IN THE HIGH COURT OF TANZANIA

(DODOMA SUB REGISTRY)

AT DODOMA

DC CRIMINAL APPEAL NO. 75 OF 2023

(Arising from the decision of the District Court of Manyoni at Manyoni dated 16/06/2023 in Economic Case No. 58 of 2022 before S. J. Kayinga, SRM)

JOHN MOSI @ JOHN..... APPELLANT

Versus

REPUBLIC ..... RESPONDENT

JUDGMENT

Date of last order: 26th February, 2024.

Date of Judgment: 22th March, 2024.

E.E. KAKOLAKI, J.

This is the first appeal by the appellant who is seeking to overturn the decision of the District Court of Manyoni dated 16/06/2023 whereby the appellant was convicted and sentenced to twenty years imprisonment after being found guilty of the offence of Unlawful Possession of Government Trophy, contrary to section 86(1) and (2) (c)(ii), 3(b), 111(1)(a) and 113(2) of the Wildlife Conservation Act, No. 5 of 2009 as amended by section 59(a) and (b) of the Written Laws (Miscellaneous Amendments) Act No. 2 of 2016, read together with Paragraph 14 of the First Schedule to, and sections 57(1) and 60(2) of the Economic and Organised Crimes Act, [Cap. 200 R.E 2002] (the EOCCA) as amended by section 13(b) and 16(a) of the Written Laws

(Miscellaneous Amendments) Act No. 3 of 2016, out of the two counts which he stood charged together with other three fellows.

Briefly before the trial court the appellant as 1st accused together with three others not subject of this appeal were jointly and together booked with the two counts, Unlawful Possession of Government Trophy as cited above and Unlawful Dealing in Government Trophy, Contrary to section 80(1), 84(1) and 113(2) of the Wildlife Conservation Act, [Cap. 283 RE 2022], read together with Paragraph 14 of the First Schedule to, and sections 57(1) and 60(2) of the EOCCA as amended by section 13(b) and 16(a) of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016, while the 2nd accused facing a separate count on Unlawful Possession of Weapon in Certain Circumstances, Contrary to section 103 of the Wildlife Conservation Act, [Cap. 283 RE 2022], read together with Paragraph 14 of the First Schedule to, and sections 57(1) and 60(2) of the EOCCA as amended by section 13(b) and 16(a) of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016. As they all denied their accusation the prosecution called four (4) witnesses and relied on six (6) exhibits to prove the case against them. After full trial the Court was satisfied that, the prosecution had managed to prove the 1st count against the appellant only and ended up acquitting the rest of

the accused persons while convicting and sentencing the appellant to custodial sentence of the offence convicted with as alluded to above. For the purposes of this judgment I find it apposite to refer the prosecution case as faced the appellant on the first count subject of this appeal.

It was prosecution case on the first count that, the appellant and three others on 16th September, 2019, during night hours at Kashangu Village within the District of Manyoni in Singida Region, were found in unlawful possession of Government Trophy namely six (6) pieces of elephant tasks obtained from one elephant valued at USD 15,000 equivalent to Tshs. 34,500,000/= only, the property of the Government of United Republic of Tanzania. When the charge was read to them they flatly denied the allegation the result of which the prosecution paraded in court four (4) witnesses and relied on six (6) exhibits to prove the charge against them as already mentioned above. The summoned witnesses were the exhibit keeper (PW1) who tendered the six pieces of elephant tasks (exhibit PE3), two chain of custody forms exhibit PE1 and one muzzle loader exhibit PE2, Trophy Valuer (wildlife officer) PW2 who tendered trophy valuation certificate exhibit PE4, the Village Executive Officer of Kashangu village (PW3) who tendered the certificate of seizure of the 6 elephant tasks from the appellant exhibit PE5 and another for muzzle

loader (Gobore) exhibit PE6 and PW4 a wildlife officer who arrested and participated in the search at appellant's house. Despite of their admission as exhibits the two seizure certificates exhibits PE5 and PE6 were expunged by the trial magistrate at the time of composing the judgment hence not considered. After consideration of oral evidence in respect of conducted search and seizure of the 6 pieces of elephant tasks and other evidence as well as the appellant's defence, the trial court was satisfied that, the offence of Unlawful Possession of Government Trophy that faced the appellant was proved beyond reasonable doubt thus, proceeded to convict and sentence him to twenty (20) years imprisonment. It is from that conviction and sentence in which the appellant is now seeking indulgence of this Court to displace relying on five grounds of appeal going thus:

1. That the trial court erred in law and fact by convicting the appellant on the 1st count of the charge (unlawful possession of Government Trophy) which was not proved beyond reasonable doubt.
2. That, the trial court erred in law and fact by convicting the appellant for basing on weak prosecution evidence.

