



THE JUDICIARY OF TANZANIA

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT KIGOMA

(CORAM: HON. AUGUSTINE RWIZILE)

ECONOMIC APPEAL NO. 6 OF 2023

**FREDRICK S/O JUMA @ NKOBONGO COMPLAINANT / APPELLANT /
APPLICANT / PLAINTIFF**

VERSUS

THE REPUBLIC RESPONDENT / DEFENDANT

JUDGMENT

Fly Notes

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Facts

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Ratio Decidendi

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27th of May 2024

Hon. RWIZILE.:

Fredrick Juma @Nkobongo was charged with two counts of unlawful possession of government trophy contrary to Section 86(1)(2)(c)(ii) of Wildlife Conservation Act, [Cap 283 R.E 2022], read with paragraph 14 of the first schedule to, and sections 57(1) and 60 (2) of the Economic and Organized Crimes Control Act, [Cap 200, R.E. 2022], and unlawful deal with government trophies contrary to section 84 (1) of Wildlife Conservation Act, [Cap 283 R.E 2022], read with paragraph 14 of the first schedule to and sections 57(1) and 60 (2) of Economic and Organized Crimes Control Act. In the end, he was found guilty in both counts, convicted and sentenced to serve 20 years in prison in each count, and the sentences were to run concurrently. Being aggrieved by both conviction and sentence, has appealed to this court advancing five grounds of appeal:

1. *That, the trial Court Magistrate erred in law and fact by convicting and sentencing the appellant by considering weak evidence adduced by prosecution witnesses which did not prove the case to the required standards of proof in Economic Cases.*
2. *That, the trial Court Magistrate erred in law and fact by convicting and sentencing the Appellant without considering that the Prosecution witness failed to tender to the Court the exhibit register to prove the said Government trophy exhibit handling.*



3. *That, the trial Court Magistrate erred in law and fact by convicting and sentencing the Appellant due to the fact that the trial Magistrate was assigned on two cases which involved the same accused which was (EC. 21/2022 and EC.25/2022) and resulted to the conflict decision on the mentioned economic cases.*
4. *That, the trial court Magistrate erred in law and fact by convicting and sentencing the appellant on incredible, tenuous, contradictory and uncorroborated evidence adduced by prosecution witness due to the fact that;*
 - *The chain of custody was blocked due to improper handling of alleged exhibit from one place to another, one person to another contrary to directive of the PGO No. 229 paragraph 15, 31 and 32. See it on page 16,17,23,26,31,32,33,34,35 of the Case proceeding copy attached.*
 - *The contradictory evidence raised among prosecution evidence on the material evidence especially PW4 testimony.*
 - *The disposal of allegedly Government trophy was done contrary to the directive of the PGO 229 paragraph 25.*
5. *That, the guilty of appellant was not proved beyond the reasonable doubt as required by the law*

At the hearing, the appellant was unrepresented while the respondent was represented by Ms Edna Makala learned State Attorney. As a lay person, the appellant's submission was very brief and without elaboration. He submitted that, the offences charged were not proved beyond reasonable doubt and there was a problem while conducting the search.

Supporting the appeal, the learned state attorney argued the appeal generally that the charges were proved. She said, the appellant was arrested selling bush meat during the daytime and the arrest was witnessed by Pw4 a ten-cell leader. She submitted further that there was no problem with chain of custody of the exhibits, it was not broken. The learned state attorney further submitted that there is no legal requirement which bars a magistrate to hear two cases of the same person.

On disposal of trophies procedure, it was submitted that the same was followed and nothing was infringed. The case of **Mohamed Juma Mpakama vs The Republic**, criminal appeal No. 385/2017 was cited to justify her argument. She finally prayed; the appeal be dismissed.

In totality, the grounds of appeal advanced are centered on whether the offences against him were not proved. It is important therefore to re-evaluate the evidence on record and see if the case was proved beyond reasonable doubt. I will therefore deal with all grounds generally.

The evidence procured was from Ins. Phortunatus France Lugumamu- Pw2, a police officer who said, they were on patrol. When they arrived at Mkondo Kabulanzwiri village, they saw a crowd of people who upon noticing they were police officers, started running away because they were buying wild meat from the appellant. The police surrounded appellant and was arrested. Search was conducted in the presence of the police and independent witness, Pw4. The meat was seized, and certificate of seizure was prepared and signed by both the appellant and the witnesses, it is exhibit P1. The meat was taken to Kasulu police station and handled to the exhibit keeper D\Sgt Nagabona, Pw5, who stored it until when it was taken from him by F. 7059 D/Cpl. Elias,



Pw1, for evaluation.

The evaluation was done by a wildlife officer, Mohamed Omary Ismail, Pw3. The report is exhibit P2. Then the meat was handled back to Pw1 who returned it to Pw5. At the end, Pw1 took the meat to Hon. Straton Aniceth Mosha, Pw6, a magistrate for a disposal order in the presence of the appellant, the inventory is exhibit P3. The appellant on his party contested by briefly saying that the prosecution witnesses were telling lies in court.

In all considerations, the prosecution witnesses were six. Apart from Pw2, there is no other witness who saw the appellant in possession and then selling the said meat. Pw1, an investigator of the case, did not witness the act. The same applies to Pw3, a wildlife officer and Pw4, a local village leader who is the chairman of place. Pw4 as an independent witness said was told by the police that they have arrested the appellant with trophies. It is clear from him that, when he arrived at the place, he found the appellant in the hands of the police officers and was told he was selling the meat. Pw5, was an exhibit keeper who kept the said meat. Pw6, a magistrate ordered disposal of perished meat.

From this evidence, none of them, saw the appellant selling government trophies save Pw2. In actual fact, the evidence of Pw2 was not supported by any independent witness given the fact that the dealing was not in the game reserve where there could be no independent witness. Going by the records, it is not in dispute that that the appellant was 81 years at the time he was arrested. In all instances he is not expected to be as smart as the boys or men who are more likely to escape and ran away from the police officers. There is a possibility therefore that he was not able to run away and so was caught. His presence alone does not prove he committed the offence. The prosecution had therefore to prove that the appellant was the one selling meat. This means the evidence was to be supported by some other evidence such as clothes with blood or money recovered after selling meat. I am saying so because the appellant was just ambushed, there was no preparation to hide some important evidence.

The evidence further showed that there was a remaining one leg of the common duiker meat and therefore it was almost sold. If indeed the appellant was the owner of the meat which he was selling, the prosecution had to show, there is no possibility of victimizing him. Failure to properly record evidence at the crime scene in the circumstance of this case, left the prosecution case empty handed.

In all, I find merit in this appeal. In the event, I am satisfied that the trial court did not get it right. Therefore, I quash the conviction and set aside sentence imposed on the appellant. Let the appellant be set free unless he is otherwise lawfully held.

Dated at KIGOMA ZONE this 27th of May 2024.



AUGUSTINE RWIZILE



JUDGE OF THE HIGH COURT

