

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI SUB REGISTRY**

AT MOSHI

CRIMINAL APPEAL NO. 67 OF 2023

(Originating from Economic Case No. 3 of 2022 of Siha District Court at Siha)

ELIA MANGA MWELILE APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

16/5/2024 & 3/6/2024

SIMFUKWE, J.

Before the District Court of Siha at Siha, Elia Manga Mwelile, hereinafter referred as the appellant was charged and convicted with an offence of unlawful possession of Government Trophy contrary to **section 86(1)(2) (b) of the Wildlife Conservation Act**, Cap 283 R.E 2022, read together with **paragraph 14 of the 1st Schedule and section 57(1) and 60(2) of Economic and Organized Crimes Control Act**, (Cap 200 R.E 2022).

It was alleged by the prosecution that on 29th September, 2022 at Simba farm area within Siha District in Kilimanjaro Region, the appellant was found in unlawful possession of Government trophy to wit: three legs and skin of Zebra valued at USD 1200 which was equivalent to TZS 2,797,200/=, the property of the United Republic of Tanzania.

After being arraigned before the trial court, the appellant pleaded not guilty. To prove their case, the prosecution side called six witnesses and tendered seven exhibits. In his defence the appellant strongly denied the allegation levelled against him. He stated that, on the material date, KINAPA rangers approached him at his farm and asked him whether he knew poachers who set snares at that area, the appellant denied. Then, they arrested him and on the way to Simba farm, PW5 went in the forest and came out with two legs and skin of Zebra and fabricated it against the appellant.

After full trial, the trial magistrate was of the opinion that the prosecution case was proved beyond reasonable doubts. The appellant was convicted and sentenced to serve twenty years term of imprisonment. The appellant was aggrieved, he decided to file the instant appeal. He advanced the following grounds:

1. *That the trial court erred in fact and law in convicting and sentencing the appellant with the offence charged without considering broken chain of custody of the alleged admitted exhibit namely motorcycle, five wires snares and Government trophy namely, one piece of skin of Zebra and three legs of Zebra.*
2. *That, the trial court erred in fact and law in convicting and sentencing the appellant with the offence charged without considering the violation of procedure in searching the appellant and identifying the alleged Government Trophy.*
3. *That, the trial court erred in fact and law in convicting and sentencing the appellant with the offence charged while exhibit P1, P2, P3, P4, P5, P6 and P7 were improperly admitted contrary to the law.*
4. *That, the trial court erred in fact and law in convicting and sentencing the appellant with the offence charged without considering that the mandatory procedure in arraigning the appellant together with disposal of the alleged exhibits*

before the court was not followed and the appellant was not accorded a right to be heard.

5. That, the trial magistrate erred in fact and law in convicting and sentencing the appellant by giving weight the evidence of PW1 without considering that his evidence was contradicting with the admitted exhibit P2.

6. That, the trial magistrate erred in fact and law by convicting and sentencing the appellant without considering that the prosecution failed to prove the case beyond reasonable doubt and the trial court delivered the judgment which had insufficient and improperly assessed evidence.

7. That, the trial court erred in fact and law by convicting and sentencing the appellant with the offence charged without taking into account the strong evidence of the appellant.

The appellant prayed that the conviction be quashed and the sentence be set aside.

Hearing of this appeal was conducted orally, the appellant was represented by Mr. Elia Kiwia, the learned counsel whereas the respondent was represented by Mr. Innocent Ng'asi, the learned State Attorney.

Starting with the 4th ground of appeal, Mr. Kiwia submitted that, the law directs that when the suspect is found in unlawful possession of Government Trophy, he should be arraigned before the court together with the exhibit pursuant to **P.G.O No.229 Paragraph 25**. If possible, the suspect should be photographed. Also, the suspect must be accorded right to be heard if he has any explanation or objection. Mr. Kiwia continued to explain that, the record shows that, the appellant was not accorded the right to be heard as shown on exhibit P6. He referred the case of **Mohamed Juma @ Mpakama v. R**, Criminal Appeal No. 385 of 2017 at page 21-23 where the procedures for disposing the exhibit were discussed. That, if the accused person is not accorded that chance of giving his explanation, his right to be heard will have been denied.

