. They also covered the offences of being found in possession of wild animal meat and hunting weapons. In proving the offence, the prosecution tendered two exhibits namely, an inventory (of unclaimed property) which was admitted as exhibit P7 and trophy valuation certificate which was admitted as exhibit P6. However, all these exhibits were not read in court and therefore suffer the consequences of being expunged from the records of the trial court. On this point the case of **Robert P. Mayunga and David Charles Ndaki V. R; Criminal Appeal No. 514 of 2016**, CAT at Tabora, the Court of Appeal of Tanzania provides the guiding principle thus:

"...documentary evidence which is admitted in court without it being read out to the accused is taken to have been irregularly admitted and suffers the natural consequences of being expunged from the record of proceedings."

The court went further stating that:-

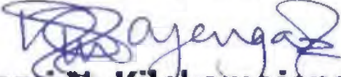
"In essence the requirement to have the document read out to the appellant after it is cleared for admission is meant to let the appellant aware of what was written in the document so that he can properly exercise his right to cross-examine the witness effectively."

When the two exhibits are expunged, the prosecution remains with no legs to stand as there was no certificate of Seizure to prove whether the appellants were actually found in possession of the government trophy as alleged.

I therefore find that the prosecution failed to prove the second to the tenth counts at the level of beyond reasonable doubt. On the 1st count there is no doubt that, the appellants were found in the game reserve and the appellants have already served the sentence of one year that they were sentenced to serve. I hereby allow the appeal; the appellants should be set at liberty unless held for other lawful reasons. It is so ordered.

DATED at **BUKOBA** this 25th day of February, 2022.




Ntemi N. Kilekamajenga
JUDGE
25/02/2022

Court:

Judgement delivered this 25/02/2022 in the presence of the appellants and the learned state attorney, Mr. Joseph Mwakasege. Right of appeal explained to the parties.



A handwritten signature in blue ink, appearing to read "Ntemi N. Kilekamajenga".

Ntemi N. Kilekamajenga

JUDGE

25/02/2022