

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

CRIMINAL APPEAL NO 99 OF 2022

(Arising from Serengeti District Court at Mugumu, Original Economic no 186 of 2021)

JUMA S/O JAMES MAKawe 1ST APPELLANT

THOMAS S/O BAHAMA @ SABI 2ND APPELLANT

AMOS S/O LILANGA @ NKINDO 3RD APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

23rd March & 24th April, 2023

F. H. Mahimbali, J.:

The appellants in this case were convicted by the trial court for three offences of unlawful entry into the National Park, unlawful possession of weapons in the National Park and unlawful possession of government trophies and were accordingly sentenced. It was alleged by the prosecution that on 26th June, 2020 at Grumeti area the appellants together with their four fellows (not part of this appeal), unlawfully entered into the Serengeti National Park which is within Serengeti District and were in unlawful

Possession of weapons therein. Furthermore, they were unlawfully found with the possession of Government trophies to wit: 160 pieces of dried meat of wildebeest and ten pieces of fresh meat of wildebeest. These facts formed the three offences convicted with, pursuant to section 21 (1) (9) (2) and 29 (1) of the National Parks Act (for first count), section 24 (1) (b) and (2) of the National Parks Act (for second offence) and section 86 (1), (2) (iii) of the Wildlife conservation Act, Act 5 of 2009 as amended by the written Laws (Miscellaneous Amendment) Act no 2 of 2016, read together with paragraph 14 of the first schedule to, and sections 57 (1) and 60 (2) both of the Economic and organized crime control Act, Cap 200 (for offence).

Aggrieved by both conviction and sentence, the appellants preferred this appeal containing a total of four grounds of appeal, namely:

- 1. That, the trial magistrate erred in law and facts to convict and sentence the appellants by admitted wrong evidence from PW1 and PW2 on testimone their evidence at the trial court PW1 and PW2 testimone that one 26th, June 2020 at Mto Grumentu area they saw four (4) people in the bush and they arrested them while in the charge sheet read that there were the six (6) accused person who manage to arrest by the conservation Rangers this evidence was not collaborated with the charge sheet.*

2. *That, the trial magistrate erred in laws and facts to convict and sentence the appellants by admitting wrong evidence from PW3 because how did PW3 identify such Trophies was wildebeest while had no profession to identify that 160 piece dried meat was wildebeest.*
3. *That the trial magistrate erred in law and facts to convict and sentence the appellants during the time of disposing of Government trophies we were not there as the law says.*
4. *That the trial magistrate erred in laws and facts to conviction and sentences the appellants we are not sign the inventory form, as PW4 at the trial court.*

During the hearing of appeal, appellants appeared in person whereas the respondent was represented by Ms Beartrice Mgumba.

In essence, the appellants prayed for the adoption of their joint grounds of appeal for consideration of their appeal. Moreover, they queried if the description by PW3 sufficed that what was found with in possession was really Wild meat (wildebeest) as distinguished from the domestic animals. On these submission on their grounds of appeal, they prayed for their appeal to succeed.

On her part, Ms Beatrice Mgumba learned state attorney for the respondent in consideration of the grounds of appeal to the petition of appeal, she partly conceded with the appeal on legal grounds especially on

offences in counts one and two; and partly resisted the appeal on the third count, contending that, there was sufficient proof of the charge to mount conviction as charged.

With the first count, she submitted that there has not been evidence to establish that the charging section does not make entry into the National Park as an offence, but only punishment is provided. Therefore, the appellants were wrongly charged and convicted with the offence on the first count.

Regarding the second count of unlawful possession of weapon within the National park, she submitted that the prosecution witnesses failed to establish how at Mto Grumeti area which was the arresting point, it was within the statutory boundaries of Serengeti National Park. She argued this relying support in the case of **Maduhu Nhandi Limbu vs Republic**, Criminal Appeal No 429 of 2017, CAT at Mwanza (pages 18-19).

Regarding the third count, it is her considered view that the Republic sufficiently established the charged offence and that the appellants were rightly convicted for being in unlawful possession of Government trophies. Therefore, the appellants' grounds of appeal in respect of the 3rd count

have no legal basis as the charged offence in the 3rd count was well established as per law.

Responding to the first ground of appeal, she submitted that as per proceedings of the case at page 13 and 27, PW1 and PW2 testified how they arrested seven accused persons, these appellants being amongst them. It was clear that what they were found during their arrest, it was government trophies and that the PW3 clearly identified the said meat as government trophy (Exhibit P3 and P4). Therefore, it was no doubt that the said exhibit was government as well explained by PW3. It is also undisputed that the said appellants were arrested by PW1 and PW2 while being in possession of the said government trophies. And that they had no permit.

