IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

ECONOMIC APPEAL NO. 1 OF 2023

(Originating from Economic Case No. 11 of 2022 of the District Court of Same at Same)

ELIAH s/o ENIYOYE @ NAKAZA ..... APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

JUDGMENT

06/03/2023 & 09/03/2023

SIMFUKWE, J.

In the District Court of Same at Same, Ester Hamis Juma together with Eliah Eniyoye alias Nakaza (hereinafter referred to as the Appellant) were charged as follows: the first accused was charged on the 1st count with an offence of unlawful possession of Government Trophies contrary to **section 86(1)(2) (c) (iii) of the Wildlife Conservation Act, No. 5 of 2009** as amended by **section 59 of the Written Laws (Miscellaneous Amendments) Act, No. 2 of 2016** read together with **paragraph 14 of the 1st Schedule, section 57(1) and section 60(2) of the Economic and Organised Crimes Control Act, Cap 200 R.E 2019.**

On the second count, both accused persons were charged with the offence of unlawful dealing in trophy contrary to **section 84(1) of the Wildlife Conservation Act, No. 5 of 2009** read together with **paragraph 14 of the 1st Schedule to and sections 57(1) and 60(2) of the Economic and Organised Crimes Control Act, Cap 200 R.E 2019.**

On the second count, it was alleged that on 10th day of December, 2021 at Majevu area within Same District in Kilimanjaro Region, both accused persons did unlawfully transport and accept government trophy to wit fresh meat of eland which is equivalent to one killed Eland valued at 1700 USD equivalent to three million seven hundred forty thousand Tanzania shillings (3,740,000/=) only, the property of the United Republic of Tanzania.

The story of the prosecution case in a nutshell is that, a Conservation Ranger who testified as PW1 received an information from the good Samaritan that at Majevu area there were people who were unlawfully dealing with government trophy. That, PW1 together with his fellows proceeded to the scene but before reaching there they informed PW2 the village chairperson. Then, they reached at the located house which is the 1st accused's house, searched and recovered two buckets containing fresh meat of eland. Upon interrogation, the 1st accused told them that the said buckets were taken there by the 2nd accused for her to keep it for a while and would go for it later. The 2nd accused was called. Upon inquiry, the 2nd accused admitted that he was the one who took the eland meat to the 1st accused's house. The District Game Officer (PW3) thereafter identified the meat.

Thereafter, they had to prepare certificate of search and seizure and the exhibits were taken to the police station. Later, the said meat was disposed through court order.

The accused persons were arraigned before the district court of Same (trial court) and charged as above. Upon hearing the prosecution and the defence case, the trial court convicted the 2nd accused (appellant) as charged and sentenced him to pay a fine of Tshs 34,740,000/- or serve 20 years imprisonment in default, while the 1st accused was acquitted. Aggrieved, the appellant has now appealed before this Court on the following grounds;

1. *That the trial court erred in law and in fact by relying on unreliable testimony of DW1 co-accused and eventually convicted and sentenced the appellant without corroboration evidence.*
2. *That, the trial court erred in law and in fact when convicted and later sentenced the appellant despite presence of doubts on the credibility of DW1's testimony.*
3. *That, the trial court erred in law by violating proper procedures by failing to give a chance to the appellant to cross examine prosecution witnesses, and eventually convicted and sentenced the appellant based on irregular proceeding.*
4. *That, a trial magistrate erred in law for provide (sic) excessive sentence than provided by the law.*
5. *That, prosecution side erred in law and fact for failed (sic) to take photograph of the alleged perishable trophy.*

6. *That, Prosecution side erred in law and fact by failing to summons, name or procure before a trial court as a witness the Hon. Magistrate who made order for disposal of alleged trophy.*
7. *That, the learned Hon. Magistrate had erred in law and fact by convicting the appellant based on circumstantial evidence which was not corroborated.*
8. *That, a trial magistrate erred in law and in fact by convicting the appellant based and relied on exhibit P6 caution statement of the first accused which was prepared involuntary.*
9. *That a trial Hon. Magistrate erred in law when shifted the burden of proof to the appellant by erroneously considering and relying upon opinions, assumptions and other extraneous matters which were not supported in evidence.*
10. *That a trial Hon. Magistrate erred both in law and in fact by convicting the appellant basing on prosecution's case which did not prove the offence on the standard required by the law.*

Hearing of this appeal was conducted through filing written submissions. The appellant was unrepresented while the respondent was represented by Ms. Grace Kabu learned State Attorney.

