

**IN THE HIGH COURT OF TANZANIA  
(BUKOBIA DISTRICT REGISTRY)  
AT BUKOBIA**

**ECONOMIC APPEAL No. 01 OF 2022**

*(Originating from Economic Case No. 14 of 2019 in the District Court of Biharamulo at Biharamulo)*

**BUNDALA JOANS ..... APPELLANT**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**

**JUDGMENT**

*1<sup>st</sup> and 22<sup>nd</sup> June 2023*

**OTARU, J.:**

This is an appeal by **Bundala Joans** against the conviction and sentence of a fine of T. Shs 10,000/- and two concurrent sentences of 20 years imprisonment imposed upon him by the District Court of Biharamulo at Biharamulo.

The Appellant was allegedly found within Burigi Chato National Park in unlawful possession of a bush knife, an axe, homemade gun known as 'gobole', python bones and bushbuck meat on 25<sup>th</sup> August 2019. He was arraigned in the District Court of Biharamulo at Biharamulo facing charges for (1) unlawful possession of weapons in the National Park contrary to Section 24(1)(b) and (2) of the **National Park Act** (Cap. 282 R.E. 2002); (2) being in possession of firearm without license contrary to Sections 4(1) and 34(1) and (2) of the **Arms and Ammunition Act** (Cap. 223 R.E.2002 as amended; (3) unlawful possession of Government trophy (python bones) contrary to Section 86(1) and (2)(c)(ii) of the

**Wildlife Conservation Act**, Act No. 5 of 2009 as amended by Section 59 of the **Written Laws (Misc. Amendments)** (No. 2) Act No. 4 of 2016 read together with Paragraph 14 of the 3<sup>rd</sup> Schedule to and Section 57(1) of the **Economic and Organized Crime Control Act** (Cap. 200 R.E. 2002) as amended; and (4) unlawful possession of Government trophy (11 pieces of bushbuck meat) contrary to Section 86(1) and (2)(c)(iii) of the **Wildlife Conservation Act**, Act No. 5 of 2009 as amended by Section 59 of the **Written Laws (Misc. Amendments)** (No. 2) Act No. 4 of 2016 read together with Paragraph 14 of the 2<sup>nd</sup> Schedule to and Section 57(1) of the **Economic and Organized Crime Control Act** (Cap. 200 R.E. 2002) as amended.

At the end of the trial, the Appellant was found guilty and convicted in respect of three counts. He was sentenced to a fine of 10,000/- Shs for the 1<sup>st</sup> count. For the 2<sup>nd</sup> and 4<sup>th</sup> counts he was sentenced to serve two concurrent sentences of 20 years imprisonment. He is contesting his conviction as well as the sentence.

The Appellant filed 6 grounds of Appeal which read as follows;-

- 1. That the prosecution side failed to prove the case beyond reasonable doubt.*
- 2. That the said exhibit P2 Certificate of seizure was illegally conducted by unknown person contrary to Section 38(3) of the **Criminal Procedure Act** (Cap 20 R.E. 2022) a person to conduct and issue the said exhibit should be a police officer.*

3. *That the court erred in law and fact to convict the appellant relaying on exhibit P2 (Certificate of Seizure) which lacked authenticity of independent witness.*
4. *That the court erred in law to convict the Appellant whereas the said 11 pieces of meat (inventory) was not witnessed by the Appellant during destruction as required by law.*
5. *That the court erred in law and fact to admit exhibit P5 (Ballistic laboratory report) which was tendered illegally by the person who has no any knowledge about the report from the ballistic laboratory.*
6. *That the prosecution side failed to summon CPL Livingstone who sent the man-made gun to the Ballistic laboratory for analysis and return the said gun with ballistic report. The failure to do that denied the right of the Appellant to make cross examination which is bad in law.*

When the matter was called on for hearing, the Appellant appeared in person, whereas the Respondent was represented by Mr. Amani Kilua, learned Senior State Attorney. The Appellant prayed to the court to adopt the Memorandum of Appeal. He further added that he did not know anything about the firearm, weapons and the government trophies. That he was arrested at his home by two National Park rangers who were looking specifically for him while he did not have any of the listed items. He then prayed to the court to find his appeal meritorious, allow it and set him free.

