IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

THE CORRUPTION AND ECONOMIC CRIMES DIVISION

AT ARUSHA-SUB REGISTRY

ECONOMIC CASE NO. 10 OF 2019

REPUBLIC

VERSUS

1. **HASSAN AHMED SAID**
2. **DAUD GABRIEL MATURO**

JUDGMENT

8th & 8th December, 2020

BANZI, J.:

Hassan Ahmed Said and Daud Gabriel Maturo (the first and second accused persons respectively), are charged with the offence of unlawful possession of government trophy contrary to section 86 (1) (2) (b) of the Wildlife Conservation Act, No. 5 of 2009 ("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 Organised Crime Control Act [Cap 200 R.E. 2002] ("the EOCCA"), as amended by sections 16 (a) and 13 (b) respectively, of the Written Laws (Miscellaneous Amendments) Act, No. 3 of 2016.

It is alleged that, on 21st June, 2017 at Arusha Star Makao Mapya area, within the City, District and Region of Arusha, the accused persons were

found in possession of government trophies, to wit; ten (10) teeth of lion and eighteen (18) claws of lion equivalent to three killed lions each valued at USD 4,900 all total valued at USD 14,700 equivalent to Tshs.32,951,667/= the property of the Government of the United Republic of Tanzania without a permit from the Director of Wildlife.

On the first day when the case was called for plea taking and preliminary hearing, the first accused person through his Advocate Mr. Gwakisa Sambo expressed his will of entering into plea bargaining arrangement with the Director of Prosecutions ("the DPP"). Nevertheless, the case proceeded with hearing while the first accused person continued with negotiations with the DPP. Consequent to the plea bargaining arrangement, on 16th October, 2020, the first accused person entered into Plea Agreement with the DPP whereby, among the conditions was to pay Tshs.65,903,