

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

CRIMINAL APPEAL NO. 10 OF 2022

(C/f Economic Case No. 08 of 2021 District Court of Monduli at Monduli)

MTEMI SAPI @ TERELAKA APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

26th July & 28th August, 2023

TIGANGA, J.

The appellant, Mtemi Sapi @ Terelaka was arraigned before the District Court of Monduli at Monduli (the trial court) on the offence of Unlawful Possession of Government Trophies contrary to section 86(1) and 2(c) (ii) of the **Wildlife Conservation Act No. 5 of 2009** as amended by section 59(a) and (b) of the Written Laws (Miscellaneous Amendment) Act No. 4 of 2016 read together with paragraph 1 of the 2nd Schedule to and sections 57 (1) and 60(2) of the **Economic and Organised Crimes Control Act**, Cap 200 R.E. 2019 (EOCCA).

According to the particulars of the offence, it was alleged that on 08th October 2021 at Jangwani Village, Mto wa Mbu area within Monduli District in Arusha Region, the appellant was found unlawfully possessing Buffalo

meat which is equivalent to one Buffalo valued at USD 1900 equivalent to TZS 4,388,791/= the property of the Government of United Republic of Tanzania.

The accused pleaded not guilty to the charge and admitted to his name and particulars as they appear in the charge sheet. During the trial, the prosecution evidence was led to the effect that, on 8th October 2021, in the morning hours, PW3, a park ranger received a tip from the informer that, there was a buffalo killed and the villagers were sharing meat. They headed to the coordinates given where the alleged buffalo was. Upon arrival, they found the appellant skinning the buffalo legs and upon further search, they found a bucket with buffalo meat inside. They notified the local authorities leaders who convened at the scene, prepared a certificate of seizure, arrested the appellant, and took him to Mto wa Mbu Police Station where he was interrogated.

In his defence, the appellant denied the offence against him on the ground that, he was just given the said buffalo meat by one Athanas and Marcel, thus, he was not involved in the hunting or killing of the said buffalo.

At the end of the trial, the court was satisfied that the prosecution proved their case against the appellant to the required standard. He was thus convicted and sentenced to pay a fine to the tune of Tshs. 43,887,910/= or serve twenty years imprisonment. Aggrieved with the decision, he has filed this appeal advancing seven (7) grounds as follows:-

1. That, the charge against the appellant was not proved beyond reasonable doubt.
2. That, the appellant was wrongly tried, convicted, and sentenced without jurisdiction.
3. That, the trial court erred in law and in fact in believing that, the appellant was found with the government trophy basing on an illegal search and seizure certificate.
4. That, the trial magistrate erred in believing that the appellant was found with the meat basing on an illegal inventory despite failure by the prosecution to summon the said magistrate who allegedly ordered the inventory.
5. That, the trial magistrate erred in law and fact in failing to see that the evidence adduced by prosecutions is full of inconsistencies, contradictions, shortcomings, and doubts.
6. That, the trial magistrate erred in law and facts in basing the judgment on extraneous matters, hence, arrived at an unwanted decision.

7. That, the trial magistrate erred in law and in failing to give due and proper consideration to the appellant's defence.

Hearing of this appeal was by way of a written submission, the appellant appeared in person and was unrepresented whereas the respondent was represented by Ms. Akisa Mhando, learned Senior State Attorney.

Supporting the appeal, the appellant did not submit on the grounds of the appeal raised, he just told the court that, he was arrested while sleeping at his home, beaten, and forced to sign a document and carry a bucket of meat alleged to be seized in his compound. He was then taken to the police station and charged with this offence. He did not submit further.

Opposing the appeal Ms. Mhando submitted on the 1st ground of appeal that the case against the appellant was proved at the required standard because the appellant was arrested by PW3 and PW4 while skinning the hind limbs of the buffalo. He was also found with a bucket with trophy meat which was seized as per exhibit P2, and after proper identification and valuation by PW2, the same was confirmed to be the buffalo's meat. More so, the meat was disposed of after the order was issued by a magistrate who gave the inventory and ordered the disposal of the said trophy per exhibit

P7. Thus, all the procedures from the arrest, seizure, and disposal of the trophy were never flawed. She argues that all the prosecution witnesses show that, the appellant was arrested with the government trophy.

On the 2nd ground, Ms. Mhando submitted that, before trial, the State Attorney who prosecuted the case filed the certificate and consent which were received by the court. Thus, the trial court had jurisdiction to prosecute this case.

On the 3rd ground of appeal, the learned State Attorney submitted that the search and seizure was properly conducted in the presence of an independent witness. The same was also signed by the appellant, proving that it was valid as held in the case of **Matata Nassoro & Another vs. The Republic**, Criminal Appeal No. 329 of 2019, CAT at Arusha (unreported).

As to the 4th ground, she submitted that the magistrate who signed the inventory and disposal form asked the appellant about the trophies seized in his compound before signing the same. The appellant also signed, hence the said inventory as tendered by PW5 was enough and there was no need to summon the magistrate as a witness during trial. On top of that, the appellant knew that the said meat was a government trophy.

