

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI SUB REGISTRY

AT MOSHI

CRIMINAL APPEAL NO. 58 OF 2023

(Originating from Economic Case No. 05 of 2022 of Rombo District Court)

LAURENT SAFARI TARIMO APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

29/01/2024 & 04/03/2024

SIMFUKWE, J.

Laurent Safari Tarimo, the appellant herein was aggrieved by the decision of Rombo District Court (the trial court) which convicted and sentenced him to serve three years and 20 years imprisonment respectively.

Before the trial court, the appellant was charged with a total of three counts: unlawful possession of Government trophies contrary to **section**

86 (1) (2) (c) (iii) of the Wildlife Conservation Act No. 5 of 2009 (the Act) as amended by **section 59 of the Written Laws (Miscellaneous Amendments) Act No. 2 of 2016** 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** [CAP 200 R.E. 2019] (the EOCCA); unlawful possession of weapons into the conservation area contrary to **section 103 of the Wildlife Conservation Act** (supra) read together with **paragraph 14 of the 1st Schedule and section 57(1) and 60(2) of the Economic and Organised Crimes Control Act** (supra) and entering into the National Park without a permit contrary to **section 21(1)(a)(2) of the National Parks Act** [Cap 282 R.E 2002] as amended by Act No. 11 of 2003.

It was alleged in the first count that, on 2nd day of April 2022 at Kamwanga area within Kilimanjaro National Park within Rombo District in Kilimanjaro region, the appellant was found in unlawful possession of dry meat of Bushbuck which was equivalent to one killed Bushbuck valued at USD 600 which is equivalent to TZS 1,392,600/= the property of the United Republic of Tanzania.

On the second count, it was alleged that, on the same date, time and place, as stated in the first count, the appellant was found in unlawful possession of 7 manila traps, one bush knife and one (1) axe without a permit.

The particulars of the third count were that on the same date, time and place, the appellant was found to have entered into Kilimanjaro National Park without a licence or permit.

In proof of the charges against the appellant the prosecution stated inter alia that on the fateful date, PW2, a wildlife ranger while on patrol, saw human steps heading inside the National Park. He made follow up of the said steps and found the accused herein with a bush knife, sulphate bag which had six pieces of dry wild meat, one axe and 7 manila ropes alleged to be traps. Upon interrogation, it was found that the appellant had no permit for entering into the National Park, possessing weapons and hunting. The above noted items were seized through certificate of seizure (Exhibit P5) and handed to the exhibit keeper (PW1). Thereafter, the alleged meat was identified by PW3 the Wildlife Officer who filed trophy valuation certificate (Exhibit P6). The investigator (PW4) confirmed that the said exhibits belonged to the accused.

In his defence, the appellant stated that he was arrested while at the farms and was accused for entering into the National Park. However, during cross examination, the appellant admitted that he was found inside the National Park and was taken to the police station with the alleged meat.

At the end of the trial, the trial court acquitted the appellant on the first count and convicted him in the second and third counts. On the second count, the court sentenced him to serve 20 years imprisonment whereas on the third count, he was sentenced to serve 3 years imprisonment. The sentences were ordered to run concurrently. Dissatisfied, the appellant preferred the instant appeal on the following four grounds:

- 1. That, the learned trial magistrate grossly erred in both law and fact by convicting the appellant with the offence which was not proved to the hilt.*
- 2. That, the learned trial magistrate erroneous (sic) by trying the economic case without the certificate to confirmed jurisdiction. (sic)*
- 3. That, the trial court erred both in law and fact by failing to note the open contradictions between the evidence of PW2*

and PW4 concerning about (sic) exhibit P4. PW2 testified that the bush knife had a black handle rolled by rubber while PW4 said the bush knife had a plastic handle and the one which rolled by rubber was an axe. This alone raised doubt in the prosecution case.

- 4. That, as the Appellant was found guilty with the offence of unlawful possession of weapons into the conservation area, he was wrongly sentenced to twenty (20) years' imprisonment.*

During the hearing of the appeal, the appellant was unrepresented while the respondent/Republic was represented by Ms. Bora Mfinanga, learned Senior State Attorney. The matter proceeded *viva voce*.

The appellant being unrepresented, briefly he informed this court that, he committed the offence because of hardship of life. He averred that instead of stealing, he found that option much better. Basing on his submission, the appellant prayed this court to have mercy on him.

The above submission was supported by the learned State Attorney who added that at page 30 of the typed proceedings of the trial court the

appellant admitted to have entered into the National Park without a permit.