On the first ground of appeal, the appellant faulted the trial court for relying on the evidence of DW1 a co-accused while the same was unreliable. He argued that apart from the evidence of DW1, there is no other evidence to corroborate DW1's evidence thus it is doubtful as to whether really the appellant took the buckets of meat to the house of

DW1 and whether they were buckets of meat from the appellant. He argued that why didn't DW1 open those buckets and report the same to the authority or local leaders as any reasonable person would be expected to do. The appellant was of the view that failure to do so means that DW1 had something to do with the said buckets of meat or else she was the real owner of the same and just uses the appellant as a scapegoat as the appellant used to do mason with DW1's husband. The appellant also opined that the allegations of DW1 that she did not know what was in the buckets was a mere defence to escape liabilities.

It was stated that failure to have corroboration in DW1's evidence raises a doubt on her evidence. He cited the case of **R vs Kosenta Chaligia and Another [1978] LRT No. 11**, in which it was held that:

> *"If there is more than one accused persons, the testimony of one accused person cannot led to conviction of the other unless there is another evidence which relates to his testimony."*

Submitting on the second ground of appeal that there was doubt on credibility of DW1's evidence, the appellant said that it is a trite law that witness shall be competent and credible to testify before the court. As far as evidence of DW1 is concerned, the appellant said that the same is questionable to the effect that at page 44 of the proceedings during cross examination DW1 testified that the appellant arrived at her house on his own, while during questions posed to her by the court, she said that she was instructed by rangers to call the appellant, and she did call him and the appellant came. The appellant was of the view that these two versions of the story proves that all her evidence was fabricated so as to shift liability to him. The appellant insisted that he went to DW1's house after

she called him and he would not have gone there as he had no business there rather, he went there to collect money of charcoal. Reference was made to the case of **Issa Reji Mafita vs R, Criminal Appeal No. 337 of 2020,** CAT at Dodoma (unreported) in which it was held that:

> *"The credibility of a witness can also be determined in two other ways, one when assessing the coherence of the testimony of that witness. Two, when the testimony of that witness is considered in relation with the evidence of other witnesses, including that of the accused."*

On the third ground of appeal the appellant lamented that he was curtailed right to cross examine prosecution witnesses. That he was not given chance to cross examine PW1, PW2, PW3, PW4, PW5, PW6, PW7 and PW8 as it was held in the case of **The Director of Public Prosecutions vs Sabin Inyasi Tesha and Another [1993] TLR 237** and the case of **Charles Kidaha and 2others vs Republic Criminal Appeal No. 395 of 2018,** CAT at Mbeya (unreported), in which it was stated that:

> *"The right to cross examine the witnesses is a right to be heard. A right to be heard is not only a cardinal principle of natural justice, but also a fundamental right constitutionally guaranteed such that no decision should be left to stand in contravention of it, even if the same decision would be reached had the party been heard."*

Thus, the trial court decision was reached in violation of the appellant's constitutional right to be heard, and cannot be allowed to stand.

