

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(SUMBAWANGA DISTRICT REGISTRY)**

AT SUMBAWANGA

DC. CRIMINAL APPEAL NO. 52 OF 2020

GODFRID S/O MPIMBWE APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

(Appeal from the decision of the District Court of Mlele at Mlele)

(B. M. Ahmed, RM)

Dated 21st day of July 2020

In

Economic Crimes Case No. 25 of 2018

JUDGMENT

13/04 & 24/05/2022

NKWABI, J.:

With three grounds of appeal filed in this court, the appellant is justifying his dissatisfaction with the decision of the trial court. The grounds of appeal could be condensed to one ground of appeal which is that the appellant was convicted of offences which were not proved beyond reasonable doubt because the exhibits were not found in his possession but rather in the house of Damas s/o Kalimanyondo as per sketch map of the scene of offence.

The respondent called seven witnesses and tendered four exhibits. The appellant defended himself and neither called a witness nor tendered any exhibit.

It was alleged in the charge sheet that on 24th day of August, 2018 the appellant and Joseph Mirumba who subsequently passed away and his case abated, both were found in unlawful possession of government trophies contrary to section 86(1) and (2) (c) (ii) of the Wildlife Conservation Act No. 5 of 2009 as amended by section 59(a) 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 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. Two government trophies were seized by the Game Officers, the trophies are Elephant skin valued at USD 15,000 equivalent to T.shs. 34,305,000/= the subject of the 1st count and one buffalo skin valued at USD 1,900 equivalent to T.shs 4,345,300/= the subject of the 2nd count on the charge sheet.

The offences are said to have been committed at Rungwa area in Rukwa/Lwafe Game Reserve within Mlele District in Katavi Region whereas the appellant and his demised colleague had no any written permit sought and obtained from the Director of Wildlife.

During the hearing of this appeal, the appellant appeared in court in person, unrepresented. The Respondent was represented by Ms. Maritha Maguata, learned State Attorney.

Advancing his appeal, the Appellant stated that the trial court did not do him justice. He added, he does not know where they got the exhibits that they tendered in court. He finally prayed the court to adopt his grounds of appeal as his submissions.

Responding to the exhortation by the appellant, Ms. Maguta was clear that, they support the appellant's conviction and sentence imposed by the District Court. She started arguing the 1st ground of appeal on it. She contended that they had seven (7) witnesses. PW1, PW2, PW3 who are Game Rangers

arrested the suspects of killing Government trophies. The appellant admitted the offence and had a gun and an ammunition.

She was of the view that there is the certificate of seizure which proves the exhibits which were listed therein. She insisted they proved the charge beyond reasonable doubt. She urged me to dismiss the 1st ground of appeal as it is meritless.

Submitting on the 2nd and 3rd grounds, Ms. Maguta stressed that the appellant talks about elephant tusks but he was found in possession of skins of buffalo and of an elephant. She pointed out that a person by the name of Damas Kanyomolo is not among the respondent's witnesses. She prayed the 2nd and 3rd grounds of appeal be dismissed. Ultimately, she prayed the appeal to be dismissed.

Finalizing his submission by way of rejoinder the Appellant, argued that the prosecution witnesses went to the camp with their own exhibits. He refuted that he was in possession of the government trophies even at the police

station. He left it to the court to decide, as on his view his grounds of appeal have merits. He finally prayed for justice.

I have carefully considered this appeal. The same is based on credibility of witnesses. In respect of credibility of witnesses, there is a lot of authorities that will guide me. One of them is **Goodluck Kyando v Republic, [2006] TLR 363**, CAT had these to say:

"It is trite law that every witness is entitled to credence and must be believed and his testimony accepted unless there are good and cogent reasons for not believing the witness. Their testimony was not challenged."

Further, unless there are other reasonable grounds to think otherwise, the trial court is best placed to determine matters on credibility of witnesses, see for instance **Martin Ernest v. Republic [1987] TLR 130** HC. One could as well have reference to the case of **Julius Billie v R. [1981] TLR 333** where it was held:

"The appellants suggested no reason why first appellant's nephew should have given false testimony against them. There is nothing on the record of the case to warrant this court

suspecting, leave alone concluding, that the witness had an axe to grind in this case. Even if there were some misunderstandings between the witness and the appellants or either of them, there would still be the evidence of the member of the guardian of law who effected the arrests for the appellants to grapple with.”

While I am quite aware that an accused person is under no obligation to prove his defence, see **Elias Kigadye and Others v R. [1981] TLR 355** (C.A) and a 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), in this case, the appellant was convicted and sentenced on the strong case of the respondent and not on the weakness of his defence. The prosecution witnesses are clear on how they become suspicious, which is that they saw vultures flying at an area. On making follow up, they found a carcass of an elephant which had its ivory removed/ missing.

On further follow-up, by following the foot-steps, on the next day they saw a camp and when they approached it arrested the appellant and Joseph Milumba who however, died before the trial was finalised hence his case

abated. The appellant and his dead colleague were arrested in possession of the elephant skin and a buffalo skin.

The trial court did not accept his defence that the appellant went to the river for fishing only. I have no valid ground to fault the decision of the trial court on this. In any way the appellant admitted material fact which corroborate the respondent's case where he admitted that he went to the river with a plastic bag which had a bed sheet, cooking pot and flour and slept there. In my view, I am fortified by the decision of **Emmanuel Lyabonga v Republic**, Criminal Appeal No. 257 of 2019 CAT (unreported):

"Actually, this piece of evidence was supported by the appellant's co-accused who, in cross-examination, said that the appellant had phone communications with a person he did not know. That apart, it is also momentous that the appellant acknowledged the communications in his cautioned statement ..."

In the premises, I find the appeal devoid of merit, I dismiss it. The convictions and the sentences imposed on the appellant are hereby upheld. It is so ordered.

DATED at **SUMBAWANGA** this 24th day of May 2022.



J. F. NKWABI

JUDGE

