IN THE HIGH COURT OF TANZANIA

SUB REGISTRY OF MOSHI

AT MOSHI

CRIMINAL APPEAL NO. 2492 OF 2024

(*Originating From Economic Case No. 18 of 2022, Same District Court)*

MUSA ZUBERI MSUYA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

27th to 28th May, 2024

E.B. LUVANDA, J

The Appellant was convicted and sentenced to imprisonment (a maximum of twenty years) for committing the offence of unlawful possession of government trophy, unlawful dealing in government trophy, unlawful possession of weapon into conservation area and criminal trespass and which offences were charged under the provisions of sections 86(1), (2)(b), (c)(iii), 84(1), 103 of the Wildlife Cnservation Act, Cap 283 R.E. 2022 read together 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. 2002, along section 299(a), (b) of the Penal Code, Cap 16 R.E. 2022, respectively.

In the petition of appeal, the Appellant grounded that: One, the learned trial magistrate grossly erred both in law and fact relying upon exhibit PE1 (certificate of seizure) to hold the Appellant guilty for unlawful possession of government trophy while the same was forged and the Appellant disputed signing it; Two, the learned trial magistrate grossly erred both in law and fact for failure to note that exhibit PE9 (ruling in Misc Criminal Application No. 14 of2023) cannot be used to prove the existence of the alleged government trophy as the same was neither inventory; Three, the learned trial magistrate grossly erred both in law and fact in failing to note that exhibit PE9 was not reliable for reason that the Appellant was not accorded with opportunity to be heard and no photo taken and tendered to prove existence of the alleged seized government trophy; Four, the learned trial magistrate grossly erred both in law and fact in using weak, tenuous, contradictory, inconsistency, uncorroborated and wholly unreliable prosecution evidence as a basis of convicting the Appellant; Five, the learned trial magistrate grossly erred both in law and fact in convicting and sentencing the Appellant despite the charge being not proved beyond reasonable doubt against the Appellant to the required standard.

The Appellant submitted that the trial magistrate wrongly relied on exhibit PE1 which was unreliable, arguing the Appellant strongly refuted it on the ground that he never signed it and the signature appearing on it is not his. He submitted that he objected admissibility of exhibit PE1, surprisingly the trial magistrate never considered his objection and shifted the burden to the Appellant by stating that he is supposed to prove that the said signature appearing on exhibit PE1 is not his. He faulted the trial court for shifting the burden of proof, arguing upon the Appellant raised that objection, the court ought to stay proceedings and call upon the prosecution to procure the attendance of the finger print and handwriting expert to clear the doubt. He submitted that failure by the prosecution to prove that the signature in exhibit PE1 is of the Appellant, vitiate the whole evidence of the arresting officers that is PW1 and PW2 who are the key prosecution witnesses who managed to forge exhibit PE1 against the Appellant and could have stopped them from fabricating the case at hand against the Appellant. He cited the case **of Arobogast Augustino @ Shayo and Two Others vs R**, Criminal Appeal No. 24 and 40 of 2022, pages 17, 18 and 19.

He submitted that giraffe meat (head and tail) and dik-dik meat (four heads) were not tendered in evidence as exhibit for the reason that were disposed

via exhibit PE9. He faulted exhibit PE9 for being unreliable for reason that the same was illegally and unprocedurally acquired and admitted in evidence for reason that ruling cannot be used as an inventory to prove the existence of the alleged wild animal's meat alleged retrieved from the Appellant.

He submitted that he was not accorded an opportunity to be heard before the alleged disposition of the alleged wild animal's meat, citing PGO No. 229(25), **Mohamed Juma @ Mpakama vs R**, Criminal Appeal No. 385 of 2017 and **Arobogast Shayo** (supra). He prayed for the Court to disregard and expunge exhibit PE 1 and 9 as well as the evidence of PW1 and PW2.

The Respondent did not file a reply.

It is true that the Appellant had objected admissibility of exhibit PE1 on account of a reason that is not his deed that is he refuted a signature appearing therein. However, his objection was determined by the learned Senior Resident Magistrate to the effects that a question of dispelling signature require proof and hold it being not a bar to the admission. To my view the learned Senior Resident Magistrate was quite clear and on a right angle. This is because a question of signature is not a question of law rather is a factual issue, and therefore it could not be determined vide an objection.

