

IN THE HIGH COURT OF TANZANIA

MUSOMA SUB-REGISTRY

AT MUSOMA

CRIMINAL APPEAL NO. 15088 OF 2024

REFERENCE NO. 202406042000015088

(Original Economic Case No. 86 of 2021 of the District Court of Serengeti at Mugumu)

JOHN KULWA @ MAGABE..... APPELLANT

VERSUS

THE REPUBLICRESPONDENT

JUDGMENT

18th & 18th June, 2024

M. L. KOMBA, J.:

The appellant above named was arraigned before the District Court of Serengeti at Mugumu (the trial court) charged with three counts; **one**, unlawful entry into the National Park contrary to Sections 21(1) (a) and (2) and 29(1) of the National Parks Act, Cap 282 as amended by the Written Laws (Miscellaneous Amendments) Act No. 11 of 2003 (the NPA); **two**, unlawful possession of weapons in National Park without permit contrary to section 24(1)(b) and (2) of Cap 282; and **three**, unlawful possession of Government trophies contrary to section 86 (1) and (2)(c) (iii) of the

Wildlife Conservation Act No. 05 of 2009 as amended by written Law (Miscellaneous Amendments) (No. 2) Act of 2016 read together with Paragraph 14 of the First Schedule to, and sections 57 (1), 60 (2) of the Economic and Organized Crime Control Act [Cap. 200 R.E. 2002] (EOCCA).

After full trial, the trial Court, found the appellant guilty, convicted and sentenced him to serve a custodial sentence of one (02) year for the second count and twenty years imprisonment for the offence in the third count.

Aggrieved and in searching for the justice, the appellant knowing he was out of time to appeal, he applied and was granted time to appeal out of time. Today he appeared before this court to express his innocence and pray to be free. In doing so he had four (4) grounds of appeal which I will not reproduce them for withheld reasons.

The appellant was unrepresented while Republic was represented by Mr. Jonas Kivuyo, a State Attorney.

In support of the appeal, the appellant had a very short submission that he was arrested while was outside the National Park in the farm and prayed this court to adopt his petition of appeal as filed.

On the other side, Mr. Kivuyo informed this court that he is not contesting the appeal as the offence charged the appellant was not proved beyond reasonable doubt. He submitted that in the first count it was not proved by the Republic that the appellant was within the National Park by presenting GPS coordinates showing exactly the place where the appellant was found. To clarify his position, he submitted that PW1 and PW2 whose testimony was recorded at pages 14-18 and 22-24 there is no GPS coordinate mentioned to show specifically the area of arrest. He said failure to mention coordinates showing the offence of being found within National Parks was not proved as was the holding in **Chacha Marwa Osondo vs Republic**, Crim. Appeal No. 91 of 2022 where this court (Musoma Sub-Registry) insisted the use of GPS. To him the offence of being found with a weapon within National Park cannot be said to be proved and it was the Republic's responsibility to prove the offence as provided under S. 3 (2) (b) of the Evidence Act, Cap 6. Without many words he submitted that the appeal has merit and prays the appellant to be released.

Appellant has nothing for rejoinder than to pray for his release.

I have thoroughly gone through the submissions by both parties, though not contested, it's the duty of this court to determine whether the appeal is

meritorious. The cardinal principle in criminal cases is that, it is upon the prosecution to prove the case against an accused person is proved beyond reasonable doubt as was in **John Makolebela vs Kulwa Makolobela and Eric Juma @ Tanganyika** [2002] T.L.R. 296. Proving an offence beyond reasonable doubt has been defined in the case of **Samson Matiga vs Republic**, Criminal Appeal No. 205 of 2007, CAT at Mtwara (unreported) where the Court of Appeal said;

'What it means, to put is simply, is that the prosecution evidence must be strongly as to leave no doubt to the criminal liability of an accused person'

The appellant was charged with three counts including unlawful entry into the National Park but was convicted with two offences. As submitted by Mr. Kivuyo, no prosecution witness provide GPS coordinated during hearing to prove that the appellant was within the prohibited area with weapon and or Government trophy. I read the testimony of PW1 and PW 2 both have words of mouth without technical prove of the area they arrested the appellant.

It is trite that in proving the offence concerning the presence of appellant within certain geographical limitation, prosecution need to provide specific

coordinates or GPS as was decided in **Dogo Marwa @ Sigana and Mwita vs Republic** Criminal Appeal No. 512 of 2019 CAT at Musoma. See also **Chacha Marwa Osondo vs Republic** (supra). For that truth and as submitted by State Attorney, the two counts cannot be said to be proved.

Consequently, Allow the appeal, I hereby quashed the conviction and set aside the sentence imposed against the appellant. I order the appellant to be released from prison unless lawfully held.

DATED in **MUSOMA** this 18th Day of June, 2024.



NLK
M. L. KOMBA
Judge

Judgement delivered in chamber before Appellant who appeared in person while without representation while Republic was represented by Mr. Jonas Kivuyo, State Attorney

NLK
M. L. KOMBA
Judge
18th June, 2024