

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

CRIMINAL APPEAL NO. 05 OF 2022

(Originating from Economic Case No. 53/2020 from Bariadi District Court)

MASUNGA MASUNGA @ BUDAGI.....APPELLANT

VERSUS

THE EPUBLIC.....RESPONDENT

JUDGMENT

06/03/ & 06/03/2023

A. MATUMA, J.

The Appellant Masunga Masunga @ Budagi stood charged in the District Court of Bariadi at Bariadi for the three counts namely; unlawful Entry in the National Park and unlawful Possession of weapons in the National Parks contrary to various provisions of the National Park Act, Cap 282 R.E. 2002 and unlawful Possession of Government Trophies contrary to the provisions of the Wildlife Conservations Act, No. 5 of 2009 read together with various provisions of the Economic and Organized Crimes Control Act, Cap 200 R.E 2019. At the end of his trial, the Appellant was convicted in all three counts and sentenced to one year jail term in respect of the offence of unlawful entry in the National Park, another one year jail term for unlawful Possession of Weapons in the National Park and twenty years jail term for unlawful Possession of Government Trophies.

The Appellant was aggrieved with both the conviction and sentence hence this appeal with four grounds whose major complaint is

that the prosecution case was not proved beyond any reasonable doubts and was therefore wrongly convicted and sentenced.

At the hearing of this appeal, the appellant who was under custody was present in person while the respondent was represented by Mr. Jukael Jairo learned State Attorney.

The learned State Attorney argued that this appeal should be partly allowed and partly denied. He submitted that in accordance to the records of the trial court the offence of unlawful possession of government trophies should have not been taken to have been proved to the required standard because the inventory of the exhibit was illegally conducted.

That, the trophies which were three pieces of Zebra meat were sent to the magistrate for disposal and finally disposed in the absence of the appellant contrary to the guidelines given by the Court of Appeal in the case of ***Michael Gabriel versus The Republic, Criminal Appeal No. 240 of 2017.***

The learned State Attorney thus argued that since the procedure for disposal of exhibit was violated, the inventory from exhibit P4 was wrongly procured and the same is liable to be expunged. He concluded that if exhibit P4 is expunged then there remains no evidence to prove unlawful possession of government trophies against the appellant.

On the other hand, the learned State Attorney opposed the appeal in respect of the offences of unlawful Entry and unlawful Possession of Weapons in the National Park submitting that PW1 and PW2 who arrested the appellant testified that they arrested the appellant in the

National Park and found him in possession of weapons but the appellant did not cross examine them when he was given a chance to do so.

The learned State Attorney argued that the fact not cross examined is taken to have been proved and any complaint against such fact thereafter is nothing but an afterthought. He referred me to the case of ***Nyerere Nyague versus Republic, Criminal Appeal no. 67 of 2010*** to that effect. He also submitted that the evidence of PW1 and PW2 in respect of the two offences were in fact corroborated by the defence of the appellant himself who stated that he was found in the National Park but was there for fetching firewood. He thus called this court to maintain the conviction and sentence in respect of the two offences.

On his party the appellant supported the submissions of the learned State Attorney and had no more to add.

Having heard the parties as reflected herein above, I agree with the learned State Attorney that the appellant was wrongly convicted and sentenced for unlawful possession of government trophies because the alleged trophies were not tendered in evidence to establish the allegations.

I am aware that an inventory form dully filled can be tendered in evidence in lieu of the physical exhibit but in this case the inventory violated the requisite procedure as rightly submitted by the learned State Attorney. In the case of Michael Gabriel supra, the Court of Appeal held;

"Normally a Valuation Report or an inventory maybe tendered in the case of perishable items but the same must have been ordered by the magistrate to be disposed of before hearing of the case after being taken before him in the presence of the accused person"

In the present case, the appellant was not involved throughout the process of inventory. The disposal of the trophies was thus illegally done and the inventory wrongly procured. I therefore expunge the inventory exhibit P4 from the record.

But again, there are inconsistencies within the prosecution witnesses as to what part of the trophy they seized from the appellant. While PW1 Ally Sufian and PW2 Rasul Oman stated that it were three pieces of dry **Zebra meat**, PW3 Michael Shirima stated that in his investigations he discovered that the exhibits were three pieces of dry **Zebra skin**. In that respect what PW1 and PW2 seized from the appellant was not the one submitted to PW3 for valuation and investigation as to whether it was the government trophy. Under the circumstances chain of custody was not in good order and it is thus dangerous to hold the appellant liable.

I therefore allow this appeal as far as the conviction and sentence is concerned in respect of the offence of unlawful possession of Government Trophies. As about the complaint relating to the conviction and sentence on the offences of unlawful Entry and unlawful Possession of Weapons in the National Park, I once again agree with the learned State Attorney that such complaint has no merit. It deserves to be dismissed. The appellant did not cross examine the two witnesses for the prosecution PW1 and PW2 on the fact that they found him in the

National Park in possession of weapons namely a knife, a panga and three wires.

He concentrated to cross examine on the government trophy alone. Most important is that the appellant himself during defence admitted that he was arrested in Serengeti Forest in which the Rangers were in patrol. He stated that he was in such forest which is in fact the Serengeti National Park for fetching firewood. It doesn't matter why the appellant was in the National Park. All what matters is whether he had any authority to enter therein and to possess weapons thereat.

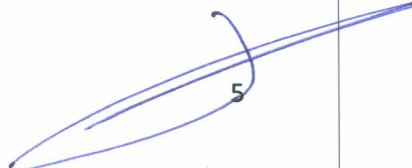
Since the appellant had no authority or permit, he was liable of the two offences and properly convicted and sentenced.

I therefore dismiss his appeal in relation to the conviction and sentence for the offences of unlawful Entry in the National Park and unlawful possession of weapons in the National Park.

All these being said and done, the appellant's conviction for unlawful possession of Government Trophies is hereby quashed and the sentence of twenty (20) years meted against him of that offence is hereby set aside.

His conviction in respect of unlawful Entry in the National Park and unlawful possession of weapons in the National Park is maintained and the sentences thereof upheld.

Since the conviction of the appellant was entered on 27/07/2021 and was sentenced to serve the imprisonment term of one year in each of the two offences, the sentences which were ordered to run concurrently, it is obvious that the appellant has already served fully



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such sentences. I therefore order his immediate release from custody unless held for some other lawful course.

It is so ordered.



A. MATUMA
JUDGE
06/03/2023