IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF SHINYANGA

AT SHINYANGA

CRIMINAL APPEAL NO. 30 OF 2023

(Arising from the District Court of Bariadi in Criminal Case No. 7 of 2023)

DAVID MARWA @ MWITA.... .....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

Date of last Order: 10.11.2023

Date of Judgment: 17.11.2023

MWAKAHESYA, J.:

In the District Court of Bariadi at Bariadi the appellant, David Marwa @ Mwita, was tried and convicted of the offences of: unlawful introduction of domestic animals into a national park contrary to section 25(1)(d) and 29(2) of the National Parks Act, read together with regulation 7(i) and 20 of the National Parks Regulations and section 351(1)(a) and (b) of the Criminal Procedure Act; and unlawful disturbing the habitat of the component of biological diversity contrary to sections 188(c), 66, 67, 68

and 193(1)(a), (b), (2), (4), and (5) of the Environmental Management Act, 2004.

The prosecution's case was that, on the 2nd of February, 2023 at Mto Rubama area within Serengeti National Park, Bariadi District, Simiyu Region, the appellant, without the permission of the Director of Wildlife, was grazing his 44 head of cattle. Upon being approached by conservation rangers of the said park the appellant took to his heels and evaded arrest, however his cattle were seized and taken to Handajenga camp within the Park. The following day the appellant, armed with an introductory letter from his village chairman, submitted himself to the park authorities claiming to be the owner of the seized cattle. The said letter also referred the appellant as the owner of the cattle. The appellant was subsequently arrested and taken to Bariadi Police Station.

During trial the prosecution fielded two witnesses (PW1 and PW2) who were the conservation rangers that spooked the appellant on the 2nd of February, 2023. They also tendered a total of three (3) exhibits including the introductory letter (exhibit P3).

Meanwhile, it was the appellant's defence that on the material day his herder was the one in charge of the cattle and the same has since

disappeared after the incident. Two other witnesses testified for the defence, these include the appellant's wife, DW3, and his neighbour, DW2.

As highlighted previously, the trial court convicted the appellant. It also meted an omnibus sentence of 12 months conditional discharge for both counts and the 44 head of cattle were forfeited to the government.

Aggrieved by the conviction and forfeiture order the appellant has preferred the present appeal on the following grounds:

1. The learned trial magistrate erred in law and fact in his finding that the prosecution proved the case against the appellant beyond reasonable doubt;
2. The learned trial magistrate erred in law and fact when he failed to evaluate the evidence on record;
3. The learned trial magistrate erred in law and fact by accepting the electronic evidence (GPS Map – exhibit P2) without considering the degree of accuracy of such information and appropriate procedures for tendering electronic evidence;
4. The learned trial magistrate erred in law when failed (sic) to show or indicate on what provisions of law the cattle were forfeited; and

5. The learned trial magistrate erred in law when failed (sic) to afford the accused/the owner of the said 44 cattle sought to be forfeited an opportunity to show cause why an order of forfeiture ought not to be made.

At the hearing of the appeal Mr. Geni Vitus Dudu, learned advocate, represented the appellant; while the respondent Republic was represented by Mr. Katandukila Kadata and Ms. Happy Chacha, learned State Attorneys.

Having informed the court that he will argue the grounds of appeal in seriatim, Mr. Dudu submitted on the first ground that, at the trial court the charges against the appellant were not proved beyond reasonable doubt since the prosecution failed to prove the ingredients of the offences. On the first count there must be proof of unlawful entering, grazing and a lack of permit. The trial magistrate failed to evaluate the ingredients of the offence.

On the second count whose ingredients are the unlawful disturbing of the habitat of the component of biological diversity, he submitted that, it was not proved as to how the domestic animals were able to disturb the habitat, if not that the wild animals themselves disturbed it.