With the second ground of appeal, she submitted that it is not true that PW3 is not professional. As per typed proceedings of the case (page 36-37), PW3 told the trial court how he is a professional. He is a diploma holder in wildlife management and that he is nine years experienced in wildlife management issues. That identification and valuation of trophies is one amongst his duties. Therefore, she is confident that with these qualifications of PW3, he was a competent witness to testify and tender the

said identification and valuation report in terms of section 114 of the Wildlife Conservation Act. Since he is Wildlife officer, as per law he was competent person to administer assessment and valuation as done.

The third and fourth grounds of appeal she argued them together as they talk of inventory and disposition of trophies. She submitted that, as per PW4's testimony at page 41 of the typed proceedings, it is clear how the inventory proceedings involved the appellants and in their presence. At page 7 of the typed judgment (of the trial court), the trial magistrate made a very good analysis on that aspect of inventory proceedings. Therefore, what transpired at the inventory proceedings and the disposal order, is clear and unchallenged. All the procedure done, complied with the directives/descriptions clarified in the case of **Mohamed Juma Mpakana vs Republic**, Criminal Appeal No 385 of 2017, CAT at Mtwara.

Responding to their additional grounds of appeal that they were not sent to the justice of peace, she replied that there is no that legal requirement that every person arrested, must be sent to justice of peace. However, if anyone asked for this service, would have been accorded with that right.

On the issue of difference between the wild meat and domestic meat, the testimony of PW3 at page 37 of typed proceedings is clear. He has been able to describe how wildebeest meat looks like when it is dry and fresh. Thus, this ground of appeal is of no merit as well.

Equally, she argued on the issue of being forced to sign the certificate of seizure, it cannot be raised now as they ought to have resisted their admission during trial and not at appellate level.

That was all as far as hearing of the appeal is concerned. The vital question now following the submission of the learned counsel for the respondent conceding the appeal on the first and second counts of the convicted offences, is whether the offence of unlawful possession of government trophies as charged in the third count was established as per law.

The relevant evidence on this, is the testimony of PW3 – Mr. Wilbroad Vincent, a wild life officer who stated in his testimony that when given/shown the said meat by DC Proches (which was labelled as MG/IR/1651/2020 – police case file), it was a total of 160 pieces of dried meat of wildebeest and 10 pieces of fresh wildebeest meat. He identified

so, because *had grey to dark brown, it had whitish meat fat, meat fiber compacted*. He further arrived at a conclusion that 160 pieces of dried wildebeest meat is equal to 22 killed wildebeest because 10 pieces of wildebeest equals to one full wildebeest. Thus, as the total pieces of dried meat arrested with amounts to 160 dried meat and 10 pieces of fresh meat, that in total was equivalent to 23 full wildebeest. I find this type of testimony to be the poorest description of scientific features of an alleged wildebeest meat whether it is dry or fresh. How then this description differs from the domestic animals, the testimony of PW3 is silent. Considering the fact that the point of their arrest is uncertain, it adds doubt whether what is alleged to be wildebeest meat is really one. I think it is now high time that such a description becomes more scientific and the issue of DNA results comes into relevancy to cast the alleged doubt. Otherwise, there was no such scientific explanations offered by the PW3 to make this court persuaded that exhibit PE3 and P4 referred wildebeest meat.

Furthermore, the manner the said exhibit (trophy) was handled and exchanged hands from PW1 to PW4 comes into question. Whereas PW4 does not state in his testimony as how he received the said exhibit from PW1 despite the fact that PW1 says he had handled it to PW4 (DC

Proches). Astonishingly, DC Proches testifying as PW4 stated how on 27th June 2020 is when he had received the case file for investigation from the OC-CID with seven suspects. This then invites a serious doubt on the manner the said exhibit seized on 26th June 2020 was properly handled by the responsible officers and how until it reached Mr. Proches the next day who in essence says nothing if he had received it on 26th June 2020 as propagated by PW1. The issue of exchange of hands on the physical exhibits was once well emphasized by the Court of Appeal in the famous case of Paulo Maduka. Though its strictness has now been relaxed, but the basic principles remain the same. Was the said trophy then tendered at the trial court, the one seized at the scene.

All this said and done, this Court finds merit in the appeal. I thus allow it, quash conviction and set aside the sentence. The appellants are thus set free unless lawfully held by other causes.

DATED at MUSOMA this 25th day of April, 2023.




F.H. Mahimbali
Judge

Court: Judgment delivered today the 25th of April, 2023 in the presence of the appellants linked from Mugumu prison and Mr. Tawabu Yahaya learned state attorney, from NPS office, Musoma and Mr. Makunja SRMA, present in Chamber Court.

Right of appeal is explained to the parties.

A handwritten signature in dark ink, consisting of several overlapping horizontal strokes that taper to the right.

F.H. Mahimbali

Judge