

IN THE HIGH COURT OF TANZANIA

(MOROGORO SUB-REGISTRY)

AT MOROGORO

CRIMINAL APPEAL NO. 77 OF 2022

**(Stemmed from Economic Case No. 02 of 2022; in the District Court of
Kilombero, at Ifakara)**

DAYMOND SANGULA APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGEMENT

28th April, 2023

CHABA, J.

Before the District Court of Kilombero, at Ifakara the appellant herein was indicted with the offence of unlawful possession of Government Trophies contrary to section 86 (1) (2) (c) (iii) and 3 of the Wildlife Conservation Act No. 5 of 2009 [Cap. 283 R. E, 2002] as Amended by Written Laws (Miscellaneous Amendments) Act No. 4 of 2016, now [R. E, 2022] read together with Paragraph 14 of the First Schedule to and Section 57 (1) and 60 (2) of the Economic and Organized Crime Control Act, [Cap. 200 R. E, 2002] as amended by Written Laws (Miscellaneous Amendments) Act No. 3 of 2016, now [R. E, 2022].



The prosecution alleged that, on 20th day of December, 2019 at about 3:30 hours at Mkamba "B" Area in Kidatu, within Kilombero District in Morogoro Region, the accused person (appellant) was found while in possession of government trophies to wit; eleven cooked pieces of warthog meat, valued at USD 300, equivalent to TZS. 690,300/= only, the property of the Government of the United Republic of Tanzania without a permit or licence from the Director of Wildlife.

After a full trial, the appellant was convicted and sentenced to serve twenty (20) years imprisonment or to pay fine in the tune of TZS. 6,903,000/=.

Aggrieved, the appellant lodged the instant criminal appeal in this Court intending to challenge both conviction and sentence imposed by the trial Court. In his petition of appeal, the appellant has presented seven (7) grounds of appeal. However, for the reasons which will become apparent herein, I see no compelling reasons to reproduce and consider them.

When the appeal was called on for hearing on 13th March, 2023, the appellant appeared in person, and unrepresented while Mr. Edgar Bantulaki, learned State Attorney entered appearance for the Respondent/Republic


Taking the floor, Mr. Bantulaki contended that upon going through the appellant's grounds of appeal, he noted that the trial Court proceedings are tainted with material irregularities. He therefore, on behalf of the Respondent/Republic conceded to the appeal lodged by the appellant on the

ground that the chain of custody is uncertain from the date the said eleven (11) pieces of warthog meat were arrested by PW.1 up to the date when the order for disposal of the said meat was issued and or given by PW.2 as shown in the inventory form, herein Exhibit P.2.

In addition, Mr. Bantulaki submitted that the said exhibit was not labelled after its seizure, and there is no clear evidence whether it was stored after seizure, who stored it, and how it arrived in the hands of PW.4.

It was the learned State Attorney's contention that, in trial Court proceedings there is no clear evidence which shows that the said eleven (11) pieces of warthog meat soon upon seizure from the appellant are the ones which ended in the hands of the PW.4 and finally clearly identified to be the ones which were seized from the appellant.

He further averred that, the pre-trial disposal of the said eleven (11) pieces of warthog meat as exhibited in Exhibit P.2 denied the appellant's right to be heard before its disposal. To reinforce his contention, Mr. Bantulaki referred this Court to the case of **Kurwa Limbu @ Musha Vs. Republic (Criminal Appeal 279 of 2018) [2022] TZCA 436 (18 July 2022)**; extracted from (tanzlii.org.tz.) (unreported), where the Court emphasized that, it is settled procedural requirements that the accused has to be present during disposal process so as to afford him/her an opportunity to see the actual trophies and have an opportunity to raise an objection, if any.



He concluded that, since there was unfair trial on the side of the appellant, he prayed the appellant's conviction be quashed and the sentence imposed against him, be set aside.

To rejoin, the appellant had nothing useful to add, he joined hands with the State Attorney's submissions.

Following the respondent's submission which conceded to the present appeal, I have impassively gone through the Court records and grounds of appeal and found that this appeal has merits. As correctly argued by the learned State Attorney, I am in agreement with his contention that, the chain of custody in respect of the said seized warthog meat was uncertain from the date it was arrested by PW.1 up to the date when the order for disposing of was issued or given by PW.2. In the case of **Swahibu Ally Bakari Vs. Republic (Criminal Appeal 309 of 2009) [2011] TZCA 152 (29 March 2011)** extracted from (tanzlii.org.tz.) (unreported), while restating the importance of the integrity of the chain of custody to eliminate the possibility of the exhibits being tampered with, the CAT cited its earlier observation about what a chain of custody is in the often-quoted case of **Paulo Maduka & Others Vs. Republic (Criminal Appeal 110 of 2007) [2009] TZHC 69 (28 October 2009)**; extracted from (tanzlii.org.tz.) (unreported). In this case, the CAT had the following to state: -