Submitting on the second ground of appeal that, the learned trial magistrate erred in facts and law by failing to evaluate evidence on record,

Mr. Dudu submitted that, the trial magistrate did not make any evaluation when composing the judgment. He submitted further that, the effect of failure to evaluate evidence was discussed in the case of **Josephat Athanazi vs Makene Musimu**, Pc. Civil Appeal No. 4 of 2023, High Court (Mwanza sub-registry) (unreported) whereby Kamana, J at page 8 cited the case of **Leonard Mwashoka V.R.,** Criminal Appeal No. 266 of 2014 CAT (unreported) which stated that:

> *"Failure to evaluate or an improper evaluation of the evidence innevitably leads to wrong and/or biased conclusions or inferences resulting in miscarriages of justice..."*

The learned advocate submitted that, since this is a first appellate court then it can re-evaluate the evidence. He elaborated that, at the trial the prosecution brought two witnesses, PW1 and PW2, who showed that 44 heads of cattle had entered a national park and the appellant had ran to evade arrest. However, the appellant brought two witnesses who testified to the effect that, he did not exercise control over the cattle and it was a herdsman who had taken the cows for grazing. The learned advocate submitted further that, the appellant's testimony was corroborated by his

wife DW3 and DW2, the latter testifying that he saw the park rangers drive the herd of cows from an unrestricted to a restricted area.

The learned advocate submitted that, all witnesses gave testimony on oath and it is trite law that every witness is entitled to credence unless there is a reason otherwise as held by the Court of Appeal in **Athumani Rashidi vs The Republic**, Criminal Appeal No. 264 of 2016. At page 11, the Court demonstrated the reasons for not believing a witness to include a witness giving improbable or implausible evidence, or the evidence to have been materially contradicted by another witness or witnesses.

Based on the position of the Court, the learned advocate implored the court, when re-evaluating the evidence, to make up its mind on whose parties' witnesses credence should be accorded.

He concluded his submission on the second ground by stating that, what the trial magistrate did at page 7 of the judgment was to take mere fragments of the evidence in order to justify arriving at the conclusion that was arrived at. Also, if the defence evidence was to be scrutinized in depth it will be seen that the appellant was not herding the cows on the fateful day as even the prosecution witness testified that they had seen a herder at a distance of 10 paces but he ran before being arrested.

Mr. Dudu then went on to attack the admission of the GPS map (exhibit P2). He Submitted that, the trial court erred in law and fact by accepting exhibit P2 without considering the degree of accuracy of such information and appropriate procedures for tendering electronic evidence. He cited the decision of **Christina Thomas vs Joyce Justo Shimba**, PC Civil Appeal No. 84 of 2020, High Court Mwanza Registry (unreported) which held the relevant provisions of the law regarding admissibility of electronic to be section 64A of Evidence Act, 18(2)(a)(b) and (c) of the Electronic Transactions Act and section 18(3) of the Electronic Transactions Act.

He elaborated that, PW1 and PW2, testified that they took coordinates and went to the G15 room for printing and gave the same to one Jackob. However, the said Jackob was not called to testify regarding authenticity of the device and how the GPS coordinates were generated.

Submitting on the fourth ground of appeal regarding forfeiture of the cattle, Mr. Dudu was of the view that the trial magistrate did not express the provision of the law through which the cattle were forfeited.

He submitted further that, in order to use section 29(2) of the National Parks Act and section 351(1)(a)(b) of the Criminal Procedure Act, the accused must be convicted. After conviction the accused must show

cause as to why a forfeiture order should not be given since forfeiture is not automatic. He was of the view that, forfeiture is not automatic since the wording in section 29(2) of the National Parks Act is "may", and although section 351(1)(b) of the Criminal Procedure Act uses the word "shall" the same does not indicate that it is mandatory.

Mr. Dudu cited the case of the case of DPP versus Paul Reuben Makujaa [1992] TLR 2, where Msumi, J. held that the word "shall be liable" when statutorily used in the prescription of penalties does not have a compulsory effect. Mr. Dudu submitted that, forfeiture being a penalty in itself, before its use, the appellant was supposed to show cause as to why the order should not be meted out.

Mr. Dudu also submitted that, the forfeiture order envisaged under section 193(1)(a)(b), (2), (4) and (5) of the Environmental Management Act, concerns substance, equipment or appliance and not livestock.

With leave of the court, Mr. Dudu withdrew the fifth ground of appeal citing that it was a repetition of the 4th ground of appeal.

In reply, Mr. Kadata, learned State Attorney, informed the court that the respondent was resisting the appeal and was of the view that the prosecution proved its case to the required standards.

On the first ground of appeal, he submitted that, the prosecution brought two witnesses (PW1 and PW2) who were park rangers and had seen the appellant graze his livestock in the national park and the appellant ran away to evade arrest. He submitted further that, it was also the appellant who went to the TANAPA office with a letter, exhibit P3, showing that he was the lawful owner of the cattle that were impounded. Also, when testifying in his defence the appellant admitted that his cattle were seized in a National Park. To the learned State Attorney that evidence proves both counts, regardless whether the appellant was present or not at the National Park because he had the duty to make sure that the animals did not enter the National Park.