3. That the trial court erred in law and fact by admitting as it did the retracted and repudiated caution statement of the appellant and convicted him basing on it.
4. That, the trial court erred in law and fact when it held that oral evidence could be used in itself to convict the accused uncorroborated.
5. That, the trial court erred in law and fact by convicting the appellant basing on the chain of custody of exhibits.
6. That, the trial court erred in law and fact when it convicted the appellant basing on contradictory evidence.

In view of the above grounds of appeal the appellant invited the Court to allow the appeal by quashing the conviction and set aside the sentence and acquit him.

Hearing of the appeal proceeded orally as the appellant appeared unrepresented while the respondent enjoyed the services of Ms. Rachel Cosmas and Mr. Gothard Mwingira, both learned State Attorney but it is Mwingira who argued the appeal in response to the appellant's submission.

In support of his appeal the appellant invited the court to adopt his grounds of appeal and determine them in his favour hence set him free. In response Mr. Mwingira resisted the appeal by supporting findings of the trial court as well as the sentence meted on him. With leave of this Court he combined the 1st, 2nd and 6th grounds and argue them jointly and together while canvassing the 3rd,4th and 5th grounds separately.

On the 1st,2nd and 6th grounds in which the appellant is challenging the prosecution evidence for failure to prove the case beyond reasonable doubt, it was Mr. Mwingira's argument that, in the first count of Unlawful Possession of Government Trophy, contrary to section 86(1) and 2(c) and 3(b) and Section 113(2) of the Wildlife Conservation Act, [Cap. 283 R.E 2022] read together with paragraph 14 to the first scheduled and sections 57(1) and 60(2) of the EOCCA, the prosecution was bound to prove three ingredients that, **one**, the alleged trophies were found in possession of the appellant and **secondly**, was so found in possession of trophy without valid permit of the Director for wildlife. **Thirdly** that, the said properties found in his possession were really trophies.

According to Mr. Mwingira, the prosecution managed to prove all the ingredients of the offence. To start with the first ingredient he argued, it is clearly explained at page 39 of the proceedings when PW4 stated the circumstances under which the appellant was arrested in possession of the said trophies after the police officers managed to set the trap and arrest him. And that, it is the appellant who led to their retrieval at the rear side of his house when found buried down as stated by PW4 at pages 42-43. In proof that the seized trophies were so done from the appellant he stated, a certificate of seizure (exhibit P6) was tendered and admitted in Court without any objection. Evidence of PW4 and P6 he argued, is corroborated with the evidence of independent witness PW3 who witnessed the search and signed exh. P6. He said, it is in PW3's evidence at page 28 of the proceedings that, when reached at the accused's home it is the said accused who dug and retrieved the said trophies from the rear side of his house. With such cogent evidence he submitted, the prosecution managed to prove beyond reasonable doubt that, indeed the appellant was found possession of government trophies.

As to the second ingredient whether the appellant had permit of the Director of Wildlife, the trial Court in its judgment made it clear at page 8 of the said

judgment that, PW4 when arrested the appellant asked him whether he had any permit and the appellant responded in negative. This evidence he stated is found at page 43 of the proceedings, thus this ingredient was also proved.

Lastly in submission was the issue as whether what were found in possession of the appellant were Government trophies where he contended, the evidence of PW2 (the Wildlife officer) proved this fact when testified at page 21 of the proceedings that, the same were trophies being pieces of elephant tusks. With all that evidence he maintained that, evidence against the appellant is watertight hence this Court be pleased to find that the trial court was justified to convict and sentence him accordingly.

Moving to the 3rd ground of appeal on the complaint that the trial Court wrongly admitted the appellant's caution statement as part of evidence despite the fact that it was retracted and repudiated, it was Mr. Mwingira's response that the position of the law is that, by practice the retracted or repudiated confession cannot ground conviction unless the same is corroborated with other evidence. However, he quickly elaborated the settled law is that, even when the confession statement is repudiated or retracted still the Court can convict after satisfying itself that, there is other

corroborative evidence as it was stated in the case of **Ally Sarehe Msuta Vs. R**, [1980] TLR 1 that, as a matter of prudence repudiated confession may require corroboration to secure conviction. In this case despite of retraction by the appellant of the confession the trial court sought other evidence from PW3 and PW4 who were at the scene of crime to corroborate the retracted confession hence rightly convicted the appellant.