On the side of the Respondent, the learned State Attorney strongly opposed the Appeal, stating that the Appeal had no merits thus should be dismissed in it's entirety for the following reasons;-

On the 2<sup>nd</sup> and 3<sup>rd</sup> grounds together, the learned State Attorney submitted that the Certificate of seizure that was admitted as exhibit P2 was issued by a park ranger because he is authorized by law to do so and that it is not necessary for the same to have been issued by a police officer. He made reference to Section 106(1) of the **Wildlife Conservation Act**, the then Act No. 5 of 2009 (the **Act**) which authorizes 'authorized officers' to seize the property while Section 3 of the **Act** (supra) defines 'authorized officers' to include park rangers. The learned State Attorney stated further that since there is specific legislation on the subject, to wit the **Wildlife Conservation Act** (supra), the **Criminal Procedure Act** (Act No. 20 R.E. 2022) is not applicable unless there is a *lacuna* in the specific legislation.

Concerning an independent witness under ground 3 of Appeal in respect of the seizure, the learned State Attorney cited the case of **Jason Paschal and another v R**, Criminal Appeal No. 615 of 2020 (CAT Bukoba) (unreported) where the Court stated that search and seizures within conservation areas do not require existence of independent witnesses. Thus, these grounds lack merits and should be dismissed.

On the 4<sup>th</sup> ground of Appeal, that the Appellant did not witness destruction of the 11 pieces of meat, the State counsel argued that the evidence to that effect was the inventory form which was signed by the Appellant himself. Counsel thus, stated that the ground lacks merits and should collapse.

On the 5<sup>th</sup> ground, concerning admission of exhibit P5 (the ballistic laboratory report), the learned State Attorney relied on the case of **DPP v Nizrai Pirbakhshi@Hadji & 4 Others**, Criminal Appeal No. 493 of 2016 (CAT Dsm) (unreported) which provided guidance as to who is to tender exhibits in court. The list includes investigators who prepared the document in question or who have knowledge of the same. In the case at hand, the investigator, who was the custodian of the document and therefore had knowledge of the same is the one who tendered the document in question (exhibit P5). The learned State Attorney further cited Section 240(3) of the **Criminal Procedure Act** (supra), that when tendering reports, it is the right of the Accused to require the calling and cross examination of witnesses. The Appellant herein said that he had no objection when the document in question was tendered. He therefore chose not to exercise his rights to cross examine on the same.

Concerning the 6<sup>th</sup> ground that Cpl. Livingstone was not called to testify thereby he was denied his right to cross examine the witness in question, the learned state Attorney stated that the prosecution did not consider the witness to have been a material witness that should have been called to testify in court. The counsel further referred to Section 143 of the **Evidence Act**, (Cap. 89 R.E. 2002) that the Prosecution has mandate of who to call as witness and who not to. That they understand that the court may draw adverse inference against witnesses called or not called, yet he insisted that in the circumstances, the chain of custody was

well established by the available witnesses. He therefore concluded that this ground should fail as well.

The learned State Attorney finished off with the 1<sup>st</sup> ground of Appeal which is to the effect that the case was not proved beyond reasonable ground. He argued that all stated above establish that the offences the Appellant was charged with were proved beyond reasonable doubt and that the prosecution had discharged its duty. The only offence that was not proved to the required standard was the 3<sup>rd</sup> count, that is why even the Appellant was not convicted on it. Other counts were well proved, thus the Appellant was correctly convicted and accordingly sentenced. The learned State Attorney then prayed that the Appeal be dismissed for being devoid of merits. He also prayed that the conviction and the meted sentence by the trial court should be confirmed.

