

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

CRIMINAL APPEAL NO 07 OF 2023

(Arising from Economic Case No. 52 of 2022, of the District Court of Serengeti at Mugumu)

JOSEPH SIMITI@MARWA 1ST APPELLANT

PETRO NYAMHANGA @ CHIBONDE.....2ND APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

JUDGMENT

9th May & 14th July 2023

F. H. Mahimbali, J.

The appellants in this case were each sentenced by the trial court to serve two years and twenty years for the second and third counts respectively after being dully convicted with the two offences charged: *unlawful possession of weapons and unlawful possession of government trophies into the Serengeti National Park.*

It was alleged by the prosecution that on 4th day of April 2022 at Nyanguge area into Serengeti National Park within Serengeti District in Mara region, The appellants were found unlawfully within the National Park as they had no any permit authorizing their entry therein and that were also found unlawfully being in possession of weapons to wit: one

panga, two animal trapping wires and spear without permit in which they failed to account the intended use other than hunting, killing, wounding or capturing of wild animals. Thus, the basis of being charged with these three offences contrary to section 21(1)(a), (2) and 29(1) of the National Parks Act (Cap 282 R.E 2002) for the first count, section 24(1),(b) and (2) of the National Parks Act (Cap 282 R.E 2002) for the second count and section 86(1) and (2) (b) of the Wildlife Conservation Act 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 2022 for the third count.

The appellants pleaded not guilty to the offences charged. This compelled the prosecution to summon a total of four witnesses to establish the charge against the appellants.

It was the prosecution's evidence via PW1 and PW2 that the appellants were found within the Serengeti National Park at an area called Nyanguge. At the point of their arrest had been in possession of the alleged charged weapons and government trophies, (exhibits P1 and P2) thus the basis of being charged. PW3 on the other hand confirmed at the trial court that what the appellants were arrested with (Exhibit p4) was the government trophy namely head of lion as it had a skin which was tawny in color, had upper and lower canal, had white

whiskers, had robust and longish, had ears inside whitish in color and hadn't neck meny. The four feet were strong and very muscular, strong and sharp keratin claws, had tawny skin color. The valuation and certification report described the said trophy to be worth 11,270,000/=(exhibit P3). PW4 on the other hand, testified how on 5th April 2022 upon being assigned the investigation of the case file: MUG/IR/763/2022 by his OC- CID and noted that the accused persons were already arrested and were in possession of amongst others the government trophy (head of lion and four feet with its claws), as were perishable good he recorded them into inventory, took the accused persons together with him to the primary court of Mugumu where inventory proceedings were conducted and eventually the order for destruction of the said trophy was issued by the court (Exhibit P4).

On their defense, the both appellants denied being arrested within the National Park as alleged but at the home of the first appellant and that they were not found with any government trophy as alleged. They thus considered the charges against them as being falsity and heresy.

Upon scrutiny of the case's evidence, the trial court convicted the duo appellants jointly for two offences; namely the second and third counts and dully sentenced them.

Undaunted with the trial court's findings on conviction and sentence the appellants have opted for this appeal armed up with four grounds of appeal but paraphrased into two as hereunder:

- 1. That the prosecution's case has not been proved beyond reasonable doubt as per law.*
- 2. That the appellants were denied with the right to be heard as they had not been accorded the right to call their witnesses.*

During the hearing of the appeal, the appellants fended for themselves whereas the Republic enjoyed the legal services of Ms Mgumba, learned state attorney.

The first appellant on his part first prayed that his grounds of appeal be adopted to form part of his appeal submission. He further added that, he was arrested on 29th March 2022 and sent to court on 13th April 2022. He queried on such much delay of being sent to court as there was no explanation given to account for such long delay. Secondly, he questioned on the point of his arrest. Was it at Nyanguge or Mara River. To his knowledge, there is no place called Nyanguge but Mara River. He thus prayed that his appeal be allowed and that he be acquitted as he inot responsible of the said charges as convicted by the trial court.

The second appellant, had nothing more to add apart from relying on his grounds of appeal and on them, he prayed that he be acquitted as he was not responsible of the said charges.

Resisting the appeal, Ms Mgumba learned state attorney was of the firm view that to her analysis of the evidence in record, the appellants were rightly convicted as the charges against them were established beyond reasonable doubt. In a total consideration of the prosecution's case via PW1 and PW2, it is very clear that the appellants were arrested on 4th April 2022. Since there is no contrary evidence to that effect, the allegation by the appellants that they were arrested since 29th March 2022 is unsupported by any evidence and by the way it is an afterthought. If it was an issue for the trial court's consideration, the ought to have raised it at the trial court itself.

On the proof of the case beyond reasonable doubt, Ms Mgumba was of the firm view that the prosecution's case is firm and unshaken. In consideration of what PW1, PW2, PW3 and PW4 had testified before the trial court, their evidence stands unimpeached. She contended that the evidence clearly establishes. It has explained clearly how the appellants were found in possession of the alleged trophies and the alleged weapons. It has also been clearly demonstrated how the alleged items arrested with were government trophy (PW3).