On the second ground of appeal, Mr. Kadata submitted that the trial magistrate evaluated all the evidence submitted during trial as it can be seen at page 7 of the judgment where the trial court held that it is undisputed that the appellant's cattle entered the National Park through exhibit P3.

At page 8 of the judgment the trial magistrate was also able to analyze and evaluate the certificate of seizure exhibit P1 which showed coordinates where the cows were found in the National Park.

On the third ground of appeal, Mr. Kadata submitted that, the GPS map was tendered in court in accordance with the law, and even if the GPS map was to be expunged from the records, it will still be proved that the cattle were within the National Park.

Replying to the fourth and fifth grounds of appeal conjointly, Mr. Kadata submitted that, the trial magistrate did not err by not citing the relevant provision when making the forfeiture order as the first count on the charge included section 29(2) of the National Parks Act which gives the court power to forfeit animals found in a National Park. Also, section 193 of the Environmental management Act also empowers the court to make a forfeiture order as well as section 351 of the Criminal Procedure Act.

Moreover, the appellant's charge was read to him in a language understood by him and this shows that the provisions regarding forfeiture were brought to his attention.

Mr. Kadata wound up by submitting that, the appellant was also present during judgment and as the records of proceedings show at page 10, he mitigated that the cows should not be forfeited. Therefore, he was given the opportunity to show cause as to why the cattle should not be forfeited.

In rejoinder, Mr. Dudu did not have anything to add apart from reiterating his submission in chief.

Having gone through the records and rival submissions of the appellant and respondent I shall now proceed to determine the appeal.

While submitting on the first ground of appeal, Mr. Dudu was adamant that the first count of unlawful introduction of animals into a national park was not proved since there was no proof of unlawful entry, grazing and a lack of permit. He termed the three as the ingredients of the offence.

In dealing with his contention, I find it prudent to reproduce the specific provisions establishing the ingredients of the first count.

Section 25(1)(d) of the National Parks Act provides:

"25. -(1) The Trustees may, subject to the approval of the Minister, make regulations for the better carrying into effect of the provisions of this Act, and such regulations may–

(a) N/A

(b) N/A

(c) N/A

(d) prohibit, control, or regulate the bringing into a national park of any wild or domestic animals;"

Section 29(2) of the same Act provides:

"29. -(2) Where any person is convicted of an offence against this Act or any regulations made thereunder, the court may order that any animal, weapon, explosive, trap, poison, vehicle or other instrument or article made use of by such person in the course of committing the offence shall be forfeited to the Government."

Meanwhile regulation 7(i) of the National Parks Regulations provides:

7 - Except with the special permission, in writing, of the Director or the Warden, or of any other authorised servant or agent of the Trustees, no person shall –

(i) Introduce any animal or vegetation into the Park;

For avoidance of doubt the word "Park" has been defined in regulation 3 to mean a park declared under section 3 or 5 of the National Parks Act to be a National Park. Meanwhile, section 5 of the National Parks Act states that:

"5. -(1) The area specified in the First Schedule to this Act is declared a national park to be called the Serengeti National Park..."

Therefore, the Park that is referred in regulation 7(i) is Serengeti National Park.

Coming back to Mr. Dudu's submission. First, it is clear that the learned advocate was inaccurate when he submitted that grazing was one of the ingredients of the offence. As it can be seen, one has to simply introduce an animal (s) or vegetation into a national park (minus a written

permission of the Director or Warden, of course) in order to commit the offence.

Second, in my view, unlawful entry and lack of permit are one and the same. The entry becoming unlawful in the absence of a valid permit. So as rightly submitted by the learned State Attorney for the respondent, there was proof of unlawful entry provided through the evidence of PW1 and PW2, coupled with exhibit P3 which stated that the appellant was the owner of the 44 head of cattle. Also, I might add that, during cross examination of the appellant (page 18 of the proceedings) the appellant testified that he did not dispute that his cows were seized in the national park.

