IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

CRIMINAL APPEAL NO. 53 OF 2022

(Originated from the District Court of Simanjiro at Orkesumet, Economic Case No. 21 of 2020)

PATRICK STANLEY TARIMO.....APPELLANT

VERSUS

THE D.P. P.....RESPONDENT

JUDGMENT

03/05/2023 & 28/06/2023

MWASEBA, J.

The appellant, Patrick S/o Stanley Tarimo was arraigned before the District Court of Simanjiro at Orkesumet and charged with two counts of unlawful possession of Government Trophy, C/s 86 (1) and (2) (c) (ii) (iii) of the Wildlife Conservation Act, No. 5 of 2009 as amended by Section 59 (a) and (b) of the Written Laws (Miscellaneous Amendments) (No. 2) Act, 2016 read together with paragraph 14 of the 1st schedule and Sections 57 (1) and 60 (2) of the Economic and Organized Crime Control Act, Cap 200 R.E 2019.

In his first count, it was alleged that on 9th day of November, 2020, the appellant was found in possession of two dik dik meat valued at USD 500 equivalent to One Million one hundred fifty nine thousand seven hundred and fifty only (Tshs. 1,159,750/=) the property of Tanzania Government without a permit from the Director of Wildlife. Regarding the second count, it was alleged that on the same date and place he was found in possession of one impala meat valued at USD 390 equivalent to Tshs. 514,605/= (five hundred fourteen thousand six hundred and five only the property of the Tanzania Government without a permit from the Director of Wildlife.

After full trial, the appellant was found guilty and was convicted on both counts and sentenced to serve 20 years imprisonment on the first count, and on the second count to pay a fine of 5,146,050/= in default to serve 20 years imprisonment.

Aggrieved by both conviction and sentence imposed on him, he has come before this court pursuing his innocence. On 28/04/2022 he lodged a memorandum of appeal consisting of six grounds of appeal and on 13/10/2022 he filed additional grounds of appeal having ten grounds. That makes sixteen grounds for appeal.

During the hearing of the appeal, the appellant appeared in person, unrepresented while Ms. Eunice Makala Learned State Attorney appeared for the respondent. The appeal was disposed of orally.

Submitting in support of the appeal, the appellant started to argue his appeal based on his additional grounds of appeal. On the 1st ground, the appellant complained that he was convicted while **Section 38 (1) and (3) of the Criminal Procedure Act,** Cap 20 R.E 2019, and **paragraph 2 (a) of PGO** No. 226 were contravened. He submitted further that the mentioned section needs a receipt to be issued to the appellant after a certificate of seizure being filled but the same was not done. He referred this court to the case of **Paulo Maduka and 4 Others vs Republic**, Criminal Appeal No. 110 of 2007, and **Andrea Augustino Msigara vs Republic**, Criminal Appeal No. 365 of 2018 on page 22- 23. Hence, he prayed for exhibit P6 to be expunged from the records.

Opposing this appeal on the 1st ground, Ms. Makala submitted that as long as a certificate of seizure was issued having a list of all that had been seized, it operated as a substitute for a receipt. She supported her argument with the case of **Papaa Olesikaladai @ Lendemu and**

Another vs Republic Criminal Appeal No. 47 of 2020 (CAT sitting at Arusha).

Submitting on the second ground of appeal, the appellant complained that the evaluation report (exhibit P7) was prepared contrary to the law since the evaluation officer was a Conservation Ranger and not a wildlife officer as per **Section 86 (4) of the Wildlife Conservation Act,** No. 5 of 2019. He argued further that the said Conservation ranger did not even state his level of education to see if he qualified to examine government trophies. He referred this court to the case of **Geophrey Jonathan @Kitomari vs Republic**, Criminal Appeal No. 237 of 2017 to bolster his argument.

Responding to this ground, Ms. Makala submitted that PW4 had all the authority to evaluate the meat to see if it was a government trophy as **Section 3 of EOCCA** defines a Wildlife Ranger to include a Conservation ranger. See the case of **Jamari Msombe vs Republic**, Criminal Case No. 28 of 2020. Further, she averred that PW4 identified meat by its skin as evidenced at page 45 of the trial court proceedings thus, this ground has no merit.

Regarding the 3rd and 4th grounds of appeal, the appellant submitted that his evidence was not considered by the trial court and that they shifted the burden of proof to him. This is due to the fact that the trial magistrate stated that he failed to prove how he travelled to Naberera Village. His argument was supported by the case of **Elias Stephen vs Republic**, (1982) TLR 312 and **Mwita and Two Others vs Republic** (1971) HCD No. 52.