The argument that the appellants were denied with the right to call their witnesses is not reflected on recorded. On this, she referred the court to the typed proceedings at pages 32-38.

Responding to the issue of not being involved during the disposition of the alleged trophies, Ms Mgumba firmly responded that it was not the mandatory requirement of the law. Making reference to section 101 of the WCA and PG No. 229 para 28, she clarified that what is mandatory by the law is involvement of the appellants at inventory proceedings but not at disposition stage.

She concluded her submissions by making analysis of the whole prosecution's case against the defense. She was of the settled view that the prosecution's case through the four witnesses (PW1-PW4) and four exhibits (P1 -P4), the prosecution's case was established beyond reasonable doubt that the appellants were in unlawful possessing weapons within the National Park and that they had been in unlawful possession of government trophies as they had no authorized permission holding the same. Thus, the duo offences convicted with were dully established as per law. On these submissions, she prayed that the appeal is devoid of merit and thus be dismissed in its entirety.

Having dispassionately considered the submissions for and against the appeal, keenly scanned the evidence of the case at the trial court, the vital question I am called upon to consider is whether the appeal is meritorious.

In essence there is no independent witness who witnessed the said arrest and seizure as alleged. However, it is settled law that when an arrest and search is done at remote area, it is not important that there should be an independent witness (see **Jasson Paschali and Another V. Republic**, Criminal Appeal No. 615 of 2020, CAT at Bukoba and **Emmanuel Lyabonga V. Republic**, Criminal Appeal No. 257 of 2019, CAT at Iringa at page 15-16).

In digest to the material of this case as presented at the trial court, it is my considered view that the appellants failed reasonably to challenge the prosecution's evidence as presented via their four witnesses which directly connected them with the offences charged. There is much coherence. The defense by the appellants is considered as a mere escape of criminal liability but not a reasonable defense challenging the prosecution's case.

It is trite law in our jurisdiction that every witness is entitled to credence and must be believed and his/her testimony accepted unless

there are good and cogent reasons for not believing a witness. In the case of **Mathias Bundala vs Republic** , Criminal appeal No. 62 of 2004 CAT at Mwanza where it approved the case of **Goodluck Kyando vs Republic** (2006) TLR 363, the court held that:

" It is trite law that every witness is entitled to credence and must be believed and his testimony accepted unless they are good and cogent reasons for not believing a witness".

In the current case, I have not been able to establish any incredence in the prosecution's evidence. As of that, I must firmly believe that what they testified is nothing but truthful in the absence of that incredence or holding doubt.

In my careful scanning of the trial court's proceedings, I have not encountered any reasonable question against the prosecution's evidence which would have shaken the prosecution's case. It is a principle of evidence established upon prudence in this jurisdiction that failure to cross examine a witness on important matter means acceptance of the truth of the evidence - see: **Damian Ruhele v. Republic**, Criminal Appeal No. 501 of 2007 (unreported), **Nyerere Nyague v. Republic**, Criminal Appeal No. 67 of 2010 and **George Maili Kemboge v. Republic**, Criminal Appeal No. 327 of 2013. Regarding the issue of date and the point of arrest whether it was on 29th March 2022 or 4th April

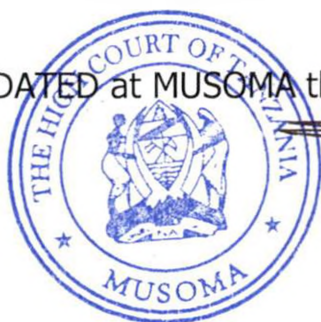
2022 and whether at Nyanguge or Mara River, it was an issue to be raised at trial and not at this court as I am not privileged to fetch any material on that. As it was not raised, it is now considered as an afterthought and not otherwise.

It is therefore my holding that the prosecution's case was established beyond reasonable doubt to justify their conviction as charged and done.

On the argument that the appellants were denied with the right to be heard as they were not accorded with the right to call their material witnesses is legally not supported by evidence as per trial court's records on pages 32 to 38 in which each appellant was fully addressed of his right to call his witnesses, tender evidence which right was fully exercised and that the appellants willingly closed their case. How come that they were denied the right to be heard as raised in this appeal?

Accordingly, I find this appeal devoid of any merit and it is hereby dismissed in its entirety. Conviction and sentence meted by the trial court are hereby upheld.

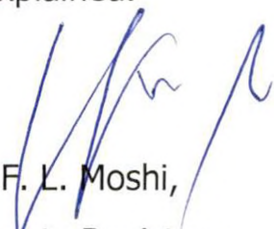
DATED at MUSOMA this 14th day of July, 2023.



F.H. Mahimbali
Judge

Court: Judgment delivered today the 14th of July, 2023 in the presence of the appellant and respondent being in person and Mr. K.S. Rutalemwa, RMA, present in Chamber Court.

Right to further appeal explained.



F. L. Moshi,
Deputy Registrar