

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MUSOMA SUB REGISTRY**

**AT MUSOMA**

**CRIMINAL APPEAL NO 101 OF 2022**

(Arising from Serengeti District Court at Mugumu Economic Case no 141 of 2021)

**JUMAPILI S/O MASANJA @ MASAGA .....APPELLANT**

***VERSUS***

**THE REPUBLIC ..... RESPONDENT**

**JUDGMENT**

28<sup>th</sup> February & 28<sup>th</sup> February, 2023

**F. H. MAHIMBALI, J.**

The appellant Jumapili Masanja @ Masaga was convicted before the trial court (Serengeti District Court) for four offences of unlawful entry into the National Park, unlawful possession of weapons in the National Park and unlawful possession of government trophies for 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> counts respectively, and sentenced for 2 years imprisonment for the first two counts and 20 years imprisonment for offences in the last two counts. He has been dissatisfied by both conviction and sentence, thus this appeal, preferred on four grounds of appeal:

1. *That, the trial magistrate erred in laws and the fact to conviction and sentence the appellant by admitted wrong evidence at the court that testimone by PW1 and PW2 because on the testimone their evidence PW1 and PW2 on testimone their evidence on the 4<sup>th</sup> count testimone that they arrests the accused person with TWO DRIED MEAT OF WARTHOG while in the particular of the offence on 4<sup>th</sup> count the offence as lead that the TWO PIECES OF DRIED MEAT OF WARTHOD.*
2. *That, the trial magistrate erred in laws and the fact ot conviction and sentence the appellant by admitted wrong evidence that produced by PW3 (Wilbord Vicent) how did PW3 know that TWO PIECES OF SRIED WAS MEAT OF WARTHOG while know that was against the law say.*
3. *That, the trial magistrate erred in laws and the fact to conviction and sentence the appellant because at the time of disposing of Government trophies I was not there by that time of disposing as laws said.*
4. *That the trial magistrate erred in laws and the fact to conviction and sentence the appellant because I did not singed the certificate of seizure that produced by PW1 and PW2 at the court because PW1 and PW2 forced me to signed that inventory form while known that was against the said law.*

During the hearing of the appeal, the appellant appeared in person linked through tele conference from Mugumu Serengeti – Prison. Whereas

Ms. Monica Hokororo, learned senior state attorney appeared for the respondent.

The appellant prayed to adopt his grounds of appeal as part of his submission in support of the appeal. Believing that the evidence at the trial court was insufficient, the appellant prayed for acquittal.

On the other hand, Ms. Hokororo senior State Attorney, supported the appeal on both legal and factual grounds.

On legal grounds, she submitted that the first and second counts (offences) in which the appellant was convicted with and dully sentenced were legally established as per law. With the first count/offence, she submitted that the offence of unlawful entry into the National Park is non-existent as per law. She clarified that section 21 (1) a and (2) of the Cap 282, does not create an offence of unlawful entry into the National Park as charged.

With the second offence of unlawful possession of weapons within the National Park, it has not been established by the arresting officers (PW1 and PW2) that at the point of his arrest (kitungi) whether it was within the statutory boundary of Serengeti National park. On this, she

relied to the Court of Appeal's decisions in the case of **Maduhu Mhindi @ Limbu vs Republic**, Criminal Appeal No. 416 of 2017, CAT at Mwanza at page 18.

With the offences in counts 3 and 4, after a long discussion, she was ultimately of the view that the appellant was not fully involved during the valuation and destruction processes of the said inventory exhibits. On these legal faults, she was of the considered view, the appellant's appeal be allowed, conviction quashed and sentence set aside.

Having critically traversed the trial court's records, I am in agreement with Ms. Hokororo, learned senior state attorney for the Republic/ Respondent that the offence charged in the first and second counts were not dully established as per law. I say so because, as per law, the offence, of unlawful entry into the National Park is none-existent as per the charging section (section 21 (1) b of the National Park Act). Whereas the second count has not been established as there was no evidence that the point of his arrest was within the geographical statutory boundaries of Serengeti National Park.

With the offences in 3<sup>rd</sup> and 4<sup>th</sup> counts, I am also in agreement with Monica Hokororo learned state attorney that there was no full involvement of the appellant during the evaluation and destruction of the inventory property allegedly arrested with the appellant. Being mindful of what was guided by the Court of Appeal in the case of **Mohamed Mpakana**. Failure of involving the appellant (accused person) during inventory destruction proceedings and its valuation, vitiates the proceedings thereof.

That said, the appeal is hereby allowed. The appellant's conviction and sentence are quashed and set aside for being nullity.

Unless lawfully held by other lawful causes, the appellant is hereby ordered to be released.

DATED at MUSOMA this 28<sup>th</sup> February, 2023.



F.H. Mahimbali

**JUDGE**

**Court:** Judgment delivered this 28<sup>th</sup> day of February 2023 in the presence of Appellant, Ms. Monica Hokororo SSA and Mr. Kelvin Rutalema – RMA.

F.H. Mahimbali

**JUDGE**