It is to be noted that exhibit PE1 was tendered by Willnesse Israel Moshi (PW1). During cross-examination, the Appellant did not shoot any single question regarding validity or genuiness of his signature appearing in exhibit PE1. Again, Fadhili Elias Manumba (PW2) who was also an arresting officer asserted that the Appellant had signed and appended his thumb print in exhibit PE1. On cross examination, the Appellant did not hit any question to PW2 regarding authenticity of exhibit PE1. During defence, throughout his testimony in chief, the Appellant who defended solo as DW1 said nothing regarding a signature and thumb print appearing in exhibit PE1. It is during cross examination when the Appellant stated that he explained to the court that a signature is not his. In the circumstance I wonder as to how and why the prosecution should be said to have an obligation to summon the finger print and handwriting expert to clear the doubt which on the face of it is not there. Equally an argument that PW1 and PW2 forged the Appellant signature appearing in exhibit PE1, is unfounded. This is because no such claim or facts was cross examined to PW1 and PW2. Therefore, bringing and raising such allegations at this stage is legally untenable and in fact is an afterthought. The cited case of **Arobogast Augustino** (supra) is inapplicable to the circumstances herein, because therein the trial magistrate

did not rule out completely the objection taken or raised by the Appellant therein regarding admissibility of an inventory. Herein, the trial court ruled instantly the objection raised by the Appellant on admissibility of exhibit PE1 on the terms that his argument require evidentiary proof as aforesaid. At page ten of the impugned judgment, at the extreme bottom of a last paragraph, the trial court ruled

> *'I find the defence that his name was just written but said he never signed as an afterthought and cannot contest what the witness said because he did not cross examine them on the aspect as a way to counter the evidence presented. See the case of **Shamir John vs R**, Criminal Appeal No. 166 of 2004, CAT Mwanza (unreported). Similarly, the purported person who allegedly wrote and signed was not dully revealed to this court nor he indicated an existing bad blood with PW1 and PW@. Accordingly, I find no doubt concerning his signing'*

Regarding an argument that a ruling exhibit PE9 cannot be used as an inventory to prove existence of the alleged wild animal's meat. This argument is meritless. According to the law what is required to be tendered to prove disposal of decaying object is a court order. Now to me whether a formal order like the instant ruling exhibit PE9 or an inventory is tendered in

the proceedings, it saves the purpose. Section 101(1)(a) of The Wildlife Conservation Act, Cap 283 R.E. 2022, provide,

> *"The Court shall, on its own motion or upon application made by the prosecution in that behalf-*
>
> *(a) Prior to commencement of proceedings, order that-*
>
> *(i) any animal or trophy which is subject to speedy decay; or*
>
> *(ii) any weapon, vehicle, vessel or other article which is subject of destruction or depreciation, and is intended to be used as evidence, be disposed of by the Director"*

Herein, Magadalena Francis Homan (PW4) asserted an application for disposal of one head for giraffe and its tail along four dik-dik head was filed, heard and an order for disposal made for the trophy to be buried, as per exhibit PE9. Therefore, I rule that exhibit PE9 was a valid order for purpose of disposal of trophy in question in accordance with the procedure.

The Appellant complained that he was not heard or involved during proceedings for disposal of trophy. However, in exhibit PE9 the court commented that there was no objection which was raised by the Appellant, meaning that the Appellant attended the disposal proceedings and was

accorded to make comment and he did not have any reservation. Therefore, raising such a complaint at appeal stage is nothing other than an afterthought. The case of **Mohamed Juma** (supra) is in applicable, for reason that, therein the disposal proceedings were silent as to the involvement of the Appellant therein.

In his submission the Appellant did not point out the allege weak, tenuous, contradictory, inconsistency, uncorroborated prosecution evidence neither argued as to why or how he was saying the charge was not proved beyond reasonable doubt against the Appellant to the required standard. In that respect it is taken as having been abandoned.

That said, the appeal is devoid of merit. The trial court decision is upheld.

The appeal is dismissed.

E.B. LUVANDA
JUDGE
28/05/2024

Judgment delivered in the presence of the Appellant and Frank Daudi Wambura learned State Attorney for the Respondent.

E. B. LUVANDA
JUDGE
28/05/2024