

IN THE HIGH COURT OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

CRIMINAL APPEAL NO. 37 OF 2022

*(Arising from Economic Case No. 160 of 2019 in the District Court of Serengeti at
Mugumu)*

MAKARANGA S/O SWEYA @ LIMBE APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

30th August & 5th September, 2023

M. L. KOMBA, J.:

MAKARANGA S/O SWEYA @ LIMBE together with two others (not parties to this appeal) were arraigned at Serengeti District Court (the trial court) with three counts namely; unlawful entry into the National Park contrary to Sections 21(1) (a) and (2) and 29(1) of the National Parks Act, Cap 282 as amended by the Written Laws (Miscellaneous Amendments) Act No. 11 of 2003 (the NPA); unlawful possession of weapons in the National Park without permit contrary to section 24(1)(b) and (2) of the NPA and unlawful possession of Government trophies contrary to section 86 (1) and (2)(c)(ii) of the Wildlife Conservation Act No. 05 of 2009 (the WCA) read

together with Paragraph 14 of the First Schedule to, and sections 57 (1), 60 (2) of the Economic and Organized Crime Control Act [Cap. 200 R. E. 2002] (EOCCA). They were heard and at the end result, they were convicted and sentenced to serve one year imprisonment, one year imprisonment and twenty years imprisonment for the 1st, 2nd and 3rd counts respectively.

It was adduced by prosecution that on 23/12/2019 at Warajoro area into Serengeti National Park, the appellant together with other accused persons did enter into the National Park without permit and they were found in unlawful possession of weapons to wit; two panga, one knife and two spears. They were also found in unlawful possession of Government trophy to wit; two hind limbs fresh meat of Wildebeest, properties of the United Republic of Tanzania.

The appellant denied the charges action which attract full trial. In the process of proving their case, the prosecution paraded four witnesses and five exhibits which were tendered and admitted in court as evidence.

Brief background of the case is that; On the 23/12/2019 at 16:00 hours, the park rangers (PW1 and PW2) together with Dotto Mwita were on patrol

at Warajoro area into Serengeti National Park. They saw three people with two motorcycles. They followed them and then fled leaving behind motorcycles. They were able to arrest the appellant and one other. The third person while trying to escape was shot on the left leg and he fell down. The park rangers found arrested persons including the appellant in possession of two machete, two spears, one knife, two fresh hind limbs of Wildebeest and two motorcycles (SANLG red in colour and SANMOTO with registration number MC 101 AVS blue in colour).

Appellant and his fellows were interrogated and was confirmed they don't had permit to be in the National Park and possess weapons and Government trophy. Then PW1 and PW2 filled the certificate of seizure which was tendered by PW1 and it was admitted and marked as exhibit PE1 without any objection. They took the appellant and the other accused persons to Mugumu Police station and file Case No. MUG/IR/3796/2019 was opened. PW1 also identified the weapons he found in possession of the appellant with the other accused by stating that the panga had a black handle and the spear and the knife was covered with a black rubber. Weapons were also marked with the case file number. The same were

tendered during trial and they were admitted and marked as exhibit PE2 collectively without any objection from the appellant.

Further to that the two motorcycles were identified in court as they were also marked with the case file number MUG/IR/3796/2019. PW1 tender them in court as exhibit and they were admitted without objection and marked as exhibit PE3 and PE4 respectively.

On 24/12/2019 at 8:00 hours at Mugumu Police station, G.3071 D/CPL Geniune (PW4) was assigned case file MUG/IR/3796/2019 and managed to see exhibits and the accused persons. On the same day at 9:00 hours he called Wilbrod Vicent (PW3) a park warden to identify and value the Government trophies seized in connection with the case file. After the valuation, PW4 took the appellant and the other accused person with the Government trophies seized to court where disposition order was requested and issued. Appellant and his fellow signed the inventory form using their thumbs. At the court the Magistrate ordered the trophies to be destroyed. During trial PW4 tendered inventory form requesting it to be admitted as evidence, the prayer was granted and marked as exhibit PE6 without any objection from the appellant and the other accused person. PW3 identified the Government trophy through their slain slightly to dark brown colour

and informed the trial court it was the meat of Wildebeest worth Tsh. 1,430,000/=. The trophy valuation certificate was tendered by PW3, admitted by the trial court and marked as exhibit PE5.

