

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

RM. CRIMINAL APPEAL NO. 52 OF 2021

KASEMA S/O MWANZALIMA APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

(Appeal from the decision of the Resident Magistrates' Court of Katavi at Mpanda)

(F. U. Shayo, RM)

Dated 17th day of March 2021

In

Economic Crimes Case No. 4 of 2020

JUDGMENT

29/03 & 23/05/2022

NKWABI, J.:

On 5th day of January, 2020, during the night, the appellant along with his wife was arrested in possession of government trophy. Their abode was searched during the night in the presence of independent witness. During the search, the police seized one skin and one tail which they suspected to be government trophies. They were confirmed as such by the Game Warden who said they were the skin of the lion and wild cat tail respectively. They were charged with two counts of unlawful possession of government trophy. The appellant was eventually convicted and sentenced to serve 20 years imprisonment on each count. He is challenging the conviction and sentence

urging that the search was conducted illegally as no independent witness witnessed it, the prosecution evidence was weak to ground conviction and prosecution witnesses contradicted themselves.

In the trial court the appellant and his wife were charged with two counts of for unlawful possession of Government trophies which offences are contrary to 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 Organized 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.

The respondent alleged through its charge sheet that was duly filed in the District Court, that on 5th day of January, 2020 that at Mkuyuni village within Mlele District in Katavi region, the appellant was found in possession of one lion skin valued at USD 4900 which is equivalent to T.shs 11,323,900/= only, the property of the Government of United Republic of Tanzania without a permit from the Director of Wildlife. He was also found in possession of one tail of a wild cat, valued at USD 250 equivalent to Tshs 577,750/= the property of the Government of the United Republic of Tanzania, without a

permit from the Director of the Wildlife. The appellant, who was the accused person, in the trial court disputed the allegations. The trial ensued which ended in his conviction and sentence when the respondent called five witnesses and tendered five exhibits. He also entered his defence.

During the hearing of this appeal, the appellant appeared in court in person, unrepresented. The Respondent was represented by Mr. Simon Peres, learned Senior State Attorney.

In his submission in chief, the Appellant stated that the trial court erred in law and fact to convict him while the case was not proved beyond reasonable doubt. He was also of the view that the caution statement was also recorded contrary to the law. He prayed to adopt his grounds of appeal as his submissions.

It was the reply submission of Mr. Peres that the complaint that there was no independent witness who witnessed the search is meritless. Even the appellant did not challenge PW1's evidence.

On the ground that the charge was not proved beyond reasonable doubt, Mr. Peres argued that the same is false. He insisted they had PW1, PW3 (the arresting officer) and PW4. Further, they had exhibit P2 and P3 as well as exhibit P4. It is due to those pieces of evidence they proved the charge, he stressed.

In respect of the 3rd ground of appeal to the effect that the prosecution witnesses contradicted each other, Mr. Peres contended that there is no such contradiction in the evidence of their witnesses. He prayed the grounds of appeal be dismissed as they are meritless.

To beef up his appeal, the Appellant, in his rejoinder submission, insisted that this court considers his grounds of appeal, allows his appeal and releases him from prison.

I have given due consideration of this appeal, I am of the view that the 2nd ground of appeal disposes this appeal. The appellant, in this ground of appeal laments that the respondent failed to prove its case beyond

reasonable doubt and I agree. I agree because, the search, was conducted during the night at around 21:30 hrs without the permission of the court being sought and granted. In the circumstances, the exhibits, that is the skin of the lion and the tail of the wild cat have to be expunged from the record. To that end, the prosecution is very weak and cannot stand, so it crumbles to the ground.

Further, in his defence, the appellant claimed the case was a fabrication by the police. This is what he had to say:

"One policeman among them said "Hatuwezi kuwachia bure". We had no money to bribe them ..."

It is trite law that an accused person is under no obligation to prove his defence, see **Elias Kigadye and Others v R. [1981] TLR 355** (C.A). In addition, conviction cannot be based on the weaknesses of the defence as per **Christian s/o Kale and Rwekaza s/o Bernard v R. [1992] TLR 302** (CA). Since the search was illegal for being conducted during the night at a dwelling house without a court's permission and the appellant alleges ill will against him by the police, the appellant is entitled to the benefit of doubt.

In the premises, I allow the appeal. The convictions and the sentences imposed on the appellant are hereby quashed and set aside respectively. The appellant is to be set free from prison unless he is held therein for another lawful cause.

It is so ordered.

DATED at **SUMBAWANGA** this 23rd day of May 2022.



J. F. Nkwabi
J. F. NKWABI

JUDGE