IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IRINGA SUB REGISTRY

AT IRINGA

CRIMINAL APPEAL NO. 11914 OF 2024

(Originating from Criminal Case No. 10536 of 2024 in the District Court of Iringa at Iringa)

THE DIRECTOR OF PUBLIC PROSECUTIONS.....APPELLANT

VERSUS

LUTONJA JIDAI KINI.....RESPONDENT

JUDGMENT

Date of the Last Order: **08.05.2024**

Date of the Judgment: **14.05.2024**

A.E. Mwipopo, J.

The Director of Public Prosecution, the appellant, filed the present appeal under a certificate of urgency against the sentence of the Iringa District Court in Criminal Case No. 10536. The republic charged Lutonja Jidai Kini, the respondent, in the District Court for two counts. In the first count, the respondent was charged with the offence of unlawful introduction of domestic animals in the national park contrary to sections 25 (1) (d) and 29 (1) (2) of the National Parks Act, Cap. 282 R.E. 2002, as amended, read together with regulations 7 (i) and 20 of the National Parks Regulations, G.N.

No. 50 of 2002, as amended by G.N. No. 4 of 2003. In the second count, the respondent was charged with the offence of disturbing the habitat of the component of biological diversity contrary to sections 188 (c), 66, 67, 68 and 193 (1) (a) (b), (2), (3), (4), (5) of the Environment Management Act, Act No. 20 of 2004.

The prosecution alleged that on the 12th day of April 2024 at Ilolo area within Ruaha National Park in the District and Region of Iringa, the respondent disturbed the habitat of component of the biological diversity of flora and fauna by grazing and introducing domestic animals to wit two hundred and five (205) cattle and two (2) donkeys into the Ruaha National Park without having a permit of the Director or Warden or any other authorized servant of Trustees of the Tanzania National Parks. The respondent was arraigned in the District Court on the 22nd day of April, 2024 and the charge was read to him. The respondent admitted that his cattle had been lost and had entered the national park. The trial court recorded his plea as a plea of not guilty.

On the 23rd day of April, 2024, the prosecution narrated the facts of the case which the respondent admitted to be correct. The facts narrated by the prosecution revealed that the respondent disturbed the habitat of component of the biological diversity of flora and fauna of the Ruaha National

Park by grazing and introducing two hundred and five (205) cattle and two (2) donkeys into the national park without having a permit. As the respondent admitted the facts, which contained elements of both offences he was charged with, the trial court decided the charge to be read afresh to the respondent. The respondent admitted both offences in the charge. The trial district court recorded the respondent's plea guilty on both counts. The prosecution proceeded to tender a certificate of seizure, a sketch map of the crime scene, and 206 cattle and two donkeys. The case facts show that one cow was born at the hands of the park rangers, making the total number of cows 206. The respondent admitted the facts to be correct and that the cattle and donkeys seized by the park rangers in the Ruaha National Park belonged to him.

The trial court convicted the appellant on his plea of guilty. The prosecution prayed for the forfeiture of the cattle and donkey, payment of the case cost, and keeping the animals. The respondent said in mitigation that he has a family depending on him and that keeping livestock is his life. He depends on livestock to run his life and is ready to pay for the cost stated if his cattle were not forfeited. The trial district court sentenced the appellant to pay a fine of 100,000/= shillings for the 1st count, 200,000/= shillings for

the 2nd count, and 11,849,400/= shillings as the cost of keeping the seized cattle.

The sentence of the trial district aggrieved the appellant and filed the present appeal under a certificate of urgency containing two grounds of appeal as follows hereunder:-

1. *That the trial magistrate erred in law and fact by issuing a lesser sentence to the respondent without considering the law.*
2. *That the trial magistrate erred in law and fact by failing to issue an order for compensation.*

The appellant was represented by Mr. Daniel Lyatuu, the state attorney, at the hearing, whereas the respondent was represented by advocate Laniel Haule. Mr. Daniel Lyatuu informed this court that the matter is of extreme urgency as 206 cattle and two donkeys were impounded inside the national park and need to be disposed of. The advocate for the respondent agreed that the matter was of extreme urgency and was ready for a hearing. The court invited both sides to make their submissions.

The learned state attorney's submission regarding the 1st ground of appeal is that the trial court issued a lesser sentence to the respondent contrary to the law. In the 1st count, the respondent was charged with the offence of unlawfully introducing domestic animals into the National Park contrary to sections 25(1) (d) and 29(1), (2) of the National Park Act as

amended, read together with Regulations 7(i) and 20 of the National Park Regulations, G.N. No. 50 of 2002 as amended by G.N. 04 of 2003. After the respondent was convicted for his plea, the trial court sentenced the respondent to pay 10,000/= shilling contrary to regulation 20 of G.N. No. 50 of 2002 as amended by G. N. No. 04 of 2003, which provided that the fine should not be less than 200,000/= shillings. The trial court ordered the respondent to pay a fine of 10,000/= without giving the reason for such a lesser fine. He prayed for the court to interpret the regulation on the payment of the mentioned amount for each animal that entered the national park and not for the whole herd of cattle as the trial court did. He believed that the penalty is not supposed to be the same for the person who introduces one domestic animal and the other who introduces 200 animals, as in this case. For the interest of justice and the protection of our national parks, he prayed for the court to interpret regulation 20 of G.N. No. 50 of 2002 to mean the penalty is for each head of cattle.