Mr. Kiwia said that the same was also discussed in the case of **William Maganga @ Charles v. R**, Criminal Appeal No. 104 of 2020, (CAT), which was cited with approval in the case of **Maria Emirio Ngoda v. R**, Criminal Appeal No. 37116 of 2023 (HC) at page 9 and 10, 2nd paragraph. That at

page 10 of the case of **Maria Emirio Ng'oda** (supra) it was stated that, despite the fact that the suspect signed the exhibit, there was no evidence that he was arraigned before the magistrate or that his opinion in respect of disposal of that exhibit was recorded. In the case at hand, the learned counsel was of the view that, the appellant was not accorded right to be heard.

On the 6th ground of appeal, Mr. Kiwia submitted that, the prosecution failed to prove the case against the appellant beyond reasonable doubt. That at page 29 of the trial court proceedings, PW6 did not give evidence as an expert, as he gave very general evidence. PW6 said that, simply by looking at it he formed an opinion that the animal was Zebra and the 3 legs were fresh and had not been skinned. Mr. Kiwia was of the opinion that the witness was supposed to explain scientifically and differentiate that animal from other animals. Also, the witness was supposed to give details of meat which was attached to the legs as it was explained in the case of **William Maganga @ Charles** (supra) at page 8-9 of the judgment. At page 9 it was stated that:

"That is precise point we are making in this case. A generalization statement is not acceptable because anybody

can make such a sweeping statement. In wildlife conservation related cases, identification of a particular species of the animal affected or part of it in relation to an offence charged is a matter of considerable significance."

The learned counsel made further reference to the case of **Republic V. Kersin Cameroon [2003] TLR 84** in which it was held that:

"The evidence of an expert is likely to carry more weight than that of an ordinary witness."

Mr. Kiwia continued to complain that, even chain of custody of the certificate of Evaluation of Trophy was not established. He referred to exhibit P2 on the first ground of appeal, and stated that, the proceedings show that on 30/9/2022 the exhibits were taken from the Police Station but it is not shown who received the exhibits at the court. That, after being produced at the court, the record does not show that the exhibits were returned to the Police custody. That means chain of custody was broken and the case was not proved beyond reasonable doubts.

On the 2nd ground of appeal; Mr. Kiwia averred that, the search which was conducted was illegal. That, it is prescribed under the law that there must

be an independent witness of the search as the arresting officers seem to have the same interest. He averred further that, PW2 and PW3 said that they called PW5 as an independent witness of the search but the said independent witness was called after the said search had been conducted. He continued to state that, evidence of PW2 and PW3 contradicts evidence of PW5 who said that he witnessed KINAPA rangers arresting the appellant. Furthermore, PW2 and PW3 testified that, they seized the government trophies from the motorcycle but the certificate of seizure shows that, the exhibits were found in the body of the appellant. The learned counsel stated further that, time indicated on exhibit P2 and P6 contradicts as the time of arrest and handing over the exhibits is the same. That, the arrest was done at Ngarenairobi and the exhibits were handed over at Sanya Juu police station. Mr. Kiwia was of the view that, it was impossible for the two acts to have been done simultaneously, that is fabrication of cases. That, where evidence is improbable, it should not be considered by the court. The learned counsel cited the case of **Tumaini Frank Abrahamu V.R, Criminal Appeal No. 40 of 2020**, CAT at Moshi in which the case of **Toyidoto Kosima** was quoted at page 13.

Concerning the third ground, Mr. Kiwia submitted that, exhibit P1 and P7 were admitted without laying foundation and the procedures were not complied with. He buttressed his argument by subscribing to the case of **Steven Salvatory v. R, Criminal Appeal No. 275 of 2018**, CAT at Mtwara, in which it was held that, the document must be cleared before admission. The witness must explain the features of the document. Mr. Kiwia lamented that, in this case, the same was not complied with. He urged this court to expunge the said exhibits from the records. In addition, Mr. Kiwia stated that, the requirement of laying foundation was stated in the case of **DPP V. Sharif Mohamed @ Athumani and 5 others, Criminal Appeal No. 74 of 2016**, at page 7.

On the 7th ground of Appeal, Mr. Kiwia submitted that, the defence of the accused was not considered. That, the appellant testified to have land dispute with an independent witness but that fact was not considered by the trial court. The learned counsel admitted that the appellant did not cross examine the witness on that issue and failure to cross examine a witness means admission of that fact. However, the learned counsel averred that, that is not an absolute rule. To justify his argument, he cited the case of **Zakaria Jackson Magayo V. R, Criminal Appeal No. 411 of 2018** at

page 13 and 15. That, the principle does not apply to improbable evidence. He continued to insist that, in this case evidence of the prosecution was improbable. Thus, failure to cross examination did not mean that the appellant accepted it.