"The chronological documentation and/or paper trail showing the seizure, custody, control, transfer, analysis and disposition of

evidence, be it physical or electronic. The idea behind recording chain of custody is to establish the alleged evidence is in fact related to the alleged crime rather than, for instance having been planted fraudulently to make someone guilty. The chain of custody requires that from the moment the evidence is collected, its very transfer from one person to another must be documented and that it be provable that nobody else could have accessed it... "

The Court also emphasized on proper sequencing of events in handling exhibits from the time they are seized, controlled, transferred, stored until they are tendered in Court during trial.

On reviewing the Court record, it is apparent that during the hearing of this appeal, it is uncertain how the exhibits were handled from when they were seized, taken to police station, received by a police officer in charge of the respective exhibits, whether or not the same were recorded in the exhibit register or not. Further, it was not established how the same were stored before being taken to the PW.2 (the magistrate who ordered the disposal). The chain was thus broken and this gives benefit of doubt to the appellant that, may be, the exhibits handed over by PW.1 to PW.2 were not the one which were found in the appellant's house if at all they seized any.

The above authorities reiterated the underlying rationale for ascertaining a chain of custody, which is intended to show to a reasonable possibility that the item that is finally exhibited in Court as evidence, has never been tampered

with along its way to the Court.

With the above settled rationale in mind, I am of a considered view that, in the present matter, there was mishandling of exhibits as it was expounded in the case of **Director of Public Prosecutions Vs. Shirazi Mohamed Sharif**, Criminal Appeal No. 184 of 2005 (unreported) where the Court held: -

"On the question of mishandling the exhibit... the handling of the exhibit still it is the view of the court that it is the question of believing that PW4 and PW5 that what they found from the accused is what they gave to PW.6, I cannot rule out completely the possibility of mixing up the exhibits, but in the absence of a clear evidence, the court cannot merely rely on that omission to record, as also it is the view of this court that this is a minor irregularity of which in the absence of clear evidence, the court cannot rely on it that therefore they have been tampering with the exhibit by the police witnesses."

In this appeal, it was important to record and ultimately testify how the meat found into the possession of the appellant was transferred to the police station, how was it kept, who kept it, how was it disposed of and how the evidence in relation to the same came to Court to prove the allegation. From the evidence adduced by the prosecution witnesses, I am satisfied in my mind that this mandatory requirement of the law was not complied with.

The other thing rightly noted by the learned State Attorney is in respect of the disposal of the meat following order of destruction issued by PW.2, one Alfa Chapalama, Esq. Resident Magistrate whose working station was at Kilombero Primary Court. In the case of **Mohamed Juma @ Mpakama Vs. Republic**, Criminal Appeal No. 385 of 2017 (unreported) the Court had the following to state: -

"While the Police Investigator, Detective Corporal Saimon (PW4), was full 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".


From the above authority, the law is settled that the accused must be heard before the disposal of the meat. That being the position of the law and since the records are silent whether the appellant was given the opportunity of being heard by the trial Magistrate, the answer must be negative. I say so because, the court records suggests that the appellant was not accorded with an opportunity to be heard before warthog meat was destroyed by the order of the Court.

From the above deliberations, I am of a strong view that, non - observance of the chain of custody and want of fair trial in the processes of acquiring the said disposal order, it is a clear indication that the prosecution case was not proved beyond reasonable doubt.

For the reasons I have endeavoured to discuss herein above, the charge of unlawful possession of government trophies against the appellant was not proved to the hilt and the appeal succeeds. I thus allow the appeal, quash and set aside the conviction and sentence respectively, and order the immediate release of the appellant, Daymond Sangula unless if held for other lawful cause.

It is so ordered.

DATED at MOROGORO this 28th day of April, 2023.



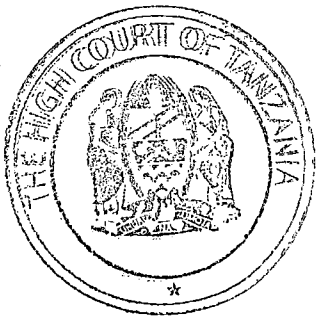
M. J. CHABA

JUDGE

28/04/2023

Court:

Judgment delivered under my hand and the Seal of the Court this 28th day of April, 2023 in Chambers in the presence of Mr. Shabani Abdallah Kalebwa, learned State Attorney for the Respondent / Republic and the Appellant who appeared in person, and unrepresented.



M. J. CHABA

JUDGE

28/04/2023

Court:

Rights of the parties fully explained.


M. J. CHABA

JUDGE

28/04/2023

