

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IRINGA SUB - REGISTRY

AT IRINGA

CRIMINAL APPEAL NO. 551 OF 2024

(Arising from the District Court of Iringa at Iringa in
Economic Case No. 13 of 2022)

ROMANUS BATON MATUTULI @ DOTTO APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

Date of last Order: 20/06/2024
Date of Judgement: 28/06/2024

LALTAIKA, J.

The Appellant herein, **ROMANUS BATON MATUTULI @ DOTTO**, was arraigned in the District Court of Iringa at Iringa charged for one count of Unlawful possession of government trophy c/s 86(1) and (2)(b) of the Wildlife Conservation Act No 5 of 2009 and paragraph 14 the first schedule and section 57(1) and 60(1) and (2) of the Economic and Organized Crime Control Act Cap 200 RE 2022. He was convicted as charged and sentenced to serve 20 years in prison. Aggrieved he filed a notice of intention to appeal

22/5/2023 and lodged his petition of appeal on 8/1/2024. It contains 7 grounds of appeal. For reasons that will be clear soon, I choose not to reproduce the grounds of appeal.

When the appeal was called on for hearing on the 20th day of June 2024, the appellant appeared in person, unrepresented. The respondent Republic, on the other hand, appeared through Ms. Winifrida Ernest Mpiwa, learned State Attorney.

Not being learned in law, the appellant had nothing substantial to add to the elaborate petition. While reserving his right to a rejoinder should the situation dictate, he paved the way for the learned State Attorney to proceed on behalf of the Respondent.

Taking up the podium, Ms. Mpiwa stated that she would address a point of law which she believed was capable of disposing of the appeal. She noted that the respondent supported the appeal because of a legal issue identified in the case.

The learned State Attorney proceeded to submit thoughtfully that the appellant had been arraigned for unlawful possession of government trophies, an economic offense. According to section 26(1) of the Economic

and Organized Crime Control Act (EOCCA) Cap 200 RE 2022, Ms. Mpiwa reasoned, prosecution for such an offense requires the consent of the Director of Public Prosecutions (DPP). The same law empowers the DPP to delegate this power to appointed officers. However, argued Ms. Mpiwa, in the matter at hand, the consent was given by the Regional Prosecution Officer (RPO) under section 26(1), which only empowers the DPP and not the RPO. Ms. Mpiwa submitted that this rendered the entire trial court proceedings illegal due to the nonexistent consent.

Ms. Mpiwa further explained that while the usual remedy in such cases is to pray for a retrial, as established in the famous case of **Fatehaji Manji v. Republic** (1966) EALR 343, certain conditions must be met for a retrial to be appropriate. These include the requirement that the prosecution's evidence is sufficient, and that the retrial would not allow the prosecution to remedy evidentiary shortcomings to their advantage.

After reviewing the proceedings, Ms. Mpiwa, reasoned, she was convinced that the case contained significant evidentiary shortfalls. She argued that if an order for retrial were made, the prosecution might take

advantage of it to address these shortcomings. She provided specific examples to illustrate her point:

Arrest and Search: PW1, as recorded on pages 8 and 9 of the proceedings, stated that he received information from his supervisor about a person in Kipera Village with elephant tusks and was instructed to arrest him. Upon receiving the information, PW1 prepared the search order and seizure certificate and proceeded to the location, pretending to be a customer.

After meeting the appellant, Ms. Mpiwa narrated, they went to where the tusks were hidden, impounded them, and then looked for the Village Executive Officer. Ms. Mpiwa is of a firm belief that this search was improper as it was not an emergency search.

PW1 and his unnamed officer, the learned State Attorney reasoned, knew in advance what they were going to do and should have been accompanied by an independent witness, as required by section 38 of the **Criminal Procedure Act Cap 20 RE 2022 (the CPA)**. Furthermore, since the search took place at 23:30 and lasted until 4:00 AM, it violated section 40 of the CPA, which mandates searches to be conducted before sunset.

This procedural flaw, Ms. Mpiwa emphasized, cast doubt on whether the appellant was indeed found with the trophy or something else.

Two: Evidence of the Government Trophy Valuer: She argued that PW3, the government trophy valuer, was supposed to prove that the impounded items were indeed elephant tusks. However, he failed to explain how the items were identified as elephant tusks and not from another animal. On page 27, PW3 merely stated that the items were light cream color, curved, and had unsharpened tips.