Replying to these grounds, Ms. Makala submitted that the evidence of the appellant was well considered at the trial court, and it was found that the charge was proved beyond a reasonable doubt. More to that, **Section 100 of WCA**, Cap 283 R.E 2022 provides that in these kinds of cases, the burden of proof lies to the accused person. She argued further that the evidence of PW2 and PW3 proved that they arrested the appellant on the material date with dik dik and impala meat and after evaluation, PW4 found it was a government trophy. Thus, the case was proved beyond a reasonable doubt.

Coming to the 5th ground of appeal, the appellant complained that the trial court erred to convict him basing on the defective charge sheet. He complained further that the value of impala stated in the charge sheet was Tshs 514, 605 but when he was testifying, PW4 said it was Tshs.

500,000/=. More to that, the charge sheet shows that the appellant was found with impala meat but during his testimony, PW4 said he found the appellant with impala deer. Lastly, the evidence shows that he was arrested at Naberera while a charge sheet stipulates that he was arrested at Simanjiro District in Manyara Region. For those reasons, the charge sheet was defective.

Responding to this ground, Ms. Makala stated that the difference in the value of the impala stated in the charge sheet and during the testimony does not make the charge defective as it did not go to the root of the case. She stated further that as the offence occurred on 9/11/2020 and the witness testified on 21/10/2021 a year later, a minor contradiction is a normal thing to happen among the witnesses. Further to that, as the accused was arrested while cooking meat in Naberela Village in Simajiro District the evidence tallied with the charge sheet, thus, this ground has no merit.

Amplifying the 6th ground of appeal, the appellant stated that the inventory form (Exhibit P8) was not read aloud after it was admitted as exhibit hence, he prayed for the same to be expunged from the record. He referred this court to the case of **Robinson Mwanjisi vs Republic** (2003) TLR 218.

Responding to this ground, Ms. Makala supported the argument of the appellant that exhibit P8 (Inventory form) be expunged as it was not read aloud after being admitted as exhibit. However, she added that even if the said exhibit will be expunged oral evidence remains. Thus, this ground has no merit too.

Regarding the 7th and 8th grounds of appeal, the appellant complained that **Section 195 (1) of the CPA** was not complied with. He stated so because a person who ordered a trophy to be evaluated was not summoned in court to testify. Also, a key witness named PC Sweetbert (Exhibit manager) at Orkesumet Police Station was not called to testify. He stated further that PC Sweetbert was supposed to testify to state who handed exhibits to him and how they were marked and who went to pick them up later. Thus, the chain of custody was not clear. He cited the case of **Aziza Abdallah vs Republic** (1991) TLR 71 to buttress his argument.

Responding to these grounds, Ms. Makala argued that the prosecution is not compelled to call witnesses therefore, **Section 195 (1) of the CPA** was not violated. Further to that, a chain of custody was not broken as evidenced by exhibit P4. The chain of custody shows that it was PC Sweetbert who handed over exhibits to the evaluator, thus, the chain of

custody was proved by documentation even if he was not called to testify. She supported her argument with the case of **Leoranald Manyota vs Republic**, Criminal Appeal No. 485 of 2015.

Coming to the 9th ground of appeal, the appellant averred that a case was not proved beyond a reasonable doubt. That is because the prosecution did not prove that the appellant signed a certificate of seizure and during the hearing, he objected because he was forced to sign the same. More to that, the cooked meat was not brought in court as an exhibit, and no evidence was submitted in regard to how the alleged trophy was disposed of. He cited the case of **Mohamed Juma Mpakama vs Republic**, Criminal Appeal No. 385 of 2017 (CAT sitting at Mtwara) to substantiate his argument.

It was his further submission that even Frank Martin Sule (Evaluator) did not explain how he evaluated the said meat to identify that it was a government trophy. More to that, there was a contradiction if the arrested meat was cooked or not. Therefore, a charge was not proved beyond a reasonable doubt.

Responding to this ground, Ms. Makala stated that the prosecution did prove that the appellant was found cooking meat which was suspected

by PW2 and PW3 (Arresting officers) to be a government trophy thus, the element of possession was proved. She added that after examination the said meat was found to be of dik dik and impala. Concerning the issue of signature, she stated that on page 33 of the typed proceedings the appellant admitted that the signature on the certificate of seizure was his, thus, his allegation is baseless. She submitted further that the alleged meat was not brought before the court as the same was disposed of as ordered by the court as evidenced by exhibit P8.