Based on the above arguments, Mr. Kiwia stressed that the prosecution failed to prove the case against the appellant. He underscored the 4th, 2nd and 6th grounds of appeal and urged this court to allow this appeal and release the appellant.

Opposing the appeal Mr. Innocent Ng'asi for the respondent, argued the first and third grounds of appeal jointly. He submitted that; chain of custody was not broken from the time of arrest until when the exhibits were tendered before the court. That, the appellant was arrested on 29/9/2022 at 18:00 hrs, by PW2 Maulid Mohamed as shown at page 14-16 of trial court proceedings. The learned State Attorney explained that, the witness told the court that on the material date, they were on patrol with others and managed to arrest the appellant. When they searched him, the appellant was found in possession of one motorcycle make dazi, red in colour, a luggage of three legs of Zebra which had skin and wires. After searching, they filled a certificate of seizure which was signed by an independent

witness, the arresting officer and the appellant as shown at page 16 of the proceedings of the trial court.

Mr. Ng'asi submitted further that, the certificate of seizure was admitted in court as exhibit P5. He contended that, after arresting the appellant, the exhibits were taken to the exhibit keeper, PW1. The exhibit keeper informed the court that he received a phone call on 29/9/2022 so that he could go to receive exhibits from PW2. After receiving the said exhibits, he filled form PF 16 (the exhibit Register).

Moreover, the exhibits were entered in the Register through entry No. 74 of 2022. The exhibit Register was admitted in court as exhibit P1 without objection from the appellant. Thereafter, the exhibit was read over aloud in Kiswahili as seen at page 12 of trial court proceedings. It was explained that, a motor cycle, three legs of Zebra, one piece of skin and five wire snares were admitted as exhibits. The motorcycle and wires were marked as exhibit P3 and P4 respectively. The two exhibits were admitted without any objection from the appellant.

Showing that there was no broken chain of custody, on 30/9/2022 the investigator PW4 in the company of a wildlife officer went to the police

station, in the office of PW1 for the sake of identifying, examining and valuation of the exhibits. Pages 12, 23 and 29 of the trial court proceedings show that, there was no broken chain of custody.

Mr. Ng'asi explained further that on the same date, on 30/9/2022 the exhibits were taken to court for destroying them. PW1 testified before the court that he handed over some of the exhibits to D/Sgt Shabani for preparing an inventory (exhibit P6). He stated that, he issued inventory for signing handing over documents. It was shown before the court that three legs of Zebra and one piece of skin were ordered to be destroyed. The learned State Attorney continued to explain that, the inventory form was signed by the Magistrate who issued the order, the investigator and the appellant. It was tendered before the court by PW4. That the exhibit was admitted before the court without any objection from the accused. Then, it was read over in court in Kiswahili language.

To buttress the first ground of appeal, the learned counsel referred the case of **DPP V. Akida Abdallah Banda**, Criminal Appeal No. 32 of 2020, CAT. He commented that, even if documentary evidence which was used to prove chain of custody is contradictory, he urged this court to rely on oral evidence

due to the fact that, physical exhibits which were tendered cannot be easily tempered with.

Concerning the 3rd ground of appeal which is in respect of improper admission of exhibits as listed; Mr. Ng'asi submitted that, the argument by Mr. Kiwia is not correct. That, the exhibits were admitted because they were relevant, material and competent. He elaborated that; every witness who tendered the exhibits laid foundation of how the exhibits came into their hands. He subscribed to the case of **D.P.P v. Shariff Mohamed Athuman**, (supra) at page 6 and 7.

Regarding the 2nd ground in respect of the allegation that search was illegally conducted as there was no independent witness; Mr. Ng'asi submitted that the said search complied with all requirements of the law. That, the certificate of search and seizure was tendered before the court and marked as exhibit P5. The certificate of search and seizure was signed by the appellant and an independent witness. The learned State Attorney continued to state that, the exhibit, listed items which the appellant was found in possession. That is three legs of Zebra, one piece of skin, one motorcycle and wires. That, there was an independent witness who testified as PW5 who explained that, he witnessed search and seizure of the exhibits.

The presence of an independent witness was also stated by PW2 at page 15 of the proceedings of the trial court. He remarked that the argument of the learned counsel for the appellant is weak due to what is seen from the trial court proceedings.