Mr. Mwingira went on arguing that, appellant's information given to police in this matter during the first interview of the appellant soon after arrest led into discovery of the said trophies. It is that information or piece of information according to him, which is admissible in Court under section 31 of the Evidence Act, [Cap. 6 R.E 2022] in which the trial court based on to convict him as it was the case in **John Peter Shayo and 2 Others Vs. R**, [1998] TLR 198 where the court stated that, confessions that are otherwise inadmissible are allowed to be given in evidence under S. 31 of Evidence Act, if and only if they lead to discovery of material object connected with crime. The rationale behind that legal position he argued is that, such discovery supply guarantee of the truth of the portion of the confession which led to retrieval of trophies. In view of that position of the law and

evidence adduced in court Mr. Mwingira submitted that, the trial court correctly convicted the appellant relying on such evidence.

Next in response was the 4th ground where the appellant is faulting the trial court for relying on uncorroborated oral evidence to convict the appellant where he argued, oral evidence is acceptable and admissible under S. 61 of Evidence Act. He stressed, it is the position of the law that, oral evidence can prove the case without any documentary evidence upon court's satisfaction that, the same is cogent enough to prove the case as it was held in the case of **Emanuel Mwaluko Kanyusi and 4 Others Vs. R**, Consolidated Criminal Appeal No. 110 of 2019 and 553 of 2020 (CAT-unreported). With such legal stance he submitted oral evidence of the prosecution witnesses PW4, PW3 and PW2 was cogent enough to prove the appellant's involvement from the time of arrest, seizure of trophies, their valuation up the time of their admission in Court. He thus implored the court to find the ground meritless.

On the 5th ground in which the appellant is attacking trial court's reliance on the evidence of chain of custody of the exhibits to convict him, Mr. Mwingira recounted that, there was evidence to prove chain of custody of trophies as

it is clear from evidence of PW1 who received them as exhibit keeper and explained how was it taken out for evaluation by PW2 who later on handed them back to him and further that, they remained under his custody until when the same were tendered in court. This is also evidenced by chain of custody exhibit form which was admitted as exhibit P2, Mr. Mwingira noted. By their nature he argued, the exhibits subject of this Court could not change hands easily hence the trial court rightly considered it as enough evidence since the position of law is that, a court cannot disregard this type of evidence and deny the exhibit especially where the same cannot easily change hands. He therefore urged this Court to dismiss the appeal for want of merit as the trial court's findings and sentence to appellant were arrived at correctly.

In rejoinder the appellant having heard the submission from the Republic reiterated his submission in chief and the prayer for this Court to consider his appeal and allow the same, as there is no evidence proving that when arrested he gave down caution statement. And that, there is no single witness who testified to the effect that, he called him by phone in the course of facilitation of his arrest during the alleged trap. Further to that he rejoined, there is no proof that the compound where the said trophies are alleged to

have been retrieved is his house hence his insistence that, the case against him was never proved beyond reasonable doubt. He contended, was arrested at Manyoni town center but no any local authority leader came forth to testify on that fact since the prosecution is claiming that he was arrested at Kashangu village which is not the case. With such submission he prayed for his appeal to be allowed.

I reserved and applied enough energy and time to consider both parties argument and further visited the impugned judgment as well as the evidence adduced in Court in a bid to disentangle parties' from locking their horns. The sole issue for determination is whether the charge against the appellant on the first court of **Unlawful Possession of Trophy** was not proved beyond reasonable doubt as complained in the grounds of appeal. In responding to the said issue I find it apposite to consider the grounds of appeal in the order canvassed by the respondent.