The appellant challenged the word **NIL** which was used by the trial magistrate in cross examination. He argued that the same has no meaning

as to what she really meant and it is against the law pronounced in the case of **Aman Bwire Kilunga vs Republic, Criminal Appeal No. 372 of 2019 (CAT**). That:

> *"It is a good practice to record proceedings in full sentence instead of abbreviation."*

On the 4th ground of appeal, the appellant challenged the sentence imposed on him by arguing that it was excessive than what is provided by the law. That, he was charged under **section 84(1) of the Wildlife Conservation Act** (supra) which imposes a fine of not less than twice the value of the trophy or sentence for a term not less than two years but not exceeding five years or both. However, the trial court imposed a fine ten times the value of the alleged trophy or to serve twenty years imprisonment. He argued further that it is a trite law that punishment of the offence is established by the law that provides an offence. Thus, since the appellant was charged under **section 84(1) of the Wildlife Conservation Act** then he ought to be punished according to the same provision.

On the fifth ground of appeal, the appellant faulted the prosecution case for failure to take pictures of the alleged perishable trophy pursuant to **Police General Order (PGO) No. 229 (25)** which provides that upon the seizure of perishable exhibit, the photography should be taken. The appellant cited the case of **Mohamed Juma@ Mpakama vs Republic, Criminal Appeal No. 385 of 2017** (unreported), in which the Court of Appeal underscored the importance of taking the accused persons before the Magistrate who is ordering the disposition of perishable exhibits and the need of taking photos of the same.

On the sixth ground of appeal, the appellant faulted the prosecution side for failure to summon the magistrate who made disposal order of the alleged trophy. He said that they failed to mention even the name of the alleged magistrate instead they summoned PW3, PW4 PW5 and PW8 who alleged to be present when the disposal order was made by the said magistrate. The appellant opined that it was necessary to call the said magistrate as a witness so as to clear the doubt on whether the magistrate who issued disposal order was the one who tried the case. That, the doubt is huge since the disposal order was made by the Magistrate of Same District Court and the case was tried before the same court.

Further to that, the appellant averred that the magistrate who ordered disposal of the said meat was a material witness to testify if at all what was disposed was eland meat. He relied on the cases of **Boniface Kundarika Tarimo vs R, Criminal Appeal No. 351 of 2008** and the case of **Hemed Said vs Mohamed Mbilu [1984] TLR 113**; in which it was held that:

> *"It is now settled that, where a witness who is in a better position to explain some missing links in the party's case, is not called without sufficient reason being shown by the party, an adverse inference may be drawn against that party, even if such inference is only permissible."*

Moreover, the appellant was of the view that exhibit P4 (Inventory form) cannot be relied upon to prove that the appellant was unlawfully dealing with Government Trophies mentioned in the charge sheet with regard to the evidence to prove the offence after expunging the Inventory exhibit P4.

Submitting on the seventh ground of appeal, the appellant condemned the trial magistrate for convicting him basing on circumstantial evidence. That, she relied on the argument of friendship between DW1's husband and the appellant as evidence to prove ownership of the two buckets of meat found in DW1's house. That there is no evidence on record to prove the allegation by DW1 that she received two buckets of eland meat from the appellant meaning that it was circumstantial which required corroborative evidence.

Regarding the 8th ground of appeal which concerns cautioned statement (Exhibit P6), the appellant condemned the trial magistrate for relying on it while the same was prepared involuntarily. He referred to page 37 of the proceedings where PW7 9567 D/Sgt Mohamed testified that he interrogated DW1 who mentioned the appellant while DW1 was supposed to be interrogated by a police woman. It was the appellant's opinion that being interrogated by a man, DW1 made her statement under pressure.

On the nineth ground of appeal, the appellant faulted the trial magistrate for shifting the burden of proof to him. He stated that he was convicted based on extraneous evidence which was formulated by the trial magistrate. The appellant gave an example of page 9 of the judgment where the trial magistrate alleged that PW2 Mohamed Seleman Bakari and PW6 Happy Paulo Msofe testified that the appellant at DW1's house confessed that those buckets of meat belonged to him while the said witnesses never mentioned such a thing and never testified that the appellant tried to escape during arrest.