Responding to the 4th ground of appeal in respect of procedures of disposal of government trophy, particularly the inventory form; Mr. Ng'asi agreed that **PGO 229. Paragraph 25** prescribes how an exhibit may be destroyed. That, the accused must be taken to court, the Magistrate must see and note the exhibit, the accused must be accorded right to be heard and if necessary or convenient, the photograph must be taken. The learned State Attorney believed that all the prescribed conditions were complied with. He clarified that the inventory form was admitted in court as exhibit P6 without any objection from the accused and the same was read in Kiswahili language by the investigator who was present when the government trophies were destroyed.

It was the argument of Mr. Ng'asi that Exhibit P6 is strong evidence which shows compliance to **PGO 229, paragraph 25**. That, exhibit P6 has a signature of a Magistrate who witnessed compliance of the order, there is a

signature of the accused, his thumb print and the type of exhibit which was being destroyed is indicated (three legs of Zebra and piece of skin of animal).

The learned State Attorney acknowledged the requirement of the accused to be accorded right to give his opinions. However, he was of the opinion that the prescribed form has no space to record what the accused says. That, as a matter of practices, when one signs or puts his right thumb print impliedly shows agreement of a particular thing. He insisted that, the inventory form was filled by adhering to all requirements of the law.

Moreover, Mr. Ng'asi informed this court that after close of examination in chief, the accused was allowed to cross examine PW4 as seen at page 25 of the trial court proceedings. The accused had no question to that witness; thus, he admitted what was said by the witness. The learned State Attorney supported his argument with the case of **Issa Hassan Uki V. R**, Criminal Appeal No. 129 of 2017, CAT at Mtwara at page 16 and 17 of the judgment.

Countering the fifth ground which is to the effect that evidence of PW1 contradicted with exhibit P2; the learned State Attorney agreed that there is a minor contradiction of time of arrest of the accused and time to hand over the exhibits. He was of the opinion that the contradiction does not prejudice

the appellant. That, in the certificate of search and seizure it is shown that it was 18:30 hrs. Chain of custody started from 18:30 hrs and the record shows that the exhibit keeper received the exhibits at 22:00 hrs. Also, in exhibit P1, entry No. 74/2022 shows that the exhibit keeper received the exhibits at 22:00 hrs. Further, Oral evidence of PW1 shows that he received the exhibit at 22:00 hrs as shown in PF 16. Also, the arresting officer PW2, testified that he arrested the accused at 18:00 hrs at Simba farm area.

The learned State Attorney contended that, there is no dispute in respect of the arrest of the accused, except time of his arrest. He added that, what the accused was found in possession is not disputed except time. In that regard, Mr. Ng'asi submitted that those were minor contradictions which do not go to the root of the case. He opined that the contradictions are a result of human errors and clerical errors and do not raise reasonable doubt in respect of the case against the appellant. The same was expounded in the case of **DPP V. Daniel Wasonga**, Criminal Appeal No. 64 of 2018, at page 15 where the Court of Appeal once said contradictions of a witness or between witnesses cannot be avoided.

In reply to the sixth ground of appeal which concerns failure of the prosecution to prove its case beyond reasonable doubts; Mr. Ng'asi informed

the court that Mr. Kiwia directed himself to expert evidence of PW6 and his remarks. The learned State Attorney was of the opinion that the ground has no merit as PW6 was a very competent witness. In his evidence, PW6 explained who was he (wildlife officer), he stated his particulars, then he was sworn. Also, PW6 stated his level of education as a holder of bachelor degree in wildlife management and that he studied at Mweka Wildlife Management College and graduated in 2017. Also, PW6 stated that he had a working experience of 3 years. Mr. Ng'asi believed that a working experience of three years, makes one to be competent.

It was submitted further that at page 29 of trial court proceedings, PW6 explained the method he used to identify the exhibit which he was required to examine. It is obvious that PW6 knew what he was doing according to his level of education and he managed to establish the value of the trophy. The certificate of valuation of Trophy was admitted as exhibit P7 without objection from the appellant and the appellant did not cross examine PW6. Meaning that he admitted what was stated by the witness in court as it was held in the case of **Issa Hassan Uki** (supra).

Responding to the last ground of appeal which concerns failure to consider defence evidence; Mr. Ng'asi referred to page 6 and 7 of the judgment of

the trial court. He submitted that, the trial Magistrate analyzed and considered evidence of DW1 and concluded that the said evidence had no merit. Hence, he was found guilty as charged.

In his final remarks, the learned State Attorney implored this court to dismiss the appeal and uphold the conviction and sentence of the trial court.

