

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

**IN THE DISTRICT REGISTRY OF BUKOBA**

**AT BUKOBA**

**ECONOMIC APPEAL NO. 6 OF 2023**

*(Arising from Economic Case No. 6 of 2021 of Biharamulo District Court)*

**ELIAS PETRO..... 1<sup>ST</sup> APPELLANT**

**EDSON PETRO..... 2<sup>ND</sup> APPELLANT**

**VERSUS**

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

**JUDGMENT**

6<sup>th</sup> and 23<sup>rd</sup> June, 2023

**BANZI, J.:**

On 30<sup>th</sup> June, 2021 the appellants were arraigned before the District Court of Biharamulo ("the trial court"), charged with the offence of unlawful possession of Government Trophy contrary to section 86 (1) (2) (c) (iii) of the Wildlife Conservation Act, No. 5 of 2009 as amended by the Written Laws (Miscellaneous Amendment) (No.2) Act, 2016 ("the WCA") read together with Paragraph 14 of the first Schedule to and section 57 (1) of the Economic and Organised Crime Act [Cap. 200 R.E. 2019] ("the EOCCA").

Before the trial court, it was alleged that on 29<sup>th</sup> June, 2021 at Kitwechembogo village, within Biharamulo District in Kagera Region, the appellants were found in possession of five (5) pieces of Bushbuck meat valued at Tshs.1,384,800/= the property of the Government of the United Republic of Tanzania without a permit from the authority. They denied the

charge and maintained their innocence throughout the trial. In a bid to prove the case against the appellants, the prosecution side called in four witnesses and produced four exhibits. At the end of the trial, the appellants were convicted and sentenced to twenty years imprisonment. Dissatisfied with their conviction and sentence, the appellants preferred this appeal on five grounds and they later filed three additional grounds which taking them together, the fall under the two grievances; **one**, the search was illegal upon being conducted by an unauthorised person and **two**, the case against the appellants was not proved beyond reasonable doubt.

The evidence leading to the conviction of the appellants reveals that, on the fateful day, Juma Said Ngao (PW1) an employee of TANAPA while he was in his office located at Burigi Chato, he received information from his superior that, there is person possessing Government Trophy without permit. Upon such information, he took his colleagues and went to Kitwechembogo village. With the help of their informant, they went straight to the house of the 1<sup>st</sup> appellant. On arrival, they found the appellants and put them under restraint. Before searching, they went to call a neighbour one Thomas Mihenga (PW2), as an independent witness. Upon returning, they asked them if they had any Government Trophy inside the house. Thereafter, the 1<sup>st</sup> appellant entered inside the house and got out with five pieces of dried meat. They decided to search inside the house, but they found nothing.

Then, the meat in question was seized through the certificate of seizure which was tendered before the Court as Exhibit P1.

Thereafter, both appellants were taken to Biharamulo Police Station with the seized meat. At the police station, WP.6872 D/CPL Rehema (PW4) called officer of TANAPA, Francis Kandeo (PW3) for identification and valuation of the seized meat. PW3 identified it as bushbuck meat because of its tenderness and fibres. Then he conducted valuation by equating five pieces to whole animal whose value is USD 600 equivalent to Tshs.1,384,800/= at the prevailed exchange rate of Tshs.2,308/=. Thereafter, he filled the certificate of valuation which was tendered as Exhibit P2. PW4 filled the inventory form and went to the trial court with the appellants to secure the disposal order. The inventory was tendered as Exhibit P3. Also, the chain of custody record was prepared and the same was tendered and admitted as Exhibit P4.

In their defence, the appellants who are brothers denied to have committed the alleged offence. The 1<sup>st</sup> appellant claimed that, he was arrested while on the way from market. He denied to be arrested with any exhibit. He also denied to sign any form after his arrest. The 2<sup>nd</sup> appellant stated that, while on the way to the house of the 1<sup>st</sup> appellant, he saw the car arriving there and the 1<sup>st</sup> appellant was inside the said car. He was arrested with the view of assisting police on investigation. Then they were

taken to Biharamulo Police Station. At the station, they were shown five pieces of meat and alleged to have been found with them.

At the hearing, the appellants appeared in person unrepresented whereas, the respondent Republic was represented by Mr. Yusuph Mapesa, the learned State Attorney.

In his submission, the 1<sup>st</sup> appellant prayed to adopt their grounds of appeal to form part of his submission. He added that, he was not arrested at his home but on the way to his home. He denied to have been found with the alleged meat. Also, he stated that he did not see the meat at the police station. He prayed the appeal to be allowed and be released. On his side, the 2<sup>nd</sup> appellant stated that, there is contradiction between the evidence of PW1 and PW2 on how the meat was retrieved from the house of the 1<sup>st</sup> appellant. While PW1 stated that the meat was taken out by the wife of the 1<sup>st</sup> appellant, PW2 stated that the same was taken out by the 1<sup>st</sup> appellant. According to him, this contradiction goes to the root of the matter. He also denied either to be taken to court for disposal order or to have signed any document concerning the disposal of the exhibits. He prayed for this court to allow the appeal and release him.

In reply, Mr. Mapesa from the outset, supported the conviction and sentence meted against the appellants. Responding to the issue of search, he submitted that, the same was properly conducted and the certificate of

seizure was properly filled because, as per section 106 of the WCA, PW1 being an officer from TANAPA, is authorised to conduct the search in question. Also, the search was witnessed by an independent person. He further stated that, the contradiction contended by the appellants concerning the evidence of PW1 and PW2 on who and how the meat was carried from the house of the 1<sup>st</sup> appellant was a minor contradiction which did not go to the root of the matter. He went on stating that, even the appellants did not cross-examine on the alleged contradiction which implies that, they accepted the truth of the evidence of prosecution witnesses. To support his submission, he cited the case of **Swaibu Amani Shabani v. Republic**, Criminal Appeal No. 87 of 2021 CAT (unreported).