To start with the 1st, 2nd and 6th grounds of appeal where the appellant grievance is that the charge against him on the first count of Unlawful Possession of Trophy was not proved to the hilt, I find there is evidence of PW4 as rightly submitted by Mr. Mwingira on how the trap to arrest the

appellant was set when communicated with PC Musa Chacha, Cpl. Peter and Japhet Maro over phone promising to meet at Majengo area within Manyoni for selling them elephant tasks before he was arrested, interrogated and confessed to possess the said trophies and later led them to Kashangu village where the same were seized. And that, it is the appellant who unearthed the six (6) pieces of elephant tasks from the rear side of his house before the same were seized and the seizure certificate (exh. PE5) issued against them, and dully signed by the police officer, appellant and PW3. PW4's evidence is corroborated with evidence of PW3 the village executive officer for Kashangu village explaining on how was he approached by PW4 who was in company of a police officer and other wildlife officers in a need to conduct search at the appellant's house, the person whom he identified to them. And further that, it is the appellant who retrieved the said 6 pieces of elephant tasks from the back area of his house which were buried in soil, where he also signed the seizure certificate and at that time the appellant admitted to be found in possession of the said trophies. At what time was the search conducted both PW3 and PW4 confirmed that it was mid night time around 00.00 hours and were assisted by the solar light from the appellant's house as well as the light from the two motor vehicles which they had by then. The

above evidence aside, it is also PW4 who witnessed the said seized 6 pieces elephant tasks handed to the Anti-poaching Unit at Manyoni for safe keeping by the police officer, the evidence which was confirmed by PW1 (exhibit keeper) who in his evidence proved to the trial Court satisfaction that, was handed with the said six 6 pieces elephant tasks before the accused person, the exhibit which he tendered in court as exhibit PE3, as he kept them under his custody before the same were issued to trophy valuer PW2 who valued and returned them back to PW1 for safe keeping until the same were tendered in Court. The trophy valuation certificate was admitted as exhibit PE4. PW1 also tendered the chain of custody forms as exhibit PE1 to exhibit that, the exhibits handed to him did not change hands until when they were tendered in Court by him hence proof of chain of custody.

With the above analysis of evidence, like the trial court this Court is also convinced that, the evidence adduced by the prosecution witnessed was cogent enough to warrant conviction on the appellant in respect of the first count. I so conclude as it was proved to the hilt that, it is none but the appellant who was found in unlawful possession of six (6) pieces of elephant tasks identified by their schreger lines as per evidence PW2 and PW4 and trophies which are Government trophy as per exhibit PE4. In his defence the

apart from alleging that was merely arrested at Manyoni and not involved in any search that led to retrieval of the 6 pieces elephant tasks at Kashangu village, the appellant did not deny to be a resident of Kashangu nor did he raise any concern to have bad blood relationship with any of the prosecution witnesses for them to testify lies against him. I for that reason do not find any reason as to how all prosecution witnesses could have plotted to fix him with such serious offence without being involved. Like the trial Court, I disbelieve his defence as the same does not in any way shake the prosecution case. That aside there is no material contradictions amongst the prosecution witnesses as the appellant would want this Court to believe when raised that concern in his 6th grounds of appeal as in evaluating discrepancies, contradictions and omissions, it is undesirable for a court to pick out sentences and consider them in isolation of the rest of the statements as it was held in the case of **Armand Guehi Vs. R**, Criminal Appeal No. 242 of 2010 (CAT-unreported). See also the cases of **Rasul Memed Vs. R**, Criminal Appeal No. 202 of 2012 and **Kavula William and Another Vs. R**, Criminal Appeal No. 119 of 2020 (CAT-all unreported). In totality I find the 1st, 2nd and 6th grounds of appeal to be unmeritorious hence dismiss them.

I now move to consider the 3rd ground of appeal on the complaint of use of appellant's repudiated and or retracted caution statement by the trial court to ground conviction on him. Having revisited the entire record and the impugned judgment, I think this ground need not detain this Court as both appellant and Mr. Mwingira I believe did not have enough time to peruse the record and appreciate the nature of that complaint. I so opine as my reading of the record and judgment could not unearth anything on the fact complained of by the appellant that his caution statement was admitted by the trial court and considered in its decision. This ground I find is wanting in merit and therefor crumbles.