In rejoinder, in respect of the argument that the inventory form had no space for recording the opinions of the accused; Mr. Kiwia submitted that since the Magistrate indicated in the inventory form that the order was issued before the accused while there was no space for recording such words; in the same manner, he could have indicated in the inventory form that the accused had no opinion. He faulted the trial Magistrate for his failure to write a coram on another paper and attach it to the inventory form if the inventory form had no space for recording the opinion of the accused. He reiterated his earlier submission that the procedures were violated.

On the sixth ground of appeal which is in respect of evidence of PW6, Mr. Kiwia rejoined that, the entire submission of the respondent has not discussed the case of **William Maganga @ Charles V.R** (supra) at page 8 and 9 where the Court of Appeal acquitted the appellant because the wildlife

officer did not differentiate the government trophy from other animals by stating peculiar features. He insisted that, PW6 included opinions of other people who are not experts.

In respect of the 1st, 2nd and 5th grounds of appeal, Mr. Kiwia reiterated his submission in chief.

On the third ground of appeal, Mr, Kiwia reiterated that all exhibits were not cleared for admission. Thus, they were improperly admitted.

Responding to the argument that the appellant did not object the admission of exhibits; Mr. Kiwia was of the view that failure to object admission of documents was not a reason for saying that the documents were properly admitted. He cited the case of **Mohamed Juma Mpakama** (supra) at page 18, 2nd paragraph as relevant authority to his argument.

Concerning the allegation that the document showed that the exhibit was handed over at 22:00 hrs, the learned counsel replied that, documentary evidence supersedes oral evidence as provided under **section 102 – 104 of the Evidence Act, Cap 6 R.E 2022**. That, what is in the document is presumed to be correct.

Mr. Kiwia also noted that the respondent had not stated why photographs were not taken when disposing the exhibits and why the accused was not accorded right to be heard.

Concerning failure to cross examine, the learned counsel submitted that it is not absolute rule that it amounts to acceptance unless the court finds that the same was true.

That marked the end of submissions of both parties.

I have considered the rival submissions of the parties, the grounds of appeal and the trial court's records. The issue for determination is *whether the prosecution case was proved beyond reasonable doubts before the trial court.*

I will start to consider the 4th ground of appeal as preferred by the appellant's counsel. On the 4th ground of appeal, Mr. Kiwia called upon this court to determine whether the procedures of disposing of the government trophy were followed. He was of the view that the procedures were flawed as the appellant was not given right to be heard during the disposal of the government trophy. He supported his opinion with the case of **Mohamed Juma @Mpakama** (supra) and **William Mganga @ Charles** (supra).

Mr. Ng'asi did not agree with the arguments of Mr. Kiwia. He contended that the procedures were followed as the inventory form was signed by the magistrate and the appellant herein. In respect of the right to be heard, it was argued by the learned State Attorney that the prescribed form has no space to record what the accused says. He insisted that the said document was admitted without objection and the appellant did not cross examine PW4 who tendered the said document, which amount to admission of what was testified by the said witness.

Starting with the last proposition of Mr. Ng'asi, with due respect to him, since the issue of procedures of disposing the government trophy is the point of law, the court cannot ignore it on the reason that the appellant did not object the admission of document.

The procedures for disposing of exhibits are provided under **Item 4.4.1** and **4.4.2.1 of the Exhibits Management Guidelines, 2020** which directs that:

"(a) The court may order storage or disposal of perishable goods before commencement or during trial depending on the nature of the exhibit; and

(b) Storage or disposal order shall direct where and how the perishable goods shall be kept and treated.

4.4.2.1. The court shall record the proceedings for the said disposal.”Emphasis added

Also, **PGO NO. 229 paragraph 25** provides that:

“Perishable exhibits which cannot easily be preserved until the case is heard shall be brought before the magistrate, together with the prisoner (if any) so that the Magistrate may note the exhibits and order immediate disposal. Where possible, such exhibits should be photographed before disposal.”