After a full trial, the trial court found the appellant and the other accused person were found with a case to answer and the appellant exercised his right by stating that he will give his evidence on oath and don't have witnesses. The appellant fended for himself by stating that on 23/12/2019 in the morning he went to graze a herd of cattle. At 1400 hours he took the cattle to the river so that they could drink water and surprisingly a car belonging to TANAPA stopped and two rangers who were from the car arrested them (appellant and the other persons) and took them to Mugumu Police station. After hearing both sides the court convicted and sentenced the appellant and the other accused persons as stated herein above.

The trial court's decision aggrieved the appellant and knocked the door of this court in search of his rights through his petition of appeal encompassed with four (4) grounds of appeal as follows;

- 1. That, the trial Magistrate erred in law and fact to convict and sentence the appellant by relying on shack and weak evidence of*

prosecution side which was obviously incredible in nature which lead him to make injustice judgment towards the appellant.

- 2. That, the extraction of exhibits PE3 and PE4 was not witnessed by appellant and endorsed by the police officer and local jurisdiction to justify authorization to wards disposal of decaying exhibit PE3 as per the terms of the Economic and Organized Crime Control Act.*
- 3. That, the trial Magistrate erred in law and fact for convicting and sentencing the appellant by relying on exhibit PE3 and PE4 which tendered by an expert from government chemists it is impossible to identify the meat of an animal by using color only it need further experts*
- 4. That, the trial Magistrate erred in law and fact by directly believing on poor and irrelevant evidence narrated by prosecution side, the said circumstances evidence by examining carefully such prosecution evidence has a lot of doubt which was unsafe to rely upon and pass conviction and sentence against appellant.*

When the appeal was scheduled for hearing, the appellant was connected from Musoma Prison in person and unrepresented while the respondent, Republic was represented by Ms. Joyce Matimbwi, learned State Attorney.

When given time to submit for his appeal the appellant had a very short submission which actually was a prayer, he prayed to be released, that was all.

Ms. Matimbwi shared the position that the Republic is against the appeal. She then joins the 1st and 4th grounds of appeal and 2nd and 3rd grounds were joined too. On the joined 1 & 4 grounds she submitted that, in order to prove the offence prosecution had four witnesses and six exhibits which are certificate of seizure, weapon, motorcycles, evaluation form and inventory form. Further she said prosecution witnesses proved that they found the appellant at Warajoro area within the Serengeti National Park together with other persons (not party to this appeal) were holding spears, knife and had motorcycle without having permission to hold weapons within the National Park. PW1 tendered Exh PE1 which was certificate of seizure and PE2 which was weapons. She submitted that the exhibits were not objected that means he admitted to be found in possession of the exhibits.

It was her further submission that PW2 informed the trial court that appellant was found with machete two (2), one knife, one motorcycle and 2 hind limbs of Wildebeest and he managed to identify other exhibits tendered by PW1.

Ms. Matimbwi submitted that PW3 identified and value the meat which was found in possession of the appellant and exhibit PE5 was tendered which

was valuation report and was not objected. She said, basing on evidence during trial it was her believe the evidence was enough to prove the offence as charged (possession of weapons and Government trophy).

On the 2nd and 3rd joined ground about disposition of the Government trophy she submitted that S. 101 of WMA provide guideline on what to be done when Government trophy is found on possession together with PGO 28 that the appellant needs to be present when disposition order is issued. She said the same was evidenced by the testimony of PW4 and his exhibit which is inventory form. The form was prepared when PW4 and the appellant went to Magistrate for disposition order. It was her stand that all elements in the case of **Mohamed Juma @ Mpakama vs. Republic**, Criminal Appeal No. 385 of 2017 CAT at Mtwara were adhered. Basing on the cited case, she said the appellant or any person to be in possession of the Government trophy is an offence and therefore the trial Magistrate was right to convict the appellant and she prayed this appeal to be dismissed.