PW1 and PW2 testified that on 2.02.2023 they seized the appellant's cattle within Serengeti National Park. PW1 specifically testified that, "*people are not allowed to enter into the park and water their cows*" (page 11 of the proceedings). Once PW1 and PW2 established that, in order to refute the appellant had to prove that he had a permit, or even mention that he was issued with one.

Since, it is without a doubt that it was the appellant's cattle that entered the national park, it cannot be a defence that the appellant was

not the one who brought the said domestic animals into the national park. The appellant exercised authority over them and therefore whether it was him or someone else under his authority that led the animals into the national park the appellant will be liable.

Regarding the second count of unlawful disturbing the habitat of the component of biological diversity the learned advocate for the appellant submitted that it was not proved as to how the domestic animals were able to disturb the habitat, if not that the wild animals themselves disturbed it.

To begin with, I do not think that the charge was proper with regard to this offence. The relevant provisions cited were 188(c), 66, 67, 68 and 193(1)(a), (b), (2), (4), and (5) of the Environmental Management Act, 2004. I am reproducing them for clarity's sake:

> *"66. (1) The Minister shall strive to attain the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources.*
>
> *(2) The powers of the Minister under this section shall in general include regulating appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources, indigenous knowledge, technologies and appropriate funding.*
>
> *(3) The Minister may, take into account of any particular conditions and capabilities and after consultation with relevant sector Ministry, make regulation prescribing:-*

(a) the development of national strategies, programmes or plans for the conservation and sustainable use of biological diversity;

(b) adaptation of such existing strategies, plans or programmes for the purposes of conservation of biological diversity;

(c) integration, as far as possible and as appropriate, of the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies;

(d) identification of the components of biological diversity important for conservation and sustainable use, having regard to any international standards applicable to Tanzania;

(e) monitoring through sampling and other techniques, the components of biological diversity, paying particular attention to those requiring urgent conservation measures and those which offer the greatest potential for sustainable use;

(f) identifying the processes and categories of activities which have or are likely to have significant adverse impacts on the conservations equitable sharing and sustainable use of biological diversity, and monitoring their effects through sampling and other techniques; and

(g) maintenance and organization:-

(i) by any mechanism; or

(ii) data derived from identification and monitoring activities pursuant to this section.

67. (1) The Minister may, in consultation with relevant sector Ministry, make regulations providing for in-situ conservation of biological diversity.

(2) Regulations made under this section may prescribe:

(a) procedures for the establishment of a systems of protected areas or areas where special measures need to be taken to conserve biological diversity;

(b) guidelines for the selection, establishment and management of protected areas or areas where special measures need to be taken to conserve biological diversity; (c) how to regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use; Conservation of biological diversity Conservation of biological diversity in-situ;

(d) the promotion of protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings;

(e) the promotion of environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas;

(f) rehabilitation and restoration of degraded ecosystems and promotion of the recovery of threatened species, inter alia, through the development and implementation of plans or other management strategies;

(g) establishment or management of the risks associated with the use and release of living modified organisms resulting from biotechnology which are genetically modified and which are likely to have adverse environmental impacts that could affect the conservation and sustainable use of biological diversity, taking also into account the risks to human health as well as social, economic cultural and ethical concern;

(h) prevention of the introduction of, control or eradication of those alien species which threaten ecosystems, habitats or species;

(i) furnishing conditions that may be needed for compatibility between present uses and the conservation of biological diversity and the sustainable use of its components;

(j) guidelines on methods to respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities;

(k) adopt economically and socially sound measures that act as incentives for the conservation and sustainable use of components of biological diversity;

(l) promotion and encouragement of the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices; and

(m)procedures for the establishment of a system or system of protected areas or areas where special measures need to be taken to conserve biological diversity.

68. The Minister may, in consultation with relevant Ministries, make rules with respect to ex-situ conservation prescribing the following measure;

(a) adopt measures for the ex-situ conservation of components of biological diversity originating in Tanzania;

(b) establish and maintain facilities for ex-situ conservation and research on plants, animals and micro-organisms, preferably in the country of origin of genetic resources;

(c) adopt measures for the recovery and rehabilitation of threatened species and for their reintroduction into their natural habitats under appropriate conditions;

(d) regulate and manage collection of biological resources from natural habitats for ex-situ conservation purposes so as not to threaten ecosystems and in-situ populations of species;

(e) adopt economically and socially sound measures that act as incentives for the conservation and sustainable use of components of biological diversity; and

(f) cooperate in providing financial and other support for ex-situ conservation.