Also, the appellant argued that evidence of PW1 which the trial magistrate relied upon is doubtful and not credible since the appellant was arrested

by PW1, PW2 and PW6 but these witnesses did not testify that the appellant attempted to escape and that he confessed to had taken the said buckets to DW1. The appellant was of the opinion that such evidence ought to be expunged since it lacks credence as his evidence was different from other prosecution witnesses who were present when the appellant was arrested.

On the tenth ground of appeal, the appellant argument was that the trial magistrate erred in law and fact for convicting him basing on prosecution evidence which did not prove the offence on the standard required by the law to wit beyond reasonable doubts as envisaged under **section 110 of the Evidence Act**, **Cap 6 R.E 2019.** He averred that since he was charged with an offence of unlawful dealing with government trophy, the prosecution ought to prove the allegations made by DW1 that the appellant was the owner of that government trophy considering that the trophy was found in the house of DW1. Also, the prosecution had to prove that it is the appellant who brought the said buckets containing eland in the said house. The appellant believed that the prosecution did not prove the case beyond reasonable doubts.

The appellant argued further that if such decision will be upheld then it will lead to a lot of conflict in the society and infringe rights of many innocent people since the people will be committing offences and claim that the same were committed by innocent people without any other evidence to support such evidence so as to escape liabilities like what happened to DW1.

In his conclusion, the appellant prayed the court to allow the appeal, quash the conviction and set aside the sentence against him.

In her reply Ms. Grace, learned State Attorney did not support the appeal. She submitted on the first, second and seventh grounds of appeal jointly where the appellant faulted the trial magistrate for relying on the evidence of DW1 a co-accused without corroboration and despite the doubts on credibility of DW1's testimony. Ms. Grace referred at page 10 of the judgment and argued that the trial magistrate gave reasons as to why he believed on the testimony of DW1 and she cited the cases of **Vuyo Jack vs The DPP, Criminal Appeal No. 334 of 2016** and **Edison Mwombeki vs The Republic, Criminal Appeal No. 94 of 2016**.

It was also submitted that the trial magistrate analysed the evidence of PW1, PW2 and PW6 as the evidence corroborating the evidence of DW1 as seen at page 11 paragraph 4 of the judgment.

Responding to the third ground of appeal that the appellant was not given a chance to cross examine prosecution witnesses, Ms. Grace submitted that this ground is unfounded and is not backed up with the trial court proceedings since the trial court's proceedings show that the appellant was given the chance to cross examine but he did not ask any question as seen at pages 23, 25, 28, 29, 32, 36, 38 and 45 of the proceedings, after examination in chief of PW1, PW2, PW3, PW4, PW5, PW6, PW7 and PW8. This was also noted by the trial magistrate at page 11 of her judgment where the trial magistrate stated that" …. ***these items of evidence weren't challenged..."*** to show that the appellant did not cross examine PW1, PW2 and PW6. The learned State Attorney referred to the case of **Nyerere Nyague vs Republic, Criminal Appeal No. 67 of 2010** (unreported) at page 5-6 where the court held that:

"A party who fails to cross examine a witness on a certain matter deemed to have accepted that and will be estopped from asking the trial court to disbelieve what the witness said."

In respect of the fourth ground of excessiveness of the sentence, Ms. Grace submitted that the appellant was sentences according to **section 60(2) of the Economic and Organised Crime Control Act**, which prescribe a sentence of not less than 20 years but not exceeding 30 years. She also referred to page 13 of the judgment to cement her argument. However, on the issue of fine, it was said that the appellant was sentenced to pay a fine of Tsh 34,740,000/= or serve twenty years imprisonment in default. Ms. Grace, was of settled opinion that the term of imprisonment was legal but the fine imposed was excessive since **section 84(1) of the Wildlife Conservation Act** (supra) provides for a fine of not less than twice the value of the trophy. Thus, in this case, since PW3 a Wildlife Officer testified that the value of one eland was Tshs 3,740,000/= then twice a value of it should be Tshs 7,480,000 which should have been the amount of fine imposed on the appellant.

