IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SHINYANGA SUB-REGISTRY)

AT SHINYANGA

CRIMINAL APPEAL NO. 40523 OF 2023

(Arising from Economic Case No. 33 of 2023 In the District Court of Bariadi at Bariadi)

PETER s/o BULANDI .....1st APPELLANT

NGUMIZI s/o MADUHU .....2nd APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

JUDGMENT

Date of Last Order 25.03.2024
Date of Judgment: 30.04.2024

MWAKAHESYA, J.:

In the District Court of Bariadi District at Bariadi the appellants, Peter s/o Bulandi and Ngumizi s/o Maduhu (the first and second appellant, respectively) were tried and convicted of two offences: Unlawful possession of a weapon in a national park c/s 17(1)(b) and (2) of the National Parks Act (the first count); and Unlawful possession of government trophy c/s 86(1) and (2)(c)(iii) of the Wildlife Conservation

Act, 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 (the second count). The appellants were sentenced to each pay a fine of TZS 100,000/= or one year imprisonment (in default) on the first count, and 20 years imprisonment on the second count.

The prosecutions case being that on the 18.06.2023 Antony Cleofasi (PW1), Frank Lutaizingwa (PW3) and one Paulo Zumo, park rangers at Serengeti National Park, while in their ordinary course of duty, arrested the appellants at Mto Mbalangati area, within the said park, in possession of: two knives; animal trapping wires; and two hind legs of wildebeest. The appellants did not have permit for the said weapons and government trophies. A certificate of seizure was duly filed (Exhibit P1) and on account of Marko Shirima (PW2), a wildlife officer, the trophy was identified to be of wildebeest whose value was TZS 1,508,650/=.

The appellants, being dissatisfied with the convictions and sentences have preferred this appeal based on four grounds which are to the effect that:

1. The prosecution's case was not proved beyond reasonable doubt;

2. The trial magistrate erred in law to hold conviction on weak evidence adduced by PW2 who was not an expert at identifying the government trophies;
3. The trial court erred in law and in fact for not considering the appellants' defense that they were not arrested in the National Park and in possession of the said government trophies; and
4. The trial magistrate misdirected himself in receiving and accepting the exhibits of the dry pieces of meat brought before the court. The same was fabricated to incriminate the appellant (sic) due to the grudge between the appellants and game rangers.

At the hearing of the appeal the appellants appeared in person, unrepresented, while the respondent Republic enjoyed the service of Ms. Nyamnyaga Magoti, learned State Attorney. Both appellants elected to adopt their grounds of appeal contained in their petition of appeal and allowed the learned State Attorney to make a reply while reserving their right to a rejoinder.

Ms. Magoti intimated that the respondent Republic was resisting the appeal and was thus supporting the conviction and sentences passed by the trial court.

Arguing against the first ground of appeal, Ms. Magoti was of the view that the prosecution proved its case beyond reasonable doubt. The appellants were charged with two offences, to wit: Unlawful possession of weapons in a national park; and Unlawful possession of Government trophies. Both offences were proved beyond reasonable doubt.

The learned State Attorney submitted that the testimony of PW1 and PW4 was to the effect that whilst on patrol within Serengeti National Park they arrested the appellants in possession of two knives, animal traps and government trophy (wildebeest hind legs) without the requisite permits. When queried about the knives and traps, the appellants responded that they were for cutting meat and trapping animals. A certificate of seizure in relation to government trophy was prepared, and the appellants signed it by affixing their thumbprints. Durin trial the said certificate of seizure was tendered as Exhibit P1 while the weapons were tendered as exhibit P3. Meanwhile, PW2 identified the trophy and made valuation of the same. At page 11 of the

typewritten proceedings PW2 testified on how he was able to identify that the meat was wildebeest's.

Ms. Magoti submitted further that to prove that the appellants were within a national park, the arresting officers took GPS coordinates and printed out a map showing the location where they arrested the appellants. The map was tendered in court as Exhibit P2. The appellants did not object to the tendering of the exhibits meaning that they were not contesting the charges against them.

As a result, Ms. Magoti submitted that, both offences were proved beyond reasonable doubt.

Turning to the second and third grounds of appeal, Ms. Magoti submitted that PW2 is an expert in identifying and evaluating Government trophies and he testified on oath that he has ten years' experience. She submitted that expertise can be gained through experience as was stated in the Court of Appeal decision of **Ahmed Shilla Mkumbo vs The DPP**, Criminal Appeal No. 235 of 2010 (unreported). The learned State Attorney submitted further that, the trial court considered the appellants' defence when it thoroughly analyzed it but rejected it.

On the fourth and last ground of appeal, Ms. Magoti submitted that, no evidence was tendered during trial with regard to dry pieces of meat. The evidence that was submitted was to the effect that the appellants were arrested with fresh pieces of meat and PW4 and PW2 testified to that effect. Also Exhibit P1 and P4 are to that effect. She went on to state that, the claims that evidence was fabricated to the effect that the appellants were in possession of dry wildebeest meat are unfounded. She submitted that, the appellants never raised this issue in court, and the issue of any of the appellants having a grudge with the game rangers is an afterthought as it was not raised during trial.