Apart from the above law and guidelines, there is a number of decisions which discussed the procedures of handling perishable exhibits. In the recent case of **Buluka Leken Ole Ndidai & Another vs Republic** (Criminal Appeal No. 459 of 2020) [2024] TZCA 116 (21 February 2024) Tanzlii, the Court of Appeal categorically discussed the importance of according the suspect right to be heard when issuing an order for disposal of perishable exhibit(s). At page 13-14 of the cited decision the Court observed that:

*As seen above, we indicated that PW3 testified that at the time of seeking a disposal order, the suspects were present. In our view, that simple linear statement is insufficient. Because it leaves many more questions unanswered, in view of this Court's authorities we referred to above. Such queries are like; **one**, if the suspects were present before the magistrate, where is it indicated in the inventory, that the suspects were present? **Two**, were they asked for any comment, remark or objection as regards the exhibit which was being sought to be disposed of? **If yes, where is the record of their comment, remark or observation in that respect?***

*In our view, **the void and emptiness left by the above questions lead to only one conclusion, namely, that the appellants were not heard and their comments or objections (if any) were not taken, at the time the disposal order was being procured.***" Emphasis added

Guided by the above cited authorities, I am of considered opinion that it is not enough for the accused person/suspect to be present during disposal of exhibit. The procedures will be fully complied if such accused person is accorded right to be heard and his remarks, objection or opinions if any, are recorded.

In the instant matter, I hasten to conclude that the appellant was not accorded right to be heard before the district court issued disposal order of the alleged three legs and skin of zebra. There are no proceedings to substantiate what transpired before the Magistrate who issued the disposal order. As stated herein above, the presence of the appellant's signature (thumbprint) in exhibit P6 cannot be equated with right to be heard.

Mr. Ng'asi observed that in the inventory form there is no space for writing opinions of accused persons. With due respect to the learned State Attorney, the position is clear on the procedures to be followed during disposal of exhibits. In the case of **Buluka Leken Ole Ndidai & Another vs Republic** (supra) the Court of Appeal outlined for the following procedures to be followed during disposal of exhibit:

*"It will be sufficient for a magistrate before whom an order to dispose a perishable Government trophy or trophies, to make such order, provided that; **one**, the prayer to issue the order to dispose of perishable exhibits may be made by the investigator or the prosecution informally before a magistrate in chambers; **two**, if the order is likely to be relied upon in any future court proceedings against any suspect, that suspect must be present at the time of making the prayer and; **three**, the suspect must be asked as to his comments, remarks or objections as regards the perishable exhibits sought to be destroyed. **Four**, if that suspect does not make any comment, remarks or objections, the magistrate shall record the fact that, the suspect was invited to make any comments, remarks or objections, but he opted to make none. **Five**, if the suspect makes any comment, remarks or objections, **they shall be recorded as appropriate either on the reverse side of the Inventory Form or on any separate piece of***

paper or papers and shall be signed by the magistrate. "Emphasis added

On the strength of the above authorities, I am settled that the above noted irregularities are fatal and warrant this court to expunge exhibit P6 from the record.

Having expunged the inventory form, the last issue which requires attention of this court is, whether the prosecution case can stand without exhibit P6. The answer is definitely 'NO'. The prosecution case cannot stand without Exhibit P6 which is the foundation of the charged offence of unlawful possession of government trophy.

Apart from the fourth ground of appeal which has been found to have merit, I had a quick glance at the rest of grounds of appeal; I will discuss the grounds briefly.

On the first ground of appeal, I concur with the learned counsel for the appellant that chain of custody of exhibits was broken as exhibit P2 (chain of custody record) shows that the recipient of the exhibits on 30/09/2022 and 06/03/2023 did not sign.

Concerning the second ground which is in respect of presence of an independent witness during the search, with due respect to the learned counsel for the appellant, presence of an independent witness is applicable for searches which are conducted in dwelling houses or any building. Thus, the second ground of appeal has no merit.

To the same effect are my findings in respect of the third and seventh grounds of appeal as the record and judgment of the trial court is crystal clear that all exhibits were cleared for admission. All witnesses stated the features of the exhibits prior to tendering. Also, the trial Magistrate considered the defence of the appellant as rightly submitted by the learned State Attorney. The issue of the appellant having a land dispute with PW5 was discussed thoroughly at page 4 to 7 of the judgment. The trial Magistrate supported his findings with a number of authorities.

The fifth and sixth grounds of appeal have merit. I support the arguments of Mr. Kiwia for the appellant that evidence of the prosecution had contradictions and it did not prove the offence charged beyond reasonable doubts.

That said and done, I allow the appeal, quash the appellant's conviction and set aside the sentence imposed on him. The appellant is henceforth set free, unless lawfully held.

Appeal allowed.

Dated and delivered at Moshi this 3rd June 2024.



X

S. H. SIMFUKWE
JUDGE
Signed by: S. H. SIMFUKWE

03/06/2024