

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

**MUSOMA SUB REGISTRY**

**AT MUSOMA**

**CRIMINAL APPEAL NO 59 OF 2022**

(Arising from Serengeti District Court at Mugumu, Originating Economic case no 16 of 2021)

**DANIEL S/O MAGUTU @ WANSIMA ..... APPELLANT**

***VERSUS***

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

18<sup>th</sup> April & 05<sup>th</sup> May, 2023

**F. H. Mahimbali, J.**

The appellant in this case, was convicted of three economic offences of being in unlawful possession of government trophies, namely two elephant tusks (count 1 and count 2) and ten pieces of dried meat of impala animal. All these three offences are pursuant to section 86 (1) and (2) (b) of the Wildlife Conservation Act, no 5 of 2009 read together with paragraph 14 of the first schedule to and sections 57 C1) and 60 (2) both of the Economic and Organized Crime Control Act, Cap 200 R. E. 2019.

It was alleged by the prosecution that on 8<sup>th</sup> day of March, 2021 at Mbilikili village within Serengeti District in Mara Region, the appellant was found in unlawful possession of government trophies to wit: two elephant tusks (for first, second offences) and ten pieces of dried meat of impala (the third count).

The appellant pleaded not guilty to the charge thus compelled the prosecution to summon a total of five witnesses who also tendered a total of seven exhibits namely: Certificate of seizure of elephant tusk one (exhibit P1), elephant tusk 1 labeled as MB1 (exhibit P2), certificate seizure for the second elephant tusk labeled MB2 (exhibit P3), elephant tusk 2 labeled MB2 (admitted as exhibit P4), inventory report admitted as exhibit P5, trophy valuation report (admitted as exhibit P5). Lastly is the report on weight and measuring agency admitted as exhibit P7 regarding the weight of the said trophies.

The summary of the prosecution's evidence is this. The appellant was suspected being a dealer in government trophies dealer unlawfully. Efforts to trace him could not yield until 8<sup>th</sup> day of March, 2021 at Mbilikili village within Serengeti District, where through the aid of police informers, police succeeded to arrest him. That upon his arrest, on interrogation about being

in possession of government trophy, he admitted to have been in possession of two elephant tusks. He led police to two places he had hidden the said elephant tusks. The same were duly recovered and seized via exhibit P1 and P3 and then duly admitted as exhibits P2 and P4 respectively. Furthermore, at his home, they had recovered a total of ten pieces of dried impala meat which the same was admitted as exhibit P5. The said trophies upon being duly identified, and valued, their particulars were accordingly recorded in exhibit P6. The said Elephant tusks, weighed 42.4 Kg (exhibit P7).

In his defense, the appellant admitted to be arrested by police on that day by use of their informers. However, he narrated a tongue taste story that his arrest was due to police being furious on his information that failed to arrest one person who is a great of government trophies unlawfully. In revenge, they arrested himself and thus charged with these and was then offences convicted and duly sentenced.

The appellant is not satisfied, thus the basis of this appeal propped up on three grounds of appeal namely:

- 1. That the trial magistrate erred in law and fact to convict and sentence him basing on unreliable testimony of PW1, PW2, PW3, PW4 and PW5.*
- 2. That, the trial magistrate erred in law and fact to sentence the appellant because there were no exhibits that were produced in court for proof of the case.*
- 3. That the trial court erred in convicting and sentencing the appellant basing on wrongly admitted evidence by the prosecution side.*

During the hearing of the case the appellant was self-represented whereas the respondent was represented by Mr. Nimrod Byamungu, learned state attorney.

In essence, the appellant had nothing material to add regarding his appeal but mainly prayed this court to adopt his grounds of appeal and consider his appeal on merit.

On his part, Mr. Nimrod Byamungu resisted the appeal for being baseless. On the first ground of appeal, he challenged the appeal for failure to state or describe how the said witnesses (PW1-PW5) are unreliable witnesses as per their testimonies. He elaborated that, with these five prosecution witnesses, PW1 was the arresting officer, whereby he led the said police up to the points where the said elephant tusks were hidden

under pond and water in which were admitted as exhibits P1, P2, P3, P4 and P5.