188. A person who-

(a) N/A

(b) N/A

(c) disturbs the habitat, of a component of biological diversity in contravention of guidelines and measures prescribed under sections 66, 67 and 68 or other provisions of this Act, commits, an offence and shall be liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years or to both.

193.(1) The court, before which a person is charged with an offence against this Act or any regulations made under this Act, may direct that, in addition to any other order-

(a) upon the conviction of the accused; or

(b) if it is satisfied that an offence was committed notwithstanding that no person has been convicted of the offence, order that the substances, equipment and appliances used in the commission of the offence be forfeited to the Government and, be or disposed of in the manner as the court may determine.

(2) In making an order under subsection (1), the court may also order that the cost of disposing of the substances, equipment and appliances referred to in subsection (1), be borne by the accused.

(3) N/A

(4) In addition to any fine imposed upon by the court, the court may order the accused person to do community work, which promotes the protection of the environment.

(5) Without prejudice to the generality of this section, the court may also issue an environmental restoration order against the accused in accordance with this Act, regulations, guidelines or standards made under this Act."

Section 188(c) which is supposed to create the offence specifies that an offence will be committed if a person contravenes the guidelines and measures prescribed under sections 66, 67 and 68. Meanwhile, sections

66, 67 and 68 gives powers to the minister responsible for matters relating to the environment to make regulations for in-situ and ex-situ conservation. It goes therefore, that there must be specific guidelines made under sections 67 and/or 68 and in case of their breach then a person would commit an offence under section 188(c). In this case no guidelines that were breached were cited. Thus, it is unlikely that an offence was committed under section 188(c) of the National Environmental Management Act, 2004.

A close look at the judgment of the trial court shows that, the learned trial magistrate did not properly appreciate the charge nor analyze the evidence as against the offence. The learned magistrate was caught tunnel visioned on the first count of unlawful introduction of domestic animals into a national park and laboured so much on it that attention was not paid to the second count.

I therefore, find that, the second count of unlawful disturbing the habitat of the component of biological diversity was not proved. In fact, I am of the view that the offence, as charged, was nonexistent. Having said that, the first ground of appeal is partly allowed.

In the second ground of appeal the appellant contends that the learned trial magistrate did not make a proper evaluation of the evidence on record. With all due respect to the learned advocate, I find that the trial magistrate did his utmost to evaluate and analyze the evidence that was produced. The learned magistrate even went on to establish as to why the appellant's assertion that it was not his fault that the cattle strayed into the national park was found to be incredible.

Regarding credence of witnesses, I believe the learned advocate for the appellant is rather shooting himself on the foot. While the appellant went unsolicited to the Handajenga camp within the national park, armed with a letter (exhibit P3) admitting that he was the owner of the cattle that were seized inside the national park, one Dickson Robi Msuba, DW2 (a neighbour of his), testified on oath that the cattle were not seized within the national park as per exhibit P3. I should also add that, when exhibit P3 was being tendered at the trial court the appellant's advocate did not object.

The contents of exhibit P3 ran as follows:

"HALMASHAURI YA MJI WA BUNDA

KATA YA BALILI,

MTAA WA RUBANA, SLP 219,

BUNDA,

02/02/2023

KWA YEYOTE ANAYEHUSIKA.

YAH:- DAVID MARWA MWITA

Mtajwa hapo juu ni mkazi wa kata ya Balili Mtaa wa Rubana. Ninathibitisha kuwa hao ng'ombe waliokamatwa ndani ya Hifadhi ni ng'ombe wa ndugu David Marwa Mwita wamevuka na kuingia ndani ya Hifadhi ni uzembe wa mtoto ambaye alikuwa anachunga. Idadi ya ng'ombe hao ni 44 arobaini nan ne ni mali halali ya ndugu David Marwa Mwita.

Naomba asaidiwe katika ofisi yako,

Asante,

Wako M/kiti wa Mtaa

Signed..."

This can be translated as:

"To whom it may concern. Re: David Marwa Mwita. The above named is a resident of Rubana Street. I can confirm that the cattle seized within the Park belong to David Marwa Mwita. The said cattle entered the Park due to negligence of a child who was tending them. The cattle numbered 44 are the rightful property of David Marwa Mwita. I request that your office kindly assist him..."

