

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF SUMBAWANGA

AT SUMBAWANGA

CRIMINAL APPEAL NO. 61 OF 2022

(Original Economic Case No. 05 of 2021 in the District Court of Kalambo at Matai)

LEAGAN S/O SIAME APPELLANT

VERSUS

THE

REPUBLIC.....RESPONDENT

24/11/2022 & 24/01/2023

JUDGMENT

T.M. MWENEMPAZI, J.

The appellant was charged in the District court of Kalambo at Matai with two counts. The first count is the offence of Unlawful Possession of Government Trophy Contrary to section 86(1) (2) (e) (ii) of the Wildlife Conservation Act, No. 5 of 2009. On this count, it was alleged that on the 03rd day of November, 2021 at Matai 'A' village within Kalambo District in Rukwa Region the accused was found in unlawful possession of several cat skin valued at Tsh. 690,750/= the United Republic of Tanzania.

On the second count the accused is charged with offence of unlawful possession of witchcraft instrument Contrary to section 3(b) (e) and 5(1) of the Witchcraft Act, No 18 of 1998. It was alleged that, on the 03rd day of November, 2021 at Matai 'A' Village within Kalambo District in Rukwa Region the accused was found in unlawful possession of witchcraft instrument to wit local medicine.

Upon completion of investigation prosecution filed a Certificate conferring jurisdiction to a subordinate court to try economic case as well as consent from the Director of public Prosecution on 13th June 2022. On the same date the charge was read over to the accused person who pleaded guilty and the court entered a plea of guilty. When the facts were read over and explained to the accused person, he admitted that they were true and correct. Thus the court found the accused guilty and was convicted of the offence of unlawful possession of government trophy contrary to section 56(1) and (2) (c) (ii) of the Wildlife Conservation Act No. 05 of 2009 read together with paragraph 14 of the First Schedule and Section 57 (1) and 60 (2) of the Economic and Organized Crime Control Act, Cap 200 RE 2019 and he was sentenced to serve an imprisonment of twenty (20) years.

The appellant is aggrieved and has filed an appeal against both conviction and sentence raising four grounds of appeal, as follows; one, that he was not found with the alleged government trophy; two, that the charged offence was not proved beyond reasonable doubt; three, that the trial court erred in law and fact to convict him of the offence based on a plea of guilty without observing that the said several cat skin were not found with the appellant and the same was not tendered in Court as exhibit to prove the allegation; and lastly, that the trial court erred in law and fact by convicting the appellant basing on the plea of guilty without considering that it was the first time for the appellant to stand in court. He prayed that the appeal be allowed and he be set free.

At the hearing the appellant was not represented and the respondent was represented by Mr. John Kabengula State Attorney. The appellant prayed to submit after the learned State Attorney had submitted in response to the grounds of appeal.

The Leaned State Attorney Submitted in reply that the Respondent is opposing the appeal. On the grounds of appeal the Learned State Attorney submitted that they have no merit and his general suggestion is that the appeal should be dismissed.

The Counsel submitted that the appellant has complained that he was not found with the Government Trophy but he was found with local made drugs. However, his conviction is based on his own plea of guilty to the charge and admission that the facts constituting the offence are true and correct. He submitted that according to section 360(1) of the Criminal Procedure Act Cap 20 RE 2019, no appeal is allowed where conviction is founded on own plea of guilty. At page 08 of the proceedings the accused admitted to the charge and facts of the case. He also did not object to the tendering of the exhibits reflected at page 10 of the typed proceedings.

From the records, the plea was recorded as prescribed by section 228(1) and (2) of the Criminal Procedure Act, Cap 20 RE 2019. The conviction was met after the appellant (accused then) had confessed to the charge. The sentence is according to the law. Items which were tendered were not objected to. In his opinion the case was proved beyond reasonable doubt. He prayed the appeal be dismissed, conviction and sentence be upheld.

In rejoinder the appellant submitted that he did not understand the language which was being used. It would seem therefore the appellant allege that the plea was equivocal.

I have read the record of the trial court. The appellant, as introduced in the judgment, was charged with two counts, first Unlawful possession of Government Trophy years 86(1) and (2) (c) (ii) of the Wildlife Conservation Act No. 05 of 2009 read together with paragraph 14 (d) of the First Schedule to section 57(1) and 60 (2) of the Economic and Organized Crime Control Act, Cap 200 RE 2022, and the second count is Unlawful possession of witchcraft instruments contrary to section 3(b) (c) and 5(1) of the Witchcraft Act No. 18 of 1998.

According to the record it is silent whether the prosecution bothered to lead evidence proving the second count or trial Court considered whether there is evidence to prove the second count. The record shows the second count was not worked on by the prosecution as well as the trial Court.

As to the first count, it is clear the appellant after being arrested he admitted to have been found with Government Trophy without permission and or licence. He admitted before the police officer who interrogated him and also confessed before justice of peace.

As a result, when the Certificate conferring jurisdiction to a subordinate court and a consent to prosecute were filed in court, the charges were read over to the accused person who admitted to the charges. Also, he admitted to the

facts to be correct and true; the appellant was thus convicted based on his own plea of guilty.

It is true, according to the submission by the Learned State Attorney and the cited provisions of law, no appeal is allowed against conviction based on own plea of guilty. Except against sentence. The sentence in this case is also proper. However, as I was perusing the record, I have discovered that the certificate conferring jurisdiction to a subordinate court and the consent of the Director of Public Prosecutions did not cite the provision of law under which the accused is charged with. That is legally not proper and in law the two documents are defective. According to the Case of **Dilipkumar Magaribai Patel Versus the Republic**, Criminal Appeal No. 270 of 2019 court of Appeal Tanzania at Dar es salaam, it was observed that in the referred documents there must be cited provisions of law under which the accused is being charged. Since the documents must be filed before hearing of the case commences, then the court at the trial had no jurisdiction to try the case. The trial was thus based on defective documents hence, the court had no jurisdiction from the beginning of the case. In the referred case, the proceedings, judgement and sentence were nullified.

Under the Circumstances, this appeal also has merit on the bases that the trial in the lower court was conducted without the court having properly vested with jurisdiction due to defectiveness on the certificate conferring jurisdiction to the trial court and consent to prosecute.

I therefore allow the appeal nullify the trial court proceedings, quash the judgement and conviction, and set aside the sentence. I further order a retrial of the case subject to Certificate conferring jurisdiction and consent of the Director of Public Prosecutions or State Attorney duly authorized in order to prosecute the appellant.

In the meanwhile, the appellant shall remain in custody as remanded pending retrial before a competent Court. It is ordered accordingly.

Dated at Sumbawanga this 24th day of January, 2023.




T.M. MWENEMPAZI
JUDGE