Contesting the sixth ground of appeal, which concerns failure to call the magistrate who issued disposal order, the learned State Attorney submitted that it was not necessary to summon the magistrate who issued a disposal order of the trophy in question since the inventory form (Exhibit P4) by itself with a seal of the court is a conclusive proof of a fact that the order was issued by the court. At page 27 of the proceedings PW3 tendered an inventory form. The appellant did not object nor cross

examine at the time of its admissibility before the court. It was alleged further that; the appellant was present at the time of disposal order and he appended his signature before the magistrate. The learned State Attorney cited the case of **Mohamed Juma Mpakama** (supra) to support her argument.

In addition, Ms. Grace explained that the appellant did not show how he was prejudiced as the prosecution has no obligation to call each and every witness in light of **section 143 of the Evidence Act** (supra).

On the 8th ground of appeal the appellant faults the trial Magistrate for convicting him based on exhibit P6 (cautioned statement of the 1st accused), that it was prepared involuntary. The learned State Attorney conceded to this ground and argued that the trial magistrate at page 9 of the judgment relied on the said exhibit while it was not cleared for admission. Also, at page 37 of the proceedings PW1 did not state if he informed the 1st accused of her right before taking her caution statement, which law guided him and at what time did he start and finish his interrogation as per **section 50 of the Criminal Procedure Act, Cap 20 R. E 2022**. On that basis she prayed the same to be expunged from the records since there is other evidence sufficient to uphold the conviction and sentence of the trial court.

Submitting against the nineth and tenth grounds of appeal, Ms. Grace explained that evidence adduced by the prosecution side was sufficient and the defence case failed to raise any reasonable doubt. That, there is direct evidence of PW1, PW2 and PW6 who arrested the appellant and when they interrogated him at the crime scene, the appellant admitted to

be the one who took the meat to DW1 as seen at page 20 of the proceedings.

Moreover, the learned State Attorney submitted that the chain of custody of trophy from when it was arrested to when it was destroyed through the court order is maintained by parading witnesses who came into possession of the trophy. That is PW1 arresting Officer, PW8 exhibit keeper and PW3 who together with PW8 went to Same District court to dispose the trophy.

The learned State Attorney concluded that the appeal should be dismissed in its entirety.

I have considered the above rival submissions of both parties and the grounds of appeal raised by the appellant in relation to the trial court records. The issue is *whether the prosecution case was proved beyond reasonable doubts.*

On the first ground of appeal, the appellant's argument was that there was no prosecution evidence to corroborate the evidence of DW1 (co-accused) who testified that it was the appellant who took the said buckets to her house. In reply, the learned State Attorney argued that, the trial magistrate analysed the evidence of PW1, PW2 and PW3 as evidence corroborating DW1's evidence.

I am aware with the established principle that evidence of the co-accused must be treated with caution and it requires corroboration. See the case of **Charles Issa Chile vs Republic, Criminal Appeal No. 97 of 2019.**

In the instant case, my scrutiny of trial court's records reveals that apart from the evidence of DW1 who was the co-accused of the appellant, there

were other prosecution witnesses to wit PW1 who at page 20 of the typed proceedings testified that when the appellant arrived at DW1's house, they inquired him and he admitted to be the one who took the eland meat to DW1's house. This evidence was also observed by the trial magistrate in her judgment.

Apart from that, there is corroborative evidence which is the certificate of search and seizure which was admitted as Exhibit P1 and the inventory form which was admitted as Exhibit P4. Having established as such, I am of considered view that the first ground of appeal has no merit.

On the second ground of appeal where the appellant is challenging the credibility of DW1; the appellant argued that, evidence of DW1 suffered inconsistency because at sometimes she said that the appellant arrived at her house on her own while during cross examination DW1 said that she was instructed by Rangers to call the appellant.

I have examined the proceedings particularly at page 43, what is observed is that during examination in chief, DW1 stated that: *"Shortly the 2nd accused came and got arrested."* At page 44 during cross examination, she stated that she called the appellant after the Ranger instructed her. She also stated that she did not phone the appellant.