After hearing the parties' submissions and going through the court's record, this court will now determine if this appeal has merits. In doing so I will analyse all grounds as listed in the petition of appeal by joining the similar

issues. See **Firmon Mlowe vs. Republic**, Criminal Appeal No. 504 of 2020 CAT at Iringa.

Reading all grounds of appeal careful, the yell of the appellant generally is failure of prosecution to prove the case beyond reasonable doubt. From facts of the case, appellant and his fellows who are not subject of this appeal were said to be found within the Serengeti National Park, possessing weapons and Government trophy. Appellant was charged with, among other counts, unlawful entry within the National Park. I find in this first count the offence was not proved beyond reasonable doubt as the cited provision does not create an offence and therefore it is impossible to be proved. See **Dogo Marwa @ Sigana and Mwita vs. Republic** Criminal Appeal No. 512 of 2019 CAT at Musoma.

Further to that, on the second count, appellant was together with other two people in the said National Park. Prosecution allege they found appellant and other two people with two machete, two spears and one knife. Both PW1 and PW2 failed to explain during trial whom among the arrested person was holding a knife, who was holding machete. As there was three person and there was two machete and one knife, who was holding what? I find the second count was not proved beyond doubts.

Appellant was supposed to be charged with the offence of possessing weapon which was found in his possession and not otherwise. The doubt should benefit the appellant. This court also holds that the second count was not proved and this is due to the fact that it was stated what weapon was in possession of the appellant and his point of arrest was not statutorily established to be within the boundaries of Serengeti National Park.

Moreover, with regard to the Government trophy, PW3 is certifying officer who certified that the said fresh meat (as per Exh P6) arrested with the appellant and his fellow is Government trophy of Wildebeest animal. Why is the alleged Government trophy belonging to Wildebeest, PW3 stated that because the said meat had features of 'slightly grey to dark brown'. I am of the considered view, this description though issued by an expert witness is wanting of clearer scientific explanations that what is alleged to be Government trophy by those features is really one. The central question is, are those features 'slightly grey to dark brown' not belonging to no one else save wild animal by name of Wildebeest? Can it not be of a monkey, dog or any other known wild animal or domestic animal? I find the scientific explanations by PW3 are short of description for this court to get

satisfied without any scintilla of doubt that it was only Wildebeest's meat. How is that description of the called features of wildebeest differentiated from others. By colour only? On that doubt, I give benefit to the accused persons who now is appellant.

Nevertheless, pursuant to section 86(4) of the Wildlife Conservation Act (the WCA), the value of trophy has to be stated or carried out by the Director of Wildlife or wildlife officer from the rank of wildlife officer. The said section reads:

"In any proceedings for an offence under this section, certificate signed by the Director or wildlife officer from the rank of wildlife officer stating the value of 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 thereon."

As stated herein, identification and valuation of Government Trophy in the case at hand was conducted by PW3, Wilbrod Vicent. He introduced himself as a park warden and not wildlife officer. Section 3 of the WCA define the term "wildlife officer" which reads as follows:

"Wildlife officer" means a wildlife officer, wildlife warden and wildlife ranger engaged for purposes of enforcing this Act."

Park warden does not include in the meaning of wildlife officer. Therefore, I am of the considered views that, evidence on the valuation of trophy conducted by PW3 cannot be admitted because he had no such authority under section 86(4) of the WCA. On this consideration, 3rd count collapses for want of establishment.

In the upshot, from the foregoing analysis, it is the finding of this court that the appeal has merit and is allowed, conviction quashed, sentence set aside. The appellant is hereby ordered to be released forthwith unless lawfully held by other causes.

DATED at MUSOMA this 05th Day of September, 2023.

Right of Appeal explained.




M. L. KOMBA

Judge

Judgement delivered in chamber while Ms. Joyce Matimbwi State Attorney connected from NPS officed in Musoma and the appellant was connected from Musoma Prison.


M. L. KOMBA

Judge

05 September, 2023