PW2 and PW3 are witnesses of the said search and recovery of the said exhibits P2 and P4 in which were seized through exhibits P1 and P3.

PW4, testified how he identified the said government trophies and accordingly valued them PW5 testified how on 11/3/2021 at 08:00 hours, he was instructed to go to Government Weight and Measurement Agency, where he established that elephant tusk (exhibit P2) is 20.65 kg, whereas the second elephant tusk (exhibit P4) weighed 21.75 kg. Total is 42.4 kg (exhibit P7).

It has been seriously argued that of all the five prosecution witnesses, there is nothing in their testimonies pointed out as being unreliable and unworthy of their credit. Equally, the similar critique is referred to ground two and three.

In a total digest to the whole of the prosecution's evidence and the grounds of appeal preferred by the appellant as all boil into question of fact they all boil into one single ground: *Whether the prosecution's case has been proved beyond reasonable doubt.* In digest to the whole of the

prosecution's evidence, it is clear that offences in counts 1 and 2 have been dully established. There is no doubt as per testimony of PW1, PW2 and PW3 that the appellant was dully arrested and that he led police and in the presence of PW2 and PW3 to the points where he had hidden the said government trophies (two elephant tusks which were admitted as exhibit P2 and P4).

His defense that he was wrongly implicated with these charges after what he had hinted police failed to yield, is not supported by any evidence. For his story to be worth of consideration, ought to have been reflected in cross-examining of PW1 in his testimony. As it is not reflected, I wonder how can one accord weight in it. It is trite law that failure to cross-examine on an important matter, ordinarily implies acceptance of truth of what has been testified (see **Nyerere Nyague vs Republic**, Criminal Appeal No 67 of 2010, **Mathayo Mwalimu and Another vs Republic**, Criminal Appeal no 147 of 2008, **Cyprian Athanas Kibogoyo vs The Republic**, Criminal Appeal no 88 of 1992)

I also agree with the trial court's findings that confession leading to discovery is reliable and self-incriminating in law. Section 31 of the TEA, cap 6 R. E. 2019 provides:

*"When any fact is deposited to as discovered in consequence of information received from a person accused of any offence in the custody of a police officer so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered is relevant".*

The relevancy of confession leading to discovery is reliable, has been well discussed in the case of **Chamuriho Kirenge @ Chamuriho Julius vs The Republic**, Criminal Appeal No 597 of 2017 while quoting the case of **John Peter Shayo and 2 others vs Republic**, (1998) TLR 198 quoted in the case of **Tumaini Daudi Ikera vs Republic**, Criminal Appeal no 158 of 2009 where it was stated:

- i) Confessions that are otherwise inadmissible are allowed to be given in evidence under section 31 of the Evidence Act 1967 if, and only if they lead to the discovery of material objects connected with the crime, the rationale being that such discovery supplies a guarantee of the truth of that portion of the confession which led to it.*
- ii) As a general rule, oral confessions of guilt are admissible though they are to be received with great caution, and section 27 (1) and 31 of the Evidence Act, 1967 contemplates such confessions ..."*

The similar position was also proclaimed in the cases of **John Shihi vs Republic**, Criminal Appeal No 573 of 2016 and **Melkiad Christopher Manumbu and 2 others, vs Republic**, Criminal Appeal No 355 of 2015.

Since it is trile law that witnesses are entitled to credence and must be believed and their testimonies accepted unless there are good and cogent reasons for not believing such a witness (see **Goodluck Kyando vs Republic**, (2006) TLR 363 quoting the case of **Mathias Bundala vs Republic**, Criminal Appeal no 62 of 2004).

Therefore, in consideration of what has been testified by PW1, PW2 and PW3, I have no doubt that it is truthful and reliable, thus weakens the defense testimony. In my considered view, the appeal is of no any merit and it is hereby bound to fail.

DATED at MUSOMA this 05<sup>th</sup> day of May, 2023.

  
F. H. Mahimbali

JUDGE