The counsel said the trial court also issued a lesser penalty to the respondent in the 2nd count after conviction. The law provides that the sentence of the person convicted of disturbing the habitat of the component of biological diversity should not exceed 10 million shillings, but in this case, the trial court ordered the respondent to pay 200,000/= shillings without

justification. The effects of the respondents disturbing the Ruaha National Park habitat significantly impact the ecology of the national park and tourism industry. The trial court was supposed to see that and punish the respondent accordingly.

Mr. Lyatuu said in support of the second ground of appeal that the trial court did not issue compensation for the damage, including the fact that the national park has to take care of the cattle the respondent introduced to the national park. The park rangers must care for the animals to serve and protect them from dangerous animals. As a result, they keep and graze cattle instead of doing activities to conserve the wildlife in the national park. He prayed for the court to order proper compensation to the appellant. He also prayed for the court to order the forfeiture of the cattle.

In his response, Mr. Laniel Haule said that the trial court's sentence was proper and according to the law. Submitting on the 1st ground of appeal, he said that section 29(1) of the National Park Act provides that the penalty for the offence shall not exceed 10,000/= shillings. Thus, it was correct for the trial court to order the fine of 10,000/= shilling on the 1st count. Also, the trial court adequately ordered payment of 200,000/= for the 2nd count since section 193(1) of the Environmental Management Act allows the court to

impose a penalty not exceeding ten million shillings. Thus, the trial court used its discretion to award the fine of 200,000/=.

On the appellant's prayer for forfeiture of the herd of cattle introduced to the national park, the learned counsel for the respondent said that section 29 of the National Parks Act and section 193 of the Environmental Management Act provide that the forfeiture is the court's discretion. In his mitigation, the respondent made it clear that grazing cattle is the only economic activity he has, and forfeiting his cattle would irreparably affect his life. Therefore, the trial court correctly decided not to order for forfeiture of the impounded cattle.

Regarding the prayer by the appellant for each head of cattle to be fined as per regulation 20 of the G.N. No. 50 of 2002 as amended, Mr. Haule said the wording of the regulation does not suggest that the penalty has to be imposed on each head of an animal that was introduced in the national park. The law indicates that the penalty is for the herd of cattle and not each animal. Thus, the court does not need to interpret the regulation differently than its wording.

The learned advocate submission on the second ground of appeal is that the trial court adequately awarded compensation to the appellant even though they failed to prove the cost of caring for impounded cattle. Section

345 of the Criminal Procedure Act, which governs the issue of compensation or cost to the prosecutor, provides clearly that the said cost or compensation must be proved. On page 11 of the typed proceedings, the trial court asked the prosecution to prove the cost of caring for the impounded cattle, but the prosecution side just mentioned it. There was no evidence to prove the cost claimed, which was tendered or adduced in court. The appellant claimed payment of per diem to park rangers while doing their normal duties. The appellant also claimed the cost of prosecuting the case while doing their routine work in Iringa, their duty station. They were doing their normal work and were not supposed to be compensated as they did not incur costs. The counsel went on to pray for the cost awarded by the trial court to be quashed as they were not justified. He also prayed for the impounded cattle to be handled by the respondent as they are still inside the Ruaha National Park under the hands of national park rangers, and it is unsafe for the animals. He said that the appellant had executed the sentence by paying the fine and prayed for the appeal to be dismissed for wants of merits.

In his rejoinder, Mr. Daniel Lyatuu said that section 29 of the National Parks Act provides for penalties for offences which the Act did not stipulate. Regulation 20 of the G.N. 50 of 2002 provides for the penalty for the offence. The Regulations are made under the provision of the Act. Hence, its penalties

are similar to those stipulated under the Parent Act. The respondent said he was ready to pay the cost so long as his cattle would not be forfeited. As a result, the prosecution did not need to prove the cost, as seen on page 11 of the proceeding. The counsel retaliated his submission in chief and prayers.

In determining this appeal, I find it pertinent to examine the law that creates each offence the respondent was facing and its penalties. The respondent was charged with unlawfully introducing domestic animals into the national park and disturbing the biological diversity component's habitat. The offence of unlawfully introducing domestic animals in the national park is created under sections 25 (1) (d) and 29 (1) (2) of the National Parks Act, Cap. 282 R.E. 2002, as amended, read together with regulations 7 (i) and 20 of the National Parks Regulations, G.N. No. 50 of 2002, as amended by G.N. No. 4 of 2003. Section 25 (1) (d) of the Act gave mandate to the Trustees of Tanzania National Parks (TANAPA), subject to the approval of the Minister, to make regulations prohibiting, controlling, or regulating the bringing into a national park of any wild or domestic animals. From the law, the Trustees made the National Parks Regulations, G.N. No. 255 of 1970 as amended. Regulation 7 (i) of G.N. No. 255 of 1970 prohibits introducing any animal or vegetation into the national park without permission in writing from the Director, Warden or any other authorized servant or agent of the Trustees.

