

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT TABORA

CONSOLIDATED CRIMINAL APPEALS NO.42/2022 AND 46/2022

(Originating from Nzega District Court in Economic Case No. 02 of 2021)

KABULA MASANJA.....1st APPELLANT

SHIJA KATUMBILI2nd APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

Date: 27/03/2023 & 12/05/2023

BAHATI SALEMA,J.:

This is a consolidated criminal case. It combines DC Criminal Appeal No. 46 of 2022 and DC Criminal Appeal No. 42/2022. Both appeals originate from the District Court of Nzega at Nzega (the trial court). The appellants herein **Kabula Masanja and Shija Katumbili** were jointly arraigned before the trial court for the offence of unlawful possession of the Government Trophy contrary to section 86(1) (2)(c) (iii) of the **Wildlife Conservation Act No. 5/2009** read together with **Paragraph 14 of the First Schedule to and Section 57 (1) & 60 (2) of the Economic and Organized Crime Control Act, Cap. 200 [R.E. 2019]**.

The particulars of the offence were that on the 5th day of February 2021 at Kashishi – Maporomoko area Nzega Mashariki Ward within Nzega District in Tabora region, the appellants were found in possession of a government trophy, to wit; wildebeest (*connochaetes taurinus*) tail valued TZS 1,500,850/= without a permit.

The facts of the case can be narrated as that; on 5th February, 2021 at noon hours, police D6451 D/S SGT Marwa accompanied by other police, P. 3280 DC Shaban, G. 2267 DC Said, and WP 10366 DC Rebeca arrived at the place while on police patrol. They arrived at Kashishi Maporomoko, Nzega Mashariki Ward in Nzega District within Tabora region. Via the street chairperson, the police accompanied him to the house of Andrea Kishiwa, the third accused (who was convicted to serve six months under probation) who was not present. However, they found the first and the second accused person – tenants therein (appellants above).

The police and chairperson then entered the room of the first and second accused persons. They searched the said room and found various things including "*mpigi*", 4 spears, various traditional medicines, coins, two pieces of clothes -red and black in colour and a piece of wild animal tail. The search and seizure certificate was filled and listed with all the observed things. It was signed by both accused persons. The first accused person introduced himself as Kabula Masanja and the witnesses at the scene signed. They were taken to Nzega central police station and

interrogated. The OC CID Nzega District, one Boniphace Mayaya, SP on 9/2/2021 wrote a letter with Reference Number 340 to the anti-poaching unit for verification of a wild animal tail that was suspected to be of a wild beast.

On 12 February, 2021, the anti-poaching unit letter confirmed that the said tail was of a wild beast and the value of the said animal was USD 650 equivalent to TZS 1,508,050/= by then. They sent the letter and the valuation report to the anti-poaching unit.

Before the trial court, the appellants pleaded guilty to the charge. The prosecutor read out facts and exhibits which were tendered and admitted. When called to plead, the appellants admitted to the facts constituting the offence. There were consequently convicted on their plea of guilty and sentenced to 20 years imprisonment.

Disgruntled by the impugned decision of the trial court, the appellants filed a petition of appeal against the conviction and sentence on the grounds outlined below;

The first appellant;

- 1. That, the case for the prosecutions was not proved against the appellant, beyond reasonable doubt as required by the law.*
- 2. That, the alleged plea of guilty by the appellant was ambiguous and equivocal.*

3. *That, failure to tender into the exhibit and read aloud in court (only shown to the adverse party), the certificate of seizure, trophy valuation certificate, cautioned statement allegedly of the appellant, and the alleged Wild beast tail, vitiates the alleged plea of guilty by the appellant.*

And for the second appellant;

1. *That the trial Magistrate grossly erred in law and fact on embarking on conviction and sentence based on a mere admission.*
2. *That the trial magistrate grossly erred in law and fact on embarking on conviction and sentence based on an equivocal plea of guilty contrary to the requirement of the law which needs a plea of guilty to be unequivocal.*

The appellants prayed to this Court to allow the appeal, quash the conviction, set aside the sentence, and order for the appellants' release from prison custody.

On 27/3/2023 when the appeal was called for hearing the appellants appeared in person unrepresented whereas the Republic had the services of Mr. Robert Kumwembe, learned State Attorney.

The appellants had nothing to add other than adopting their grounds of appeal in the petition to form part of their respective submissions, and leaving it to the Court to decide.

In his reply, the learned State Attorney submitted on the first and second grounds of appeal regarding the plea of guilty being ambiguous and equivocal. Mr. Kumwembe argued that section 360 (1) of **the Criminal Procedure Act**, Cap.20 [R.E. 2022] bars the appeal of the appellants. To bolster his stance, he cited the case of **Lawrence Mpinga V Republic**, [1983] TLR, 166.

He further added that it is evident that the court read the offence to the appellants who admitted to the charge. The record of the court reveals that the first and the second appellants confessed to having been found with the beast's tail.

As to the third ground of appeal, on the failure to tender and read aloud the documentary exhibits; the learned State Attorney conceded that the exhibits were tendered but were not read before the court. He further argued that there was no legal requirement that the admitted documentary exhibits after a plea of guilty must be read aloud. Cementing his stance, he referred this court to the case of **Paskali Kamara Versus Republic**, Criminal Appeal No. 457 of 2018 where the Court referencing the case of **Mathias Barua Versus Republic**, Criminal Appeal No. 105 of 2015 (unreported) faced an akin situation and held that;

“We wish to point out that once it is shown on the record that the accused person on his own free will pleaded guilty to the

offence unequivocally, then it is enough to support the charge with which the accused is charged. Tendering of the exhibit, be it an object or document, is not a legal requirement though it is desirable to do so, to ground a conviction".