While I agree with the learned advocate for the appellant's assertion that every witness is entitled to credence unless there are sound reasons

suggesting the contrary, see **Christian Ugbechi *vs* The Republic**, Criminal Appeal No. 274 Of 2019 (unreported) and **Goodluck Kyando v. Republic** [2006] T.L.R 369, I also find that DW2 was incredible as his evidence was materially contradicted by exhibit P3 and the appellant's testimony as well.

In light of this, I find that the second ground of appeal lacks merit and thus fails.

The third ground of appeal suggests impropriety in the mode the GPS map (exhibit P2) was admitted in evidence. It should not detain us much.

Admissibility of electronic evidence is governed by section 64A and of the Evidence Act and section 18(2) of the Electronic Transactions Act, 2015. Section 64A of the Evidence Act provides:

> *"64A.-(1) In any proceedings, electronic evidence shall be admissible.*
>
> *(2) The admissibility and weight of electronic evidence shall be determined in the manner prescribed under section 18 of the Electronic Transaction Act.*
>
> *(3) For the purpose of this section, "electronic evidence" means any data or information stored in electronic form or electronic media or retrieved from a computer system, which can be presented as evidence."*

Section 18(2) of the Electronic Transactions Act, 2015 provides:

"(2) In determining admissibility and evidential weight of a data message, the following shall be considered-

(a) the reliability of the manner in which the data message was generated, stored or communicated;

(b) the reliability of the manner in which the integrity of the data message was maintained;

(c) the manner in which its originator was identified; and

(d) any other factor that may be relevant in assessing the weight of evidence."

Therefore, before any electronic evidence is admitted it must pass through the test provided in section 18(2) of the Electronic Transactions Act, 2015. In the appellant's case the trial magistrate did not bother to consider the pre-requisites highlighted in section 18(2) of the Electronic Transactions Act, 2015 despite objections from the defence. I therefore, find that exhibit P2 was admitted contrary to section 18(2) of the Electronic Transactions Act, 2015 and hereby proceed to expunge it. That being said, I find merit in the third ground of appeal and allow it.

In the fourth ground of the appeal the advocate for the appellant was of the view that, the trial magistrate did not indicate the provision of the law with which the cattle were forfeited as well as not affording the appellant the chance to show cause as to why the cattle should not be forfeited. Meanwhile, the learned State Attorney for the respondent

Republic submitted that, section 29(2) of the National Parks Act which gives the court power to forfeit the animals found in the National Park was included in the first count. Also, section 193 of the Environmental management Act which empowers the court to make a forfeiture order as well as section 351 of the Criminal Procedure Act empowering the court to do the same were included in the second count.

As correctly submitted by the learned State Attorney, the mentioned provisions concern forfeiture and thus the appellant, who had legal representation throughout his trial, was well informed that forfeiture was to be involved if he was to be convicted with the offences he was charged with. Likewise, after conviction the appellant was given a chance to submit as to why a forfeiture order should not be granted and he gave his response to the same arguing that he preferred a fine in lieu of a forfeiture order. Therefore, the appellant was neither caught by surprise with the forfeiture order nor was he condemned unheard. This takes care of the fourth and fifth grounds of appeal which I find lack merit and proceed to dismiss them.

In the upshot, I partly allow the appeal with regards to the second count of unlawful disturbing the habitat of the component of biological

diversity contrary to section 188(c), 66, 67, 68 and 193(1)(a), (b), (2), (4), and (5) of the Environmental Management Act, 2004. I quash the conviction of the same.

However, I sustain the conviction regarding the first count of unlawful introduction of domestic animals into a national park contrary to section 25(1)(d) and 29(2) of the National Parks Act, read together with regulation 7(i) and 20 of the National Parks Regulations and section 351(1)(a) and (b) of the Criminal Procedure Act

This brings me to the conundrum involving sentence. As indicated earlier the trial magistrate passed an omnibus sentence of 12 months conditional discharge, this court cannot uphold such a sentence because it is illegal. I therefore, step into the shoes of the trial court and sentence the appellant to 12 months conditional discharge and the same to run from the date of the trial court's delivery of judgment. I also uphold the forfeiture order. The 44 head of cattle to remain forfeited to the Government.

This appeal stands dismissed.

It is so ordered.

DATED at **SHINYANGA** this 17th day of November, 2023.

N.L. MWAKAHESYA

JUDGE

17/11/2023