Regulation 20 of G.N. No. 255 of 1970, as amended by G.N. No. 4 of 2003, makes it an offence to contravene or fail to comply with the provision of the Regulations. Regulation 20 provides that a person who violates or fails to comply with any of the provisions of the Regulations commits an offence and, on conviction, is liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a period not exceeding three months or to both.

Reading regulation 20 of G.N. No. 255 of 1970 as amended, it makes any contravention or non-compliance to the regulation an offence. The penalty for the offence under regulation 20 of G.N. No. 255 of 1970 upon conviction is a fine not exceeding two hundred thousand shillings or imprisonment for a period not exceeding three months or both fine and imprisonment. The penalty provided by the Regulations is for the offence. In the present case, the respondent was charged with introducing domestic animals to the national park. The penalty for the offence after he was convicted of his plea of guilty was a fine not exceeding two hundred thousand shillings or imprisonment for a period not exceeding three months. The counsel for the appellant believed that each head of cattle introduced in the national park was supposed to be fined up to two thousand shillings. With due respect, I disagree with his suggestion. As I stated earlier, the penalty provided by regulation 20 of G.N. No. 255 of 1970 as amended is regarding

the offence and not the subject matter. The trial court correctly sentenced the respondent to pay a fine for the offence, not for each animal introduced in the national park. However, the fine of ten thousand shillings the trial court ordered the respondent to pay was very low considering the number of cattle introduced in the national park. The appellant was supposed to be fined the maximum penalty available. Thus, the ten thousand shillings fine imposed by the trial court on the respondent in the 1st count is set aside and replaced by the fine of two hundred thousand.

The same applies to the fine of two hundred thousand shillings (200,000), which the trial court sentenced the respondent after conviction for the 2nd count was very low. Section 188 (c) of the Environmental Management Act, Act No. 20 of 2004, provides a fine a fine not exceeding ten million shillings or imprisonment for a term not exceeding five years or both to the person who is convicted for the offence of disturbing the habitat of a component of biological diversity. The typed proceedings on page 10 show the effects of the offence committed, which include the destruction of flora and fauna, use of resources to maintain cattle introduced in the national park, disturbance to the tourism industry and bad image of the nation on the protection of natural resources. The fine imposed was supposed to consider the effects of the offence on the national park and the country at large. For

that reason, I set aside the trial court sentence for the respondent to pay a fine of two hundred thousand shillings for the 2nd count and substituted for the fine of five million only.

Regarding the appellant's submission that the trial court was supposed to forfeit 206 cattle and two donkeys for disturbing the habitat of a component of biological diversity of the Ruaha National Park in addition to the fine, section 193 (1) of the Environmental Management Act provides the same to be the discretion of the trial court. The trial court rejected forfeiting the cattle and donkeys because the respondent said livestock keeping is the job running his life. In other words, the respondent said livestock keeping is his life. Forfeiting his cattle will be similar to taking away his only source of income and possibly causing poverty to the respondent and his family. It is not the intention of the legislature to cause impoverishment in its citizens. Penalty aims to punish the offender so that he can learn and be reformed. The court is aware of the frequency of the offence in our national parks and the need to deter other persons from committing the same offence. However, the same should not be the only factor to be considered when deciding the punishment for the offender. In **Silvanus Leonard Nguruwe vs. Republic, [1981] TLR 67**, the court said on page 68 that:-

"Prevalence of an offence is indeed a factor which a trial court should always take into account when assessing a proper sentence to impose in any particular case, but it would be contrary to principle to consider this factor either as the predominant or only factor that must guide the court in its consideration of sentence."

From the above-cited case, there are other factors to consider when sentencing the offender.

In the present case, the respondent, from the beginning of this case, admitted that his cattle had entered the national park. In his submission on the auxiliary order for forfeiture, the respondent said he would be ready to pay the cost incurred if his cattle were not forfeited. The said mitigation is of a person who feels sorry and repents for his actions. He has learnt his lesson. Such a person, being a first offender, deserves a lenient sentence. See. **Tabu Fikwa vs. Republic 1988 TLR 48**. The trial court used its discretion judiciously to order costs instead of a forfeiture order.

The counsel for the respondent said the cost awarded needed to be proved. However, the record shows that the respondent said he was ready to pay for the cost of caring for his cattle inside the national park if they were not forfeited. I agree with the state attorney that there was no need to prove the cost claimed when the respondent stated that he was ready to pay it. The trial court stated the reason for awarding a cost of shillings 11,520,000/= to

the republic, which I found to be reasonable. Thus, the order for the cost awarded by the trial court is upheld.

Therefore, the appeal is partly allowed. The respondent is to pay the fine of two hundred thousand shillings in the 1st count and a fine of five million shillings in the 2nd count. The fines imposed by the trial court for the 1st and 2nd counts are set aside accordingly. The trial court's order for 206 cows and two donkeys to be returned to the respondent is upheld. It is so ordered accordingly.

Dated at Iringa, this is the 14th day of May 2024.

A.E. MWIPOPO

JUDGE