Next for consideration is the appellant's grievances on the use of uncorroborated oral evidence by the trial court to convict him. Again I find no merit in this 4th ground of appeal. As correctly submitted by Mr. Mwingira, oral evidence is acceptable under section 61 of the Evidence Act, [Cap. 06 R.E 2022] and the same does not require corroboration of documentary evidence to sustain conviction. Section 61 of Evidence Act reads:

> *61. All facts, except the contents of documents, may be proved by oral evidence.*

From the above exposition oral evidence is direct evidence and can prove all facts in the case in as long as it meets the conditions set out in section 62(a),(b) and (c) of the Evidence Act that, must be referring to the fact(s) which the witness saw, heard, perceived or the opinion held by him. The Court of Appeal in the case of **Emmanuel Mwaluko Kanyusi and 4 Others Vs. R**, Consolidated Criminal Appeal No. 110 of 2019 and 553 of 2020 (CAT) Tanzlii when deliberating on competency of oral evidence against the expunged handing over book and trophy valuation certificate for not being read after admission, had this to say:

> *"… oral witnesses can prove facts in the expunged document…"*

Similarly in the case of **Saganda Saganda Kasanzu Vs. R**, Criminal Appeal No. 53 of 2019 (CAT) Tanzlii where both certificate of seizure and valuation certificate, which were not read out during admission hence expunged from the record it was held by the Court that:

> *"…evidence of those two prosecution witnesses together with that of PW5 proved the contents of both expunged exhibits."*

See also the case of **Huang Qin and XU Fujie Vs. R**, Criminal Appeal No. 173 of 2018 (CAT) Tanzlii. With that settled legal stance, I find the trial court

was justified to rely on the evidence of PW3 and PW4 to establish whether the 6 pieces of elephant tasks were found in possession of the appellant after expunging the certificate of seizure from the record, the evidence which is already discussed above and found to be sufficient enough to warrant conviction of the appellant when considering grounds of appeal No. 1, 2 and 6. This ground therefore collapses.

Lastly is the 5th ground of appeal where the complaint is that, the trial court was in error to convict the appellant basing on the chain of custody of exhibits. With due respect to the appellant, I am not prepared to embrace his assertion as it is evident in record as rightly submitted by Mr. Mwingira that, chain of custody evidence was cogent to be relied on by the trial court as part of evidence proving commission of offence of Unlawful Possession of Government property to convict the appellant. It is so as was aiming at establishing the exhibit trail from the stage of seizure, storage until when the same is tendered in Court. In this case PW1 proved to the trial Court through oral evidence and chain of custody forms (exh.PE2) on how he was handed with 6 pieces of elephant tasks from the police officer involved in seizure exercise, kept them until when they were tendered in court. The appellant advanced no evidence establishing breaking this chain of custody

so as to raise doubt and move this Court to disbelieve such vital prosecution evidence. Even if there was no exhibit PE2 (Chain of custody form) still I would maintain similar view as chain of custody was proved also through oral evidence of PW1,PW2, and PW4 and further that, elephant task is not such a property that could easily change hands to affect the chain of custody as it was the situation in the case of **Kadria Said Kimaro Vs. R**, Criminal Appeal No. 301 of 2017 (CAT) Tanzlii where the Court of Appeal held that, pellets were such a property which could not easily change hands. On proof of chain of custody orally the Court of Appeal in the case of **Abdallah Rajabu Mwalimu Vs. R**, Criminal Appeal No. 361 of 2017(CAT) Tanzlii, had this to say:

> *"…even in the absence of paper documentation on how the pellets were handled from the time of arrest until when they were tendered in court, the oral evidence of witnesses who described how the pellets were handled from arrest to the time the same were tendered in court was sufficient proof."*

Before I pen off, let me comment albeit briefly on the move taken by the trial magistrate to expunge from the record two seizure certificates when considering the same in the judgment, as it is a duty of superior courts to supervise compliance of the law by subordinate courts. See the cases of

Marwa Mahende Vs. Republic [1998] T.L.R. 249 and **Adelina Koku Anifa & Another Vs. Byarugaba Alex**, Civil Appeal No. 46 of 2019 (CAT) Tanzlii. In this case it is noted the trial magistrate had no mandate to expunge exhibit from his own proceedings when considering its value when composing the judgment rather to disregard or accord it no weight after the findings that it tainted with deficiencies diminishing its value. This should serve as a reminder also to other judicial officers subordinate to this Court.

All said and done it is the findings of this Court that, the appellant's appeal is devoid of merits as I hereby uphold the trial court's findings on both conviction and sentence imposed on the appellant and proceed to dismissed it in its entirety.

Order accordingly.

Dated at Dodoma this 22th March, 2024.

E. E. KAKOLAKI
JUGDE
22/03/2024.

The Judgment has been delivered at Dodoma today on 22th day of March, 2024, via video conference in the presence the appellant in person and Ms. Veradina Matikila, Court clerk and in the absence of the respondent.

E. E. KAKOLAKI
JUGDE
22/03/2024.