

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SONGEA SUB - REGISTRY)

AT SONGEA

CRIMINAL APPEAL NO. 52 OF 2023

(Originating from Tunduru District Court in Economic Case No. 16/2022)

HEMED ALLY ALLY APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

Date of Last Order: 29/11/2023

Date of Judgment: 06/12/2023

U. E. Madeha, J.

It is worth considering that, before the District Court of Tunduru in Ruvuma region, the above-named Appellant, was charged with the offence of unlawful possession of Government Trophy contrary to section 86 (1) and 2 (b) of the *Wildlife Conservation Act* (Cap. 283, R. E. 2022), read together with paragraph 14 of the First Schedule thereto and section 57 (1) of the *Economic and Organized Crime Control Act* (Cap. 200, R. E. 2022).

It was alleged by the prosecution side that, on 24th August, 2022, at Wenje Village within Tunduru District and Ruvuma Region, the Appellant was found to be in possession of four pieces of elephant tusks. weighed at 39.45 kilograms. When the Appellant was arraigned before the trial Court to face his charge, he denied to have found to be in possession of Government Trophy.

After trial, the Appellant was convicted for the offence he was charged and sentenced to serve twenty years imprisonment. The four pieces of elephant tusks were forfeited to the Government of the United Republic of Tanzania. The Appellant was aggrieved with both conviction and sentence imposed by the trial Court and he preferred this appeal. in his petition of appeal, he has three grounds of complaints, namely:

- i. That the trial Court erred in fact and in law in convicting the Appellant while the prosecution side failed to prove the case beyond reasonable doubt.*
- ii. That the trial Court heard and delivered its judgment contrary to the law.*
- iii. That, the sentence imposed by the trial Court contravened the law.*

When this appeal was called for hearing before this Court, the Appellant enjoyed the legal services of Mr. Bernad Mapunda, the learned counsel, whereas Mr. Gaston Mapunda, the learned State Attorney, represented the Respondent.

Arguing in support of this appeal, the Appellant's Counsel submitted that, having passed through the judgement of the trial Court it appears that the Appellant was charged with the offence of unlawful possession of Government Trophy contrary to section 86 (1) (2) (b) of the *Wildlife Conservation Act* (Cap. 283, R. E. 2022), but he was convicted with another offence under section 86 (1) (2) (c) (1) of the *Wildlife Conservation Act* (supra). He contended that the offence of which the Appellant was charged with, is different to the offence he was convicted and sentenced with.

He argued further that the Appellant was not convicted in accordance with the offence he was charged and proved and he prayed for this Court to remit the case records to the trial Court in order for the Appellant to be convicted and sentenced in accordance to the law.

Mr. Gaston Mapunda, the learned State's Attorney representing the Respondent, submitted that the Appellant was charged with the offence of unlawful possession of Government Trophy contrary to section 86 (1) and 2 (b) of the *Wildlife Conservation Act* (Cap. 283, R. E. 2022), read together with paragraph 14 of the First Schedule thereto and section 57 (1) of the *Economic and Organized Crime Control Act* (Cap. 200, R. E. 2022), the offence which he denied to have committed. After full trial, the Appellant was convicted and sentenced for the offence of unlawful possession of Government Trophy under section 86 (1) (2) (c) of the *Wildlife Conservation Act* (supra), read together with Paragraph 14 of the First Schedule thereto and sections 57 (1) and 60 (2) of the *Economic and Organized Crime Control Act* (supra).

He argued that, the offence of which the Appellant was charged with is different to the offence he was convicted and sentence. He added that the trial Court contravened the law in convicting and sentencing the Appellant with the provisions of the law which are different to those he was charged with. He went on submitting that, the conviction and sentence given by the trial Court were not in accordance with the law, since the

evidence presented by the prosecution side didn't prove the offence he was convicted with but it proves the offence the Appellant was charged and it offended section 312 of the *Criminal Procedure Act* (Cap. 20, R. E. 2022). He was of the view that, under such circumstance there is no conviction at all. He concluded that, the Court of Appeal of Tanzania in various decisions has given directives on how to resolve such omissions. He relied on the decision made in the case of **Jafari Ally v. Republic**, Criminal Appeal No. 170 of 2016 (unreported) and prayed for this case records to be remitted back to the trial Court for the compliance with the law by rectifying the conviction order in order for justice to be done.

As far as I am concerned, I have gone through the original Court records and find that, the Appellant was charged with the offence of unlawful possession of Government Trophy contrary to section 86 (1) and 2 (b) of the *Wildlife Conservation Act* (Cap. 283, R. E. 2022), read together with paragraph 14 of the First Schedule thereto and section 57 (1) of the *Economic and Organized Crime Control Act* (Cap. 200, R. E. 2022). The charge which was levelled against the Appellant reads:

"STATEMENT OF OFFENCE:

Unlawful possession of Government Trophy Contrary to section 86 (1) and 2 (b) of the Wildlife Conservation Act Cap.283 of 2022. Read together with paragraph 14 of the first schedule and section 57 (1) of the Economic and Organized Crime Control Act (Cap. 200, R. E. 2022).

PARTICULARS OF OFFENCE:

Hemed S/O Ally Ally on 24th day of August 2022 at Wanje village within Tunduru District in Ruvuma Region. Unlawfully did found in possession of Government Trophy to wit four pieces of Elephant Tusks weight 39.45 Kilogrames valued at Tanzanian shillings 34,744,200 (Thirty-four million, seven hundred forty-four thousand and two hundred shillings) the property of the Government of United Republic of Tanzania without a valid permit.”

After full trial, the trial Court found the prosecution has managed to prove the charge and convicted the Appellant under section 86 (1) (2) (c) (i) of the *Wildlife Conservation Act* (supra) read together with Paragraph 14 of the first schedule to the Act and sections 57 (1) and 60(2) of the *Economic and Organized Crimes Control Act* (supra).

As it is argued by the Appellant's learned Counsel and the Respondent's State Attorney, the conviction made by the trial Court was

not proper. The Appellant was supposed to be convicted under the sections and laws he was charged with.

I am satisfied that the conviction meted to the Appellant is different from the section written in the charge sheet. The learned counsel in this appeal prayed for this Court to make revision on the inconsistency on the conviction and sentence imposed by the prosecution.

On my party, I find there are clerical errors in the judgment of the trial Court. Usually, clerical errors are rectified by the trial Court. In **Jafari Ally v. Republic** (supra), the Court had this to state:

"I pray to quote that, on many occasions, we have held failure to convict to be a fatal omission, as a result of which we have been remitting such matters to the trial Court to enter conviction."

Therefore, I invoke the revision power under section 373 (1) (a) of the *Criminal Procedures Act* (supra) and order for the original case records to be remitted to the trial Court to rectify the clerical errors found in the conviction order. Order accordingly.

DATE and DELIVERED at SONGEA this 6th day of December, 2023.



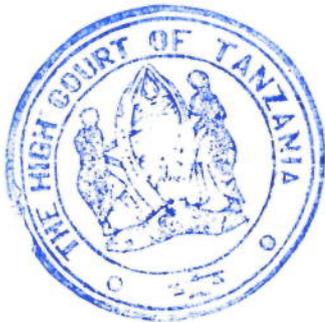
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U. E. MADEHA

JUDGE

06/12/2023

COURT: Judgment is delivered in the presence of the Appellant and his Counsel and Mr. Gaston Mapunda, the learned State Attorney for the Respondent. Right of appeal explained.



A handwritten signature in blue ink, appearing to read "U. E. MADEHA", with a long horizontal line extending to the right.

U. E. MADEHA

JUDGE

06/12/2023