It was her further submission that at page 46 of the proceedings the Magistrate proved that she saw the dik dik and impala meat, and when they went to court with the inventory form, they went together with the appellant. More to that, the appellant failed to show how he was prejudiced by not being present when the meat was destroyed. He prayed for the appeal to be dismissed with costs.

In a brief rejoinder, the appellant prayed for the court to set him free based on the pointed-out anomalies.

Having given a keen consideration on the grounds of appeal, the trial court records, and the submissions made for and against the appeal this

court now turns to determine the issue of whether the grounds of appeal advanced by the appellant are meritorious.

Starting with the 1st ground of appeal, the appellant complained that **Section 38 (1) and (3) of CPA** and **Paragraph 2 (a) of the PGO** No. 226 were violated as he was never given a receipt after a certificate of seizure was filled at the scene of the crime. **Section 38 (3)** of the CPA provides that:

> *"Where anything is seized in pursuance of the powers conferred by subsection (1) the officer seizing the thing shall issue a receipt acknowledging the seizure of that thing, being the signature of the owner or occupier of the premises or his near relative or other person for the time being in possession or control of the premises, and the signature of witnesses to the search, if any."*

The cited provision of the law provides that when a Certificate of seizure is filled, an accused person is required to be given a receipt. However, as long as the certificate of seizure was filled, and all the arrested exhibits were listed the same stand as a receipt as well. This position was well stated by the Court of Appeal in the case of **Papaa Olesikaladai @ Mundeni vs Republic** (Supra) that:

"We agree with Ms. Madikenya that the complaint for non-issuance of a receipt will have no place in cases where a certificate of seizure is issued."

Therefore, guided by the cited authority, I concur with Ms. Makala's argument that since a certificate of seizure was issued, the issuance of a receipts had no place. Therefore, this ground is dismissed for want of merit.

Coming to the 2nd ground of appeal, the appellant complained that exhibit P7 (Evaluation report) was prepared contrary to the law by an unqualified person who is a Conservation ranger contrary to **Section 86 (4) of the WCA.** The said section provides that:

"In any proceedings for an offence under this section, a certificate signed by the Director or wildlife officers from the rank of a wildlife officer, stating the value of any trophy involved in the proceedings shall be admissible in evidence and shall be prima facie evidence of the matters stated therein including the fact that the signature thereon is that of the person holding the office specified therein."

The above provision requires a certificate to be signed by the Director or a Wildlife officer. a wildlife officer is defined under **Section 3 of the WCA**, as follows:

> *"Means a wildlife officer, wildlife warden, and wildlife ranger engaged for the purposes of enforcing this Act;"* (emphasis is mine).

The above definition was further expounded by the Court of Appeal in the case of **Jamari Msombe and Another vs Republic** (supra) that:

> *"It is our considered view, from the above discussion and the definition of who is "game ranger", that a game warden, wildlife officer, wildlife ranger and a game ranger are same persons whose main task is to protect wildlife. We find that, in substance, there is no difference between a "wildlife officer" a "wildlife ranger", a "game ranger" or a "wildlife ranger". In our view, the use of these terms is just a matter of semantics.*

In the case at hand, the record shows that PW4 introduced himself as a conservation ranger (game ranger). Thus, guided by the above cited provision and the cited case, I agree with Ms. Makala that a conservation ranger or game ranger is also qualified to be a valuer of the meat which was found to be a government trophy. Therefore, this ground has no merit.

Coming to the 3rd and 4th grounds of appeal, the appellant alleged that his evidence was not considered, and the trial court shifted the burden of proof to him by asking him to submit a proof that he travelled on the

material day to Naberera village for farming. I have revisited the trial court records, particularly the judgment, this court noted that the evidence of the appellant was well considered as evidenced at pages 3-4 of the trial court judgment. Further to that, it was the appellant's argument that the trial court shifted the burden of proof to him. I am aware that under **Section 100 (1) of the WCA** in this kind of cases, a burden of proof is shifted from the prosecution to the accused person. However, the notion of the trial Magistrate that the appellant had no proof of traveling on the material date it was on the matter of evaluating the evidence presented before him by both sides. It was the appellant who alleged that he travelled to Mererani so he was duty bound to prove his allegation. This is due to the settled position that he who alleges must prove as stipulated under **Section 110 (1) of TEA**. Therefore, the trial magistrate was right to argue in that way as the appellant was dutybound to prove his allegations that he travelled. Thus, this ground has no merit.