I have noted the said discrepancy, however, I am of considered opinion that the same is not material discrepancy since it did not remove the fact that the appellant arrived at DW1's house. Also, it will not take away the fact that it is the appellant who took the said government trophy at DW1's house.

On the 3rd ground of appeal the appellant lamented that he was curtailed right to cross examine prosecution witnesses hence his right to be heard

was compromised. He added that even where the trial magistrate wrote NIL was against the law since she was required to write in a long form.

Ms. Grace argued to the contrary that the appellant was not curtailed right to cross examine. That, even the trial magistrate noted that in her judgment.

The right of cross examining the witness has great significance as it is a with constitutional right. The Court of Appeal in the case of **Abanus Aloyce and Ibrahimu vs Republic, Criminal Appeal No. 283 of 2015** (CAT) (unreported) emphasized that denial of the right to cross examine result to miscarriage of justice.

In the instant matter, without further ado, the appellant was not curtailed right to cross examine. In the place of cross examination, it reveals that the appellant was given the chance to cross examine but he opted not to, thus the trial magistrate wrote ***NIL*** which plainly means ***nothing*** which is distinguishable to abbreviations referred in the Court of Appeal decision (supra).

Turning to the fourth ground where the appellant challenged the sentence imposed on him by arguing that it was excessive, it was the appellant's argument that he was charged under **section 84(1) of the Wildlife Conservation Act** (supra) which provides a fine to be twice the value of the trophy or serve not less than two years imprisonment in default.

The learned State Attorney conceded to the ground of appeal and argued that the fine was supposed to be Tshs 7,480,000/= which is twice the value of the trophy.

As rightly submitted by the parties, since the appellant was charged under **section 84(1) of the Wildlife Conservation Act** (supra) which imposes the fine of twice the value of the trophy, then the appellant being convicted under such provision ought to be sentenced to pay a fine of twice the amount of Tshs 3,740,000 which is Tshs 7,480,000/= or serve not less than 20 years imprisonment in default as per **section 60(2) of the Economic and Organized Crimes Control Act** or as rightly submitted by the learned State Attorney.

As far as the 5th ground of appeal is concerned, the appellant faulted the prosecution for failure to take a picture of the said perishable trophy. Before the trial court, the prosecution tendered an inventory form which signifies that there was perishable trophy to wit eland meat. The same was admitted in court without objection from the appellant. Thus, the grievance that there were no pictures of the government trophy at this stage is an afterthought.

This goes hand in hand with the 6th ground of appeal where the appellant faulted the prosecution for failure to call the magistrate who issued disposal order. With due respect to the appellant, the prosecution is not bound to call each and every witness but they ought to call witnesses who will prove certain facts. In the case of **Aziz Abdallah vs Republic, [1991] TLR 71** it was stated that:

> *"…the general and well-known rule is that the prosecutor is under the prima facie duty to call those witnesses who from their connection with the transaction in question, are able to testify on material facts…"*

In this case, considering the fact that witnesses who witnessed the disposal order testified before the court and the inventory form was admitted without objection of the appellant, I am of considered opinion that raising this grievance at this stage is an afterthought as the appellant should have raised such concern during the trial. Moreover, the appellant failed to tell this court how such omission to call the magistrate prejudiced him.

On the seventh ground of appeal the appellant tried to challenge the trial court's findings to the effect that, the trial magistrate relied on circumstantial evidence. That, the trial magistrate relied on the friendship between DW1's husband and the appellant to conclude that the appellant was the owner of the alleged government trophy without any other evidence to corroborate such evidence.

On the other hand, the learned State Attorney was of the opinion the trial magistrate analysed the evidence of the prosecution witnesses as the evidence corroborating the evidence of DW1. She added that the appellant did not cross examine the witnesses thus, he is estopped from challenging the same at this stage.

