

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

CRIMINAL APPEAL NO. 100 OF 2023

(Arising from Serengeti District Court at Mugumu Economic Case no 21 of 2020)

MAHERI MABANDA @ MRAMBAROAPPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

21st & 21st February, 2023

F. H. Mahimbali, J.

The appellant was charged and convicted at the trial court of three offences namely; unlawful entry into game reserve contrary to section 15 (1) and (2) of the Wildlife Conservation Act, Act No. 5 of 2009 for the first count, unlawful possession of weapons in Game Reserve, contrary to section 17 (1) and (2) of the Wildlife Conservation Act, Act No.5 read together with paragraph 14 of the first schedule to, and section 57 (1) and 60 (2) of the Economic and organised Crime Control act (Cap 200 R. E. 2022) as amended by the Written Laws (Miscellaneous Amendments) Act No 3 of 2016 for the second count, unlawful possession of Government Trophies contrary to section 86 (1) and (2) (c) (iii) of the

Wildlife Conservation Act, Act No, 5 of 2009 read together with paragraph 14 of the first schedule to, and section 57 (1) and 60 (2) of the Economic and organised Crime Control act (Cap 200 R. E. 2022) as amended by the Written Laws (Miscellaneous Amendments) Act No 3 of 2016. The appellant was sentenced to serve one year imprisonment for the first and second counts and as for the third count, was accordingly sentenced to 20 years imprisonment in jail.

The appellant was not satisfied, thus the basis of this appeal. For reasons to be known shortly, the grounds of appeal not be reproduced in this appeal.

During the hearing of the appeal, the appellant was unrepresented whereas Ms. Beatrice Mgumba learned State Attorney who supported the appeal, represented the Respondent – Republic.

On his part, the appellant had nothing to submit but just prayed that his grounds of appeal dully lodged, be adopted by the Court to form part of his submission. He therefore invited the Republic to respond first and if need be, will make his rejoinder submission.

Ms. Beatrice Mgumba on her part, conceded with the appeal on the reason that as per third ground of appeal, the offences the appellant was convicted with, were not fully established as per law. She reasoned

that, considering the evidence of PW1 and PW2 who are park rangers, they failed to establish as to how the appellant was found being within the game reserve. Since a game reserve is a statutory boundary, there ought to have been clear evidence that at the points of his arrest, the appellant was actually within the geographical coordinate points of the established boundaries. The evidence at pages 25-26 and 31 of the typed proceedings are silent on that.

Similarly, she argued that even the third count of being in unlawful possession of government trophy was legally not established as the inventory proceedings were conducted in isolation of the appellant which is unprocedural. In consideration of all these pregnant legal errors, Ms Beatrice Mgumba was of the considered view that the offences with which the appellant was convicted and consequently sentenced with, though statutorily prohibited, had not been established as per law. Thus, the basis of her concession to the appeal. That said, Ms Beatrice prayed that the appeal be allowed, conviction quashed and sentence be set aside and that the appellant be set free. She supported her submission by making references to the case of **Mohamed Juma Mpakama Vs. Republic**, Criminal Appeal No. 385 of 2017 (By Court of Appeal) and this Court in the case of **Mathias Mwaisela Marwa Vs. Republic**, Criminal Appeal No. 104 of 2021, High Court Musoma.

I have thoroughly gone through the record of appeal and the parties' submissions in this appeal. At the outset, I must insist that as usual in criminal cases, it is upon the prosecution to prove its case beyond reasonable doubt.

In establishing the offences of unlawful entry into game reserve and unlawful possession of weapons as per the decision of the Court of Appeal in the case of **Mosi Chacha Iranga and Makiri Chacha vs Republic**, Criminal Appeal No 508 of 2018, CAT at Musoma the Court of Appeal of Tanzania made a position that in establishing such charges, there must be established boundaries of the said point of arrest for the Court of law to be satisfied that the committed offence falls within the statutory boundaries of the Wildlife Conservation Area (see page 15 of the CAT's decision). With this, the first and second counts collapse as well argued by Ms Beatrice Mgumba, learned state attorney.

In consideration to the submissions made in support of the appeal, and the position of the Court of Appeal in the case of **Mosi Chacha Iranga and Makiri Chacha vs Republic** (supra), I agree as that is the proper position guiding Courts and investigating machineries/prosecution as far as offences of entry into the National Park/Wildlife Conservation Area/ and possession of weapons therein,

there must be a clear establishment that the point of arrest is actually within the geographical points /coordinate points of the established Wildlife Conservation, National Park, etc. With this case, there is none of that evidence.

As regards to the offence of unlawful possession of government trophies it is trite law that a trophy has to be dealt with for it to be worth court's exhibit is tantamount to legal procedures. The exhibit PE3 is silent on the manner the appellant was involved in the dealing of the said trophy. The inventory proceedings are not establishing his involvement but just a destruction order by the magistrate. Other than this, there is nothing further exhibited by the said PE3 exhibit. What then is the legal value of this? In the case of **Mohamed Juma Mpakama vs Republic**, Criminal appeal No 785 of 2019, CAT at Mtwara provided appropriate directives on what to be done by the magistrate for the procedure to be in legal compliance prior to the issuance of destruction order of the said inventory exhibit. The Court on this had this to say:

"According to paragraph 2 (a) of the Police General Orders (PGO), the Police Force recognizes the above duty to protect every exhibit, perishable or otherwise, which comes into their possession:

2.(a) The police are responsible for each exhibit from the

time it comes into the possession of the police, until such time as it is admitted by the Court in evidence, or returned to its owner, or otherwise disposed of according to instructions; [Emphasis is added].

The above paragraph 25 envisages any nearest Magistrate, who may issue an order to dispose of perishable exhibit. This paragraph 25 in addition emphasizes the mandatory right of an accused (if he is in custody or out on police bail) to be present before the Magistrate and be heard. In the instant appeal, the appellant was not taken before the primary court magistrate and be heard before the magistrate issued the disposal order (exhibit PE3). While the police investigator, Detective Corporal Saimon (PW4), was fully entitled to seek the disposal order from the primary court magistrate, the resulting Inventory Form (exhibit PE3) cannot be proved against the appellant because he was not given the opportunity to be heard by the primary court Magistrate. In addition, no photographs of the perishable Government trophies were taken as directed by the PGO”.

My conclusion on evidential probity of exhibit PE3 in this case ultimately coincides with that of Ms. Beatrice learned State Attorney. Exhibit PE3 cannot be relied on to prove that the appellant was found in unlawful possession of Government trophies mentioned in the charge sheet. If the appropriate legal procedure is not followed then the said exhibit lacks evidentiary legal value and is subject to disregard, as I hereby do.

All said and done, this court holds that since all the three counts


were not proved beyond reasonable doubt, this appeal is allowed and the trial court's conviction on all charged offences is quashed, and the sentences meted out are set aside.

This court orders the immediate release of the appellant from custody unless he is lawfully held for another cause.

It is so ordered.

DATED at MUSOMA this 21st day of February, 2023.




F. H. Mahimbali

Judge

Court: Judgment delivered 21st day of February, 2023 in the presence of the Appellant, Ms. Beatrice Mgunda State Attorney for the respondent and Mr. Kelvin Rutalemwa, RMA.

Right of appeal is explained.


F. H. Mahimbali

JUDGE