Ms. Mpiwa argued further that this was insufficient and noted that the valuer should have provided specific scientific features and his experience to support his identification. She cited the case of **William Maganga @ Charles v. Republic** Crim Appeal No 104 of 2020 CAT, Tabora (Unreported), which emphasized the need for the valuer to distinguish the items from those of other animals with horns. The weaknesses in the valuer's testimony left many doubts.

Due to these identified weaknesses, Ms. Mpiwa argued that many doubts arose in the case. If the matter were retried, the learned State

Attorney emphasized, the prosecution would have the opportunity to remedy these issues, which would deny the appellant his rights.

In conclusion, Ms. Mpiwa reiterated that the respondent supported the appeal, prayed for the appeal to be granted, and requested that the appellant be set free.

The Appellant stated that he had nothing to add. When questioned by the court to establish actions before and after the incident, he explained that he was a resident of Kipela Village, where he was born. Kipela Village is near the Kalenga area and far from any protected area. The Appellant mentioned that the authorities were initially looking for someone else, specifically Kasian Kindole. They asked him to get into their car and they went to Kasian's place, as they lived in the same village. After bidding them goodbye, he was shortly thereafter arrested. He also noted that the informer had directed the authorities. The Appellant was brought to court without any legal representation.

I have carefully considered the submissions by both parties in the light of the grounds of appeal. It is my finding that while technical flaws have been identified in the prosecution's case, these have not prejudiced the

Appellant in a manner that would warrant overturning the conviction outright. It is acknowledged that wildlife crime, particularly involving trans-national organized activities, represents a serious threat that requires robust prosecution and protection measures.

The identified procedural lapses, such as the improper search and insufficient valuation of the wildlife trophies, are deemed technical in nature. They do not undermine the core elements of the prosecution's case nor significantly prejudice the Appellant's rights.

With regards to the description given by the valuer, this Court had stated in **Seif Rashid Bwabwala vs Republic** (Misc. Criminal Appeal 12 of 2023) [2023] TZHC 17224 (10 May 2023) thus:

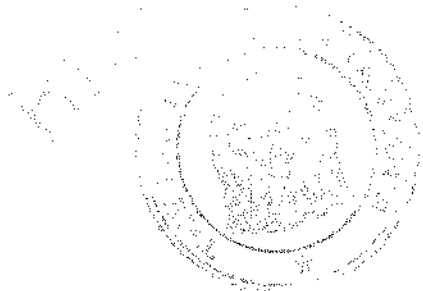
*I am also alive to the fact that the Court of Appeal of Tanzania in **SKONA ROLYAN MUNGE & OTHERS VS REPUBLIC** (Criminal Appeal 51 of 2020) [2022] TZCA 773 (6 December 2022) refused to entertain the common confusion among Kiswahili speakers on whether elephant tusks are teeth "**meno ya tembo**" or horns "**pembe za ndovu**." The Court relied on the expert witness' description and moved on. Even in English the words "ivory" and "elephant tusks" are sometimes used*

interchangeably. Nevertheless, courts in many countries have refused to be swayed back and forth through technicalities, semantics, and tautology, when it comes to easily identifiable objects such as elephant tusks.

Wildlife crimes cannot be allowed to be resolved so simply, especially when international ramifications are involved. The integrity of our wildlife and natural resources demands thorough and legally sound prosecution. Therefore, in case the RPO erred in obtaining DPP's consent, there is no harm, in my opinion, in requesting for an amended document. This is ordered that the case be retried to rectify the procedural deficiencies and to ensure that justice is served both for the accused and for the protection of wildlife.

In the upshot I order that the case be retried upon obtaining the consent of the DPP as provided for by the EOCCA

It is so ordered.

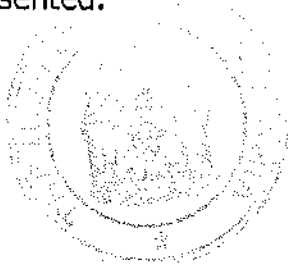


E.I. Laltaika

E.I. LALTAIKA
JUDGE
28.06.2024

Court

This judgement is delivered under my hand and the seal of this court this 28th day of June 2024 in the presence of Mr. Sauli Makori, learned State Attorney for the Respondent and the Appellant who has appeared in person, unrepresented.



E.I. Laltaika

**E.I. LALTAIKA
JUDGE
28.06.2024**

Court

The right to appeal to the Court of Appeal of Tanzania is fully explained.



E.I. Laltaika

**E.I. LALTAIKA
JUDGE
28.06.2024**