I have examined the judgment of the trial court, the appellant misdirected himself by arguing that the learned magistrate relied on circumstantial evidence to convict him. From page 8 to 12 the prosecution evidence was properly scrutinized and I find no basis to fault the same.

Regarding the eighth ground of appeal, the appellant alleged that the trial magistrate relied on the caution statement which was prepared involuntarily since DW1 was interrogated by PW7 the male police while DW1 was female.

The learned State Attorney conceded to this ground on the reason that the caution statement was not cleared for admission and also it contravened **section 50 of the Criminal Procedure Act**. Ms. Grace prayed the said exhibit to be expunged from the record. However, she argued that, apart from the caution statement, there was enough evidence to convict the appellant.

I have noted the said error, the caution statement was taken by the male police officer while DW1 was female and PW7 did not testify as to whether he informed the 1st accused of her right before he took her caution statement. Also, the caution statement contravened **section 50 of the CPA** since it did not state at what time did, he start and finish interrogation.
On that basis, I hereby expunge Exhibit P6, the caution statement of the 1st accused from the record as prayed by the learned State Attorney.

On the nineth ground of appeal, it was argued that the trial magistrate shifted the burden of proof to the appellant by considering the opinion and assumptions which were not supported by evidence.

The learned State Attorney was of the view that the trial magistrate did not shift the burden and the case was proved beyond reasonable doubts.

I have gone through the judgment of the trial court and there is nowhere where the trial magistrate shifted the burden of proof to the appellant. The trial magistrate thoroughly analysed the evidence of prosecution and found that the same proved the case beyond reasonable doubts against the appellant. At page 10 of her judgment, the trial magistrate also considered the defence of the appellant and found it to be mere evasion

from culpability and an afterthought. At the last paragraph the trial Magistrate observed that:

> *"Furthermore, there is no evidence that there are misunderstandings between the prosecution witnesses and 1st accused on one hand and the 2nd accused on the other to fabricate the case against him. Thus, the court believes them as witnesses of truth."*

In addition, the appellant faulted the trial magistrate to the effect that PW2 and PW6 did not give the evidence that the appellant tried to escape and he confessed to the allegations raised against him.

My thorough scrutiny of the judgment of the trial court vis a vis the prosecution evidence, reveals that it is only PW1 who testified that the appellant tried to escape arrest and that the appellant confessed the allegations. However, at page 11 of the judgment, the trial magistrate added that PW2 and PW6 testified on that fact. I am of settled mind that the trial magistrate misdirected herself as it was only PW1 who testified on those facts. I am satisfied that evidence of PW1 suffice to conclude that the appellant confessed to the fact that he was the one who took the said eland meat to DW1's house since the appellant did not challenge such evidence during cross examination. Apart from that, PW1's evidence corroborated the evidence of DW1 that the appellant took the said eland meat to her house.

Lastly, on the tenth ground of appeal, the appellant submitted that the prosecution did not manage to prove the case beyond reasonable doubts. That, it was the duty of the prosecution to prove the allegations made by DW1 that the appellant was the owner of the alleged Government trophy

and that it was the appellant who took the said government trophy in DW1's house.

Basing on the findings under the 1st and 9th grounds of appeal, I am of considered opinion that the prosecution case against the appellant was proved beyond reasonable doubts.

Consequently, I allow the appeal to the extent explained above. Basing on the findings under the fourth ground of appeal, I hereby set aside the sentence imposed by the trial magistrate in respect of fine. In the alternative, I hereby invoke my revisional powers and sentence the appellant to pay a fine of Tsh 7,480,000/- or serve twenty years improvement in default as per **section 84(1) of the Wildlife Conservation Act** (supra) read together with **section 60(2) of the Economic and Organized Crimes Control Act** (supra).

It is so ordered.

Dated and delivered at Moshi this 9th day of March, 2023

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY

X

S. H. SIMFUKWE
JUDGE
Signed by: S. H. SIMFUKWE