Regarding the 5th ground of appeal, the appellant alleged that he was convicted based on the defective charge since there was a difference in the amount of impala stated on the charge sheet and the one submitted by PW4. He added that even the second count was not clear as PW4

said it was impala deer while the charge sheet said it was impala. Lastly, he complained that there was a contradiction regarding the place where he was arrested. The charge sheet shows it was Naberera Village within Simanjiro District in Manyara Region while PW1, PW2, and PW3 said it was Rotiana hamlet, Naberera Village in Manyara Region. On her side, Ms. Makala submitted that those differences did not go to the root of the case hence, they cannot flop the prosecution case.

Responding to the raised claims this court having gone through the records of the trial court noted that the arresting officers, PW2 and PW3 said the appellant was arrested at Rotiana hamlet, Naberera Village within Simanjiro District in Manyara Region. Therefore, the only place that was not mentioned in the charge sheet was Rotiana hamlet and since it is within Naberera Village, the said omission is curable under **Section 388 (1) of the CPA**. The same goes for the issue of the value of the impala, as long it was valued at USD 314 the equivalent amount cannot make the charge defective. Coming to the issue of the name "impala and impala deer" it is the holding of this court that there is no "impala deer" It could have been slip of tongue done by PW4 or a slip of pen done by the trial magistrate which does not go to the root of

the case and the same cannot make the charge defective. Thus, this court finds no merit on this ground.

With regard to the 6th grounds of appeal, the appellant prayed for exhibit P7 (inventory form) to be expunged from the records as the same was not read aloud after being admitted as exhibit. The same was supported by Ms. Makala and she added that the oral testimony will suffice even if exhibit P7 will be expunged from the record. She referred this court to the case of **Robinson Mwanjisi and 3 Others vs Republic** (supra) and **Ally Said @ Tox vs Republic**, Criminal Appeal No. 308 of 2018 (unreported).

In this ground, I do not agree with the appellant and the learned state attorney. The record, at page 43 of the typed proceedings appears as follows:

> *"Xd resumes*
>
> *(PW4 reads over the contents of exhibit P7 in court)."*

From the above quotation it is clear that the exhibit P7 was read over in court. That means this ground has no merit too.

Turning to his 7th ground of appeal, the appellant alleged that a person who ordered the government trophy (meat) to be disposed of was

supposed to be called as an addition witness. Thus, failure to do so violated **Section 195 (1) of the CPA.** However, having gone through the trial court records this court noted that the said person was called who is PW5 (Lucia Mushi, RM) a Magistrate and she explained how she ordered the meat to be disposed of after seeing it. Thus, this ground has no merit.

The appellant on his 8th ground of appeal, alleged that the prosecution failed to call PC Sweetbert from Orkesumet Police station who handed over the meat to the valuer contrary to **Section 195 (1) of the CPA**, thus, the chain of custody was broken. On her side, Ms. Makala responded that even if the said witness was not called a chain of custody was proved by documentation via Exhibit P4. This court agrees with Ms. Makala that exhibit P4 proved the chain of custody even without the testimony of PC Sweetbert. See the case of **Paulo Maduka and Four Others vs Republic**, Criminal Appeal No. 110 of 2007 (CAT-Unreported).

On the 9th ground of appeal, the appellant complained that a charge was not proved beyond a reasonable doubt due to the following reasons: First, there was no proof that he signed a certificate of seizure (exhibit P6). However, as well submitted by Ms. Makala, on the trial court's

records particularly page 33 of the proceedings, the appellant admitted having signed exhibit P6, thus, this issue has no merit. Second, the appellant argued that the cooked meat was not brought to court as exhibits, however, the records show that the same was destroyed as per the order of the court as explained by PW5 (Lucia Mushi, RM), so this issue has no merit too.

Third, the appellant complained that PW4 (Frank Sule) did not explain how he evaluated and identified that the meat was a government trophy. The records of the trial court reveal that when PW4 testified he did not explain how he identified the alleged meat of dik dik and impala. However, he tendered Exhibit P7 which proved the same to be evaluated, and found it to be dik dik and impala meat, which are government trophies, then, this issue is baseless. Fourth, the appellant complained that there was a contradiction as to whether the meat found with him was a cooked one or not. However, the records revealed that the appellant was arrested with both cooked meat and raw meat and part of the meat had the remaining skin on it. Therefore, there was no contradiction regarding the meat alleged to be found with the appellant which was later on identified as a government trophy (dik dik and impala

meat). Thus, the last issue is found with no merit as well. For the said reasons, the 9th ground of appeal is found with no merit.

Consequently, the appellant's appeal is dismissed for want of merit. The trial court's conviction and sentence are upheld.

It is ordered.

DATED at **ARUSHA** this 28th day of June 2023.

N.R. MWASEBA

JUDGE