On the 5th ground of appeal, the learned Senior State Attorney submitted that there were no contradictions to the evidence adduced by prosecution witnesses and if there were any, the same did not go to the root of the case as held in the case of **Samson Kejo vs. The Republic**, Criminal Appeal No. 302 of 2018, CAT at Arusha (unreported).

She further submitted on the 6th ground of appeal that, the trial court's judgment based on the facts on record as testified by witnesses hence, there was no concept out of procedure as all issues were considered and determined as per the law. Lastly, she submitted that the trial court considered the defence evidence and found that the same did not cast any doubt on the prosecution case. She prayed the appeal to be dismissed for want of merit. In his rejoinder appellant had nothing to add.

Having gone through the trial court's records and each party's submission, while having in mind the legal principle that, as a first appellate court I am entitled to assess and re-evaluate the evidence, I find the only question for determination is whether the case against the appellant was proved to the required standard to warrant his conviction. (See **D.R. Pandya (1957) EA 336** and **Iddi Dhaban Amasi vs. The Republic**, Criminal Appeal No 111 of 2006 (unreported)). For the reasons to be given

later, I will start with the 2nd ground of appeal then the 3rd, 4th, 6th, and 7th, and the 1st and 5th grounds will be dealt with last.

Starting with the 2nd ground of appeal, the appellant claimed that, the trial court had no jurisdiction to determine the case. This being an economic-related offence, the same required consent from the Director of Public Prosecution (DPP) under section 26(1) of EOCCA which provides that;

*"26(1) Subject to the provisions of this section, no trial in respect of an economic offence may be commenced under this Act save with the **consent of the Director of Public Prosecutions.***

[Emphasis mine]

Also, section 12 (4) of the same law requires a certificate of the DPP conferring jurisdiction to the subordinate court which reads;

*"12(4) The Director of Public Prosecutions or any State Attorney duly authorized by him, may, in each case in which he deems it necessary or appropriate in the public interest, **by certificate under his hand order that any case instituted or to be instituted before a court subordinate to the High Court and which involves a non-economic offence or both an economic offence and a non-economic offence, be instituted in the Court.**"*

[Emphasis mine]

From the above-quoted provisions, it is an undisputed fact that this case required both consent from the DPP and a certificate from him,

conferring jurisdiction to the subordinate Court. This is so because the appellant was charged with the economic offences under paragraph 1 of the 2nd scheduled to and section 57 (1) of EOCCA. Looking at the trial court's proceedings, specifically on page 6, on 1st April 2022, the prosecutor prayed to tender the Consent and Certificate from the DPP, and the same was received by the trial court. I also took the liberty to peruse the record and found that the said documents were indeed filed on that day. In that regard, the trial court had jurisdiction to hear and determine this matter. This ground fails.

On the 3rd ground of appeal, the appellant challenged the search and seizure procedure for being flawed. In his submission, he did not expound more on what exactly was done inappropriately. Looking at the search and seizure certificate, exhibit P5, the same was conducted under section 106 (1) (a) (b) and (c) of the WCA and section 42 of the **Criminal Procedure Act**, [Cap 20, R.E. 2022]. The former section provides for search and seizure in respect of wildlife while the latter provides for general searches conducted under emergencies like in the case at hand. It was conducted in the presence of Mto wa Mbu Ward Executive Officer, Jangwani Village Chairman, and independent witness as required by the law. The rationale behind controls

on powers of search and seizure was well laid down by the Court of Appeal in the case of **Badiru Mussa Hanogi vs. The Republic**, Criminal Appeal No. 118 of 2020, CAT at Mtwara (unreported) where the Court of Appeal observed that;

"In our view, the meticulous controls provided for under the CPA and a clear prohibition of search without warrant in the PGO is to provide safeguards against unchecked abuse by investigatory agencies seeking to protect individual citizens' rights to privacy and dignity enshrined in Article 16 of the Constitution of the United Republic of Tanzania. It is also an attempt to ensure that unscrupulous officers charged with the mandate to investigate crimes do not plant items relating to criminal acts in people's private premises in fulfilling their undisclosed ill-motives."

According to PW3 who filled the search and seizure certificate, he told the trial court that, they found the appellant skinning the legs of the buffalo and claimed that he was given the same by other people. After apprehending him, they called for local leaders and continued to search inside his house in their presence where they found 2 knives and 1 panga with blood. He did not object to the said certificate from being admitted or challenge what was seized during his cross-examination to either PW3 or PW4, the park rangers who arrested him. This implies that he admitted the seized trophy and other items being found in his possession. More so, during his defence, he

maintained that the said meat was given to him by his friends. All these are enough proof that the search and seizure was properly conducted. This ground therefore fails.