On the issue of disposal of exhibit, he stated that, PW4 in her testimony explained that, she went to Biharamulo District Court with the appellants and the court issued disposal order in their presence. Also, the appellants signed in the inventory form indicating that they fully participated. Therefore, disposal procedure was followed. Besides, the appellants did not cross-examine PW4 about their absence at the disposal of the exhibit which connotes their acceptance of truthfulness of PW4. He cited the case of **Kanaku Kidali v. Republic**, Criminal Appeal No. 326 of 2021 CAT (unreported) to support his submission. Concerning competence of PW3 to identify and conduct valuation he responded that, although in his testimony

PW3 did not mention his rank but he had authority to identify and conduct valuation because Exhibit P2 shows that, he is a wildlife officer. Hence, pursuant to section 86 (4) of the WCA, he is qualified to conduct valuation and there was no need for valuation to be conducted by the Government Chemist as suggested by the appellants because that is not the requirement of the law. Winding up his submission, the learned State Attorney urged the Court to dismiss the appeal because the case against the appellants was proved to the required standards, there was no need of corroborative evidence.

In their rejoinder, the 1<sup>st</sup> appellant insisted that, the meat was not found in his house while, the 2<sup>nd</sup> appellant insisted that, the prosecution evidence did not prove if the meat in question was of bushbuck. Thus, they prayed to be released from custody.

Having heard the submissions of both parties, the issue for determination is whether the case was proved against the appellants beyond reasonable doubt. In determining this issue, I will start with the complaint on illegal search.

Section 106 (1) (b) of the WCA provides that:

*"(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) N/A*

***(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: Provided that, no dwelling house shall be entered into without a warrant except in the presence of at least one independent witness."***

*(Emphasis supplied).*

The above provision of the law permits any authorised officer to enter and search any place without warrant but when it comes to dwelling house, he cannot enter without at least one independent witness. Section 3 of the WCA defines an authorised officer to mean:

*"...the Director of Wildlife, a wildlife officer, wildlife warden, wildlife ranger or police officer, and includes the following-*

*(a) an employee of the Forest and Beekeeping Division of, or above the rank of forest ranger;*

***(b) an employee of the national parks of, or above the rank of park ranger;***

*(c) an employee of the Ngorongoro Conservation Area of, or above the rank of ranger;*

*(d) an employee of the Fisheries Division of, or above the rank of fisheries assistant;*

- (e) an employee in a Wildlife Management Area of a designation of a village game scout;*
- (f) an employee of the Marine Parks and Reserve of, or above the rank of marine parks ranger;*
- (g) an employee of Tanzania Wildlife Management Authority of or above the rank of conservation ranger;*
- (h) an employee of the Antiquities Division of, or above the rank of conservator of antiquities; and*
- (i) any other public officer or any person, who shall be appointed in writing by the Director;”(Emphasis added).*

Notably, according to the law cited above, an employee of the national parks of or above the rank of park ranger is recognised as authorised officer who under the ambit of section 106 (1) (b) is permitted to enter and search in any building with or without warrant. However, such authorised officer is not allowed to enter and search into the dwelling house without warrant unless he is accompanied by at least one independent witness. In the matter at hand, the appellants questioned the alleged search for being conducted by a person who is not an authorised officer. I have carefully examined the testimony of PW1. At page 15 of the proceedings, PW1 introduced himself as follows:

***"I am working at TANAPA. On 29/6/2021 while at the office Burigi Chato office, I was informed by my boss that, there is a person who possess the Government trophies without a permit..."***(Emphasis supplied).



Apparently, it is undisputed from the extract that, PW1 who conducted search in the house of the 1<sup>st</sup> appellant is the employee of the national park. However, he did not mention his rank which could have assisted this court to know if he is authorised officer or not. The fact that he is an employee of the national park, it does not qualify him to be an authorised officer unless he is of or above the rank of park ranger. In the certificate of seizure, PW1 mentioned his rank as PCR I. Unfortunately, in his entire testimony, he did not explain that initial stands for what. In that regard, it is unknown whether PW1 at the time of search, he was authorised officer vested with powers to enter and search in any building. Without clear evidence to that effect, we cannot arrive into conclusion that, the search in question was conducted with a person who is authorised by law to conduct search. Under those premises, I entirely agree with the appellants that, the search was illegal for being conducted by unauthorised person.

From that finding, no weight can be accorded to the exhibits including the meat in question which were retrieved following the illegal search. In other words, they are the fruits of illegal search with no evidential value. Likewise, the certificate of seizure (Exhibit P1) which was a result of illegal search lost its evidential value and cannot accorded any weight. Equally, Exhibits P2, P3 and P4 resulted from illegal search and hence they lost evidential value. Due to illegality of search, there is nothing left to prove the

alleged offence against the appellants. It cannot be said that, under these circumstances, the prosecution side had managed to prove the case against the appellants beyond reasonable doubt.

For those reasons, I allow the appeal by quashing the conviction and setting aside the sentence imposed on the appellants. I hereby order their immediate released from prison unless otherwise lawfully held.



**I. K. BANZI**  
**JUDGE**  
**23/06/2023**

Delivered this 23<sup>rd</sup> June, 2023 in the Mr. Erick Mabagala, learned State Attorney for the respondent and the appellants in person. Right of appeal duly explained.



**I. K. BANZI**  
**JUDGE**  
**23/06/2023**