The learned State Attorney also alerted the court that there was an issue of law concerning the judgment, and that is non-adherence to section 312(2) of the Criminal Procedure Act as the trial court omitted to state the sections of the law that provides for the offences of which the appellants were convicted of. Ms. Magoti prayed for this court to rectify the anomaly through section 388 of the CPA.

I will dispose of the appeal by starting with the complaint that the case was not proved beyond reasonable doubt. PW1 and PW4 (park rangers) gave testimony that on the material date they arrested the appellants within Serengeti National Park and in possession of weapons

and government trophies and that one Paulo Nzuho, their team leader, filled the certificate of seizure. The said certificate of seizure was tendered during trial (Exhibit P1) by PW1. It should be noted that the maker of the Exhibit P1 did not give evidence during trial.

A close look at Exhibit P1 reveals that it was filled by Paulo Nzuho and it was witnessed by Anthony Misemi and Frenk Bishaho. The said names do not provide any aliases. As stated previously, PW1 (Antony Cleofasi) tendered the same. Perhaps it is prudent to quote the relevant portion of his testimony during trial touching on tendering of Exhibit P1 found at page 6-7 of the typewritten trial court proceedings:

> *"...The team leader filled the certificate of seizure and the coordinate of that place. The team leader was Paulo Nzuho.*
>
> *If I see the certificate I shall identify since* ***it has the date which we arrested the accused, the place where we arrested the accused, the names of accused including their signatures****...I have seen the form, it is the certificate of seizure, the one I explained here in court I pray the same to be received in court.* ***It has the names of the accused persons and the date and place where we arrested them****..." (Emphasis supplied).*

Meanwhile, at page 17-18 of the same proceedings, PW4 testified that:

> *"...On 18/06/2023 at around 9:00 am we were in (sic) patrol at Mto Mbalangeti within Serengeti National Park. My fellow park rangers who were Paulo Zumo and Antony Mwiseni...then Paulo Nzumbi who is the patrol team*

leader filled the certificate of seizure. I signed the form and the accused also signed with my fellow park rangers. If I see the form I shall identify it has my names and signature, the names of Park Rangers, the names of accused persons (sic), with their signature..."

What stands out from those extracts is that: one, none of the arresting park rangers on 18.06.2023 went by the name of Antony Cleofasi; two, PW4 was adamant that he signed Exhibit P1.

The question that begs for an answer is: is Anthony Mwisemi and Frenk Bishasho the same as Antony Cleofasi (PW1) and Frank Lutaizingwa (PW4)? I am afraid that from what is on the trial court's records that puzzle cannot be deciphered. Neither PW1 nor PW4 testified to the effect that they have aliases and that they used the same in filling Exhibit P1. What is stranger is that PW1 did not mention at all that, as a witness he signed Exhibit P1.

I am fully aware that on the strength of the Court of Appeal decisions of: **The DPP v. Kristina d/o Biskasevskaja**, Criminal Appeal No. 76 of 2016; and **DPP v. Sharif Mohamed @ Athumani and 6 others**, Criminal Appeal No. 74 of 2016 (both unreported) a witness who has full information and knowledge of the contents of a document is competent to tender it, however in the appeal at hand in the absence of proof that Anthony Mwisemi and Antony Cleofasi are the

same person, I do not think that PW1 was competent to tender Exhibit P1 and perhaps that is why even when he was laying the foundation for tendering it he omitted to state the obvious fact that he could identify the document because his name and signature were appended to it. I have my doubts that PW1 was present at the arrest of the appellants, likewise for PW4. There is no reasonable explanation as to why government employees would use different names on different occasions, and in light of that it would have been prudent for the said Paul Nzuho to testify during trial and tender Exhibit P1 or even identify it, otherwise Exhibit P1 leaves a lot to be desired.

All that being said and done, and having raised doubts that PW1 and PW4 arrested the appellants on the material date, the same is to be resolved in favour of the appellants. Apart from the evidence of PW1 and PW4 placing the appellants within Serengeti National Park and in possession of weapons and government trophy, which as alluded raises doubts, there is nothing on record to prove beyond reasonable doubt that the appellants committed the offences they were convicted of. Thus, the first ground of appeal is upheld, the prosecution failed to prove the case against the appellants beyond reasonable doubt.

Having found so, the rest of the grounds of appeal need not be entertained.

In the upshot, this appeal is allowed, the conviction of the trial court is quashed and sentences set aside. The appellants are to be released forthwith unless they are otherwise lawfully held.

It is so ordered.

DATED at **SHINYANGA** this 30th day of April, 2024

N.L. MWAKAHESYA

JUDGE

30/04/2024