On the 4th ground of appeal, the appellant alleged that the inventory was illegally admitted as the magistrate who took it was never summoned at the trial court to testify. The record shows that the inventory, exhibit P7 was taken by a magistrate from Mto wa Mbu Primary Court. At the back of the said Inventory document, the said magistrate inquired from the appellant on what he knows about the seized trophy. The following is what transpired;

1. *Swali:- Je ni kweli hiyo nyama ni ya Pori*
Jibu:- Ndiyo Mheshimiwa
2. *Swali:-Ni kweli wewe ndiwe umewinda?*
Jibu:- Hapana ni Marceli na Jackson.
3. *Swali:- Je wewe umetoka wapi na hiyo nyama pori ?*
Jibu:- Marcel na Jackson ndio walinipa

Sahihi ya Mtuhumiwa

Sgd. Hakim

8/10/2021

As briefly intimated above, during his defence, the appellant had admitted having been given the trophy by Jackson and Marceli. This goes hand in hand with what he replied to the magistrate who took the inventory

and ordered the disposal of the trophy. In the circumstances, **first**, I do not find any illegality in the inventory taken, **second**, the appellant neither objected admission of the Inventory nor discredited the same during cross-examination or his defence. **Lastly**, even without the said magistrate being summoned to testify, the evidence tendered regarding the inventory sufficed. This ground also fails.

On the 6th ground, the appellant challenged the trial court's judgment that it was based on extraneous matters. During his submission, he did not submit on the extraneous matters he referred to. However, looking at the trial court's judgment, it is my considered opinion that, the same properly addresses all the contentious matters and determines them, hence reaching a just verdict. There is no extraneous matter noted. This ground also fails.

As to the 7th ground of appeal, the appellant challenged the trial court for not considering his defence evidence. However, looking at page 9 of the trial court's judgment, the trial magistrate considered the appellant's defence and concluded that, the same did not cast any doubt on the prosecution case. This ground also lacks merit and the same fails.

Back to the 1st and 5th grounds of appeal in which the appellant claims that the prosecution evidence was contradictory and the same did not prove the case against him beyond reasonable doubt. He however did not point out the said contradictions and inconsistencies. This being a criminal case conviction may only be entered based on the strength of the prosecution case and not on the weakness of the defence case. Thus, the burden to prove the case never shifts. See **Jonas Nkize vs. The Republic** [1992] TLR 213, **Marando Suleiman Marando vs. SMZ** [1998] TLR 375, **Luhemeja Buswelu vs. The Republic**, Criminal Appeal No. 164 of 2012, CAT at Mwanza (unreported) and **Abuhi Omary Abdallah & 3 Others vs. The Republic** Criminal Appeal No. 28 of 2010 CAT at Dsm (unreported)

Going through the trial court's proceedings and judgment, and based on the above analysis, I find the case against the appellant was proved to the required standard. I hold so because the appellant himself admitted to having been found in possession of the trophy but pointed his fingers at Marcel and Jackson as the ones responsible for the hunting and killing of the said buffalo and that, he was only brought meat. As the doctrine of recent possession provides, the appellant cannot escape liability. In **Joseph Mkumbwa and Another vs Republic**, Criminal Appeal No. 94 of 2007

(unreported) Court of Appeal had this to say regarding the doctrine of recent possession;

"Where a person is found in possession of a property recently stolen or unlawfully obtained, he is presumed to have committed the offence connected with the person or place where the property was obtained. For the doctrine to apply as a basis of conviction, it must be proved, first, that the property was found with the suspect; second, that the property is positively proved to be the property of the complainant; and lastly, that the stolen thing constitutes the subject of the charge against the accused... The fact that the accused does not claim to be the owner of the property does not relieve the prosecution to prove the above elements."

Borrowing wisdom of the Court of Appeal in the above-cited decision on the offence of found in the *possession of a property recently stolen or unlawfully obtained*, and applying the same in the case at hand, in the case of being unlawful possession of government trophy, the fact that, the appellant claim he was given the trophy by other person does not exonerate him from criminal liability because the appellant was charged with Unlawful Possession of Government Trophies contrary to section 86(1) and 2(c) (ii) of the **Wildlife Conservation Act No. 5 of 2009** as amended by section 59(a) and (b) of the Written Laws (Miscellaneous Amendment) Act No. 4 of 2016 read together with paragraph 1 of the 2nd Schedule to and section 57

(1) and 60(2) of the **Economic and Organised Crimes Control Act**, Cap 200 R.E. 2019 (EOCCA) he has not disputed to have the trophy, what he disputed is that he did not hunt, but the meat was given to him by his friends. The fact that he was found with the trophy which he has not disputed, proves the offence he was charged.

In fine, the case against the appellant was proved to the required standard hence, the conviction entered and the sentence imposed by the trial Court was deserving. Therefore, this appeal is dismissed for want of merit and the trial court's decision is hereby upheld.

It is accordingly ordered.

DATED and delivered at **ARUSHA** this 28th day of August 2023.



A handwritten signature in black ink, appearing to read "J.C. Tiganga", is written over a horizontal line.

J.C. TIGANGA

JUDGE