He urged this court to dismiss the case since it has been improperly brought under section 360 of **the Criminal Procedure Act**, Cap. 20 [R.E 2022].

In their brief rejoinder, the first and second appellants beseeched to this court to allow the appeal contending that the plea entered was unequivocal and prayed to this court for a leniency sentence.

Having keenly considered the submissions and the record of the court, the issue is whether the appeal has merit. This appeal centers on the question of whether the appellant's plea in the trial court was unequivocal. If it will be established that the plea was unequivocal then that will be the end of the matter. Section 360 (1) of the **Criminal Procedure Act**, Cap. 20 bars appeals from a conviction based on plea of guilty. It provides that;

"No appeal shall be allowed in the case of any accused person who has pleaded guilty and has been convicted on such plea by a subordinate court except as to the extent or legality of the sentence."

The above quote is the general rule. I am also aware of the fact that under certain circumstances, an appeal may be entertained notwithstanding a plea of guilty. In my mind, are the cases of **Laurent Mpinga v. Republic** (1983) TLR 166; and **Ramadhani Haima v. The D.P.P**, Criminal Appeal No. 213 of 2009 (unreported). In **Laurent Mpinga's** case, Samatta, J. (as he then was), stated thus:

“An accused person who had been convicted by any court of an offence on his own plea of guilty/ may appeal against the conviction to a higher court on the following grounds;

- 1. That taking into consideration the admitted facts his plea was imperfect ambiguous or unfinished and, for that reason the lower court erred in law in treating it as a plea of guilty;*
- 2. That he pleaded guilty as a result of a mistake or misapprehension;*
- 3. That the charge laid at his door disclosed an offence not known to law; and;*
- 4. That upon the admitted facts, he could not in law have been convicted of the offence charged.*

Thus, in this matter it is now appropriate; at this stage, to reproduce the appellants' plea and what transpired in the trial court. After the charge of the second count for unlawful possession of government trophy contrary to section 86 of the Wildlife Conservation Act read together with paragraph 14 of the First schedule of the Economic and Organized Crime Control Act, Cap 200 was read over and explained to the first accused Kabula Masanja, he was recorded as having said: "I admit the facts and exhibit shown that are true and correct. Second, accused: I admit the facts and exhibits shown that are true and correct.

It is on record that the appellant's plea was recorded as one of guilty and the facts and exhibits were shown to them. Therefore, in this present matter, it is evident from the above that the appellants knew what they were pleading. The appellants after having admitted the facts, the trial court entertained no doubt that the plea of guilty by the appellants were unequivocal and proceeded to convict them as charged. They were then invited to give their mitigation and upon doing so, the trial court proceeded to sentence them to 20 years imprisonment.

Now coming to section 228(1) and 2 of the CPA which governs the plea taking. Section 228 (1) of the CPA provides as follows;

" If the accused admits the truth of the charge, his admission shall be recorded as nearly as possible in the words he uses,

and the magistrate shall convict him and pass sentence upon or make an order against him unless there shall appear to be sufficient cause to the contrary".

It is a settled principle of law that, for a plea of guilty to be unequivocal, it must satisfy the requirement set out in section 228 which has been met. As found by the trial court, I am of the considered view that the conditions for an equivocal plea of guilty were met hence no appeal could lie to the court.

As to the third ground of appeal that the appellant faulted the trial court that it failed to tender into the exhibit and read aloud in court, I subscribe to the view expressed by the learned State Attorney that there is no legal requirement that the admitted documentary exhibits after a plea of guilty must be read aloud. The court in the case of **Mtumwa Silima @ Bonge v R**, Criminal Appeal No. 11 of 2019 stated that;

"Failure to read an exhibit in court after a guilty plea does not vitiate the plea entered since that was not a legal requirement.

This ground also has no legal basis.

On the first ground of appeal, the appellants faulted the trial court that the prosecution did not prove against the appellants beyond

reasonable doubt. Section 86(1) of **the Wildlife Conservation Act, No. 5** of 2009 provides that;

"Subject to the provision of this Act, a person shall not be in possession of, or buy, sell or otherwise deal in any Government trophy".

In this present matter, I have to decide, whether the facts as presented by the prosecution constitute the offence of unlawful possession of a government trophy under Section 86(1)(2)(c) (iii) of **the Wildlife Conservation Act No. 5/2009**.

As I have already stated, the appellants admitted to having been found with the government trophy unlawfully possessed. Unlawful possession of government trophies is defined under section 86 of **the Wildlife Conservation Act**. Therefore, the facts adduced in this case are compatible with the above definition. The facts which were admitted by the appellants show that the appellants were found in unlawful possession of the trophy. I am in the considered view that this constitutes the offence with which they are charged and therefore, it is within the offence of unlawful possession of the trophy.

From the above authorities, I find that the appellants admitted the facts produced by the prosecution which constitute the offence. I am satisfied that the offence specified in the charge had been made out.

There are no grounds given to convince this court that the appellant did not fully understand the nature of the offence when they pleaded guilty to the charge. In the event, the appeal is without merit and is hereby dismissed in its entirety.



A.BAHATI SALEMA

JUDGE

12/5/2023

Court: Judgment delivered in presence of both parties.



A.BAHATI SALEMA

JUDGE

12/5/2023

Right of Appeal fully explained.



A.BAHATI SALEMA

JUDGE

12/5/2023