Concerning consent and certificate to confer jurisdiction as raised by the appellant in his 2nd ground of appeal, Ms. Bora submitted that the said documents were filed in court as seen in the trial court proceedings.

On the issue of sentence, the learned State Attorney supported the sentence of 20 years and her reason was that entering into the National Parks is an economic offence.

Having considered the grounds of appeal and the submissions of the parties, it is evident that the appellant raised four grounds of appeal but in his submission, he stated that he committed the said offences due to hard life. His submission was supported by the learned State Attorney. Admittedly, this is a rare case where the appellant raised the grounds of appeal but in his submission, departs from his grounds of appeal and admits to have committed the offences.

Despite the fact that the appellant admitted to have committed the offences of which he was convicted, for interests of justice I will discuss the 2nd and the 4th grounds of appeal as they raise points of law.

Starting with the second ground of appeal; the appellant grieved that the trial court entertained the economic case without certificate conferring jurisdiction. Ms. Bora the learned State Attorney replied that, the certificate conferring jurisdiction was filed in the trial court as seen in the trial court proceedings.

I have examined the proceedings of the trial court and found that the same speak loudly that the said certificate was filed in court on 06/12/2022 and it was admitted on 07/02/2023 as reflected at page 10 of the typed proceedings. Therefore, this ground is without merit.

Regarding the 4th ground of appeal; I have gone through the trial court records and found that, at page 30 of the trial court proceedings the appellant admitted to have been found in Kilimanjaro National Park which is the gist of the offences charged on the 2nd and 3rd counts. Moreover, I discovered that, despite his admission to the offences charged, the appellant was charged under the wrong provision of the law on the second count. Unlawful possession of weapons in the National Park is an offence under **section 17 (1) (a), (b) and (2) of the National Parks Act**, (supra). Thus, it was wrong to charge the appellant under **section 103 of the Wildlife Conservation Act** (supra) read together with

paragraph 14 of the 1st Schedule and section 57(1) and 60(2) of the Economic and Organised Crimes Control Act (supra) which is applicable for Game Reserves.

The appellant ignorantly complained that he was wrongly sentenced to 20 years imprisonment because he was found guilty with the offence of unlawful possession of weapons in a **conservation area**. The learned State Attorney supported the sentence meted to the appellant. With due respect to the learned State Attorney, I reiterate that the appellant was charged under a wrong provision of the law. I am of strong opinion that since the appellant was found in possession of weapons in **the National Park**, the correct provision to charge him was supposed to be **section 17(1)(a), (b) and (2) of the National Parks Act**, (supra) which reads:

17.-(1) No person shall, save under and in accordance with a permit in writing signed by an authorized officer, within any national park -

(a) dig, lay, or construct any pitfall, net, trap, snare or other devices whatsoever, capable of killing, capturing or wounding any animal;

(b) carry or have in his possession or under his control any weapon in respect of which he fails to satisfy the Trustees or any authorized officer that it was intended to be used for a purpose other than the hunting, killing, wounding or capturing of an animal.

Section 17(2) of the same Act prescribes punishment for unlawful possession of weapons in the National Parks. The provision reads:

*(2) Any person who contravenes any of the provisions of this section shall be guilty of an offence and shall be liable on conviction **to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years** or to both such fine and such imprisonment.*”Emphasis added

The above provision is clear that any person found in possession of weapons in the National Park will be liable under the **National Parks Act** and will be sentenced to pay a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Furthermore, even the imposed sentence of three years imprisonment on the third count is illegal as it exceeds the maximum prescribed sentence under **section 21 (1) (a) of The National Parks Act** (supra) which provides that:

"21. -(1) Any person who commits an offence under this Act shall, on conviction, if no other penalty is specified, be liable –

(a) in the case of an individual, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year or to both that fine and imprisonment;"

In light of the above provisions, I hereby invoke my revisionary powers under **section 373 (1)(b) of the Criminal Procedure Act**, Cap 20 R.E 2022, quash the conviction and sentences meted against the appellant nullify the proceedings of the trial court and allow this appeal.

As the appellant has already served almost one year in prison, I am convinced that ordering retrial of the matter will prejudice the appellant. Therefore, I hereby order his immediate release from custody unless held for other lawful reasons.

Order accordingly.

Dated and delivered at Moshi this 4th day of March, 2024.



X

S. H. SIMFUKWE

JUDGE

Signed by: S. H. SIMFUKWE

04/03/2024