I have considered the rival parties' arguments, the record of the trial court as well as the applicable law and find that the question for determination before this court is whether the Appeal has merits.

On the 2<sup>nd</sup> and 3<sup>rd</sup> grounds as argued together, the two grounds are challenging the admissibility of the Certificate of seizure (exhibit P2) which was tendered at the trial by a park ranger. I have gone through the law as cited by the learned State Attorney, a park ranger is authorized by law to do so by virtue of Section 106(1) of the **Wildlife Conservation Act** (supra), which provides;-

*S. 106(1) Without prejudice to any other law, where any **authorised officer** has reasonable grounds to believe that any person has committed or is about to commit an offence under this Act, he may-*

*(a) require any such person to produce for his inspection any animal, game meat, trophy or weapon in his possession or any license, permit or other document issued to him or required to be kept by him under the provisions of this Act or the **Firearms and Ammunition Control Act**;*

*(b) **enter and search without warrant any land, building, tent, vehicle, aircraft or vessel in the occupation or use of such person, open and search any baggage or other thing in his possession.***

*[Emphasis provided]*

Under Section 3 of the Act, an authorized officer includes (b) *an employee of the national parks of, or above the rank of **park ranger***. In the case at hand, the search was conducted by *park ranger* Amen Ngonyani and witnessed by *park rangers* Paul Deus (PW2) and Samwel Mayoti (PW3) among others. Therefore the search was conducted in compliance with the law. Also the Certificate of seizure was filled in and tendered as exhibit accordingly. As submitted by the learned State Attorney, grounds 2 and 3 carry no water thus should fail.

On the requirement of having an independent witness when searching and seizing items under the Act (*supra*), I find the case of **Jason Paschal and another**

**v R** (supra) cited by the learned State Attorney to be relevant. The Court considered the circumstances under which authorized officers work, such that having independent witnesses in most cases is difficult if not impossible. The Court therefore was of the view that search and seizures within conservation areas does not require presence of independent witnesses. This ground as well fails.

On the 4<sup>th</sup> ground of Appeal, that the Appellant did not witness destruction of the 11 pieces of bushbuck meat, I am in agreement with the learned State Attorney that the Appellant's print of his right thumb appears on the inventory form (exhibit P4) indicating his presence during destruction of the same. In any case, witnessing or not witnessing the destruction does not remove the fact that the meat was found in his possession. This ground therefore collapses like the previous ones.

On the 5<sup>th</sup> ground, concerning admission of the ballistic laboratory report (exhibit P5), the custodian of the document tendered the same without any objection from the Appellant neither did he cross examine the witness as per Section 240(3) of the **Criminal Procedure Act** (supra). Further, in my view, the custodian of the document tendering the same was in line with the guidance provided by the Court in the case of **DPP v Nizrai Pirbakhshi@Hadjji & 4 Others** (supra) cited by the learned State Attorney.

On the 6<sup>th</sup> ground that Cpl. Livingstone was not called to testify thereby denying him the right to cross examine the witness in question. I agree with the



learned State Attorney that the prosecution have a choice of who to call and who not to. The prosecution had already proved their case with availed witnesses.

Consequently, there was sufficient evidence to convict the Appellant as the trial court rightfully did. All grounds raised by the Appellant, including the 1<sup>st</sup> ground therefore fail for lack of merits.

In the final analysis, this Appeal lacks merits and is hereby dismissed in its entirety. The conviction and sentence meted on the Appellant by the trial court is hereby confirmed.

It is so ordered.


**DATED at BUKOBA** this 22<sup>th</sup> June, 2023.



  
M.P. Otaru  
**Judge**

**Court:** The Judgment was read in Judge's chamber under the seal of the court, in the presence of the Appellant and Ms. Elizabeth Twakazi, learned State Attorney for the Republic.



  
M.P. Otaru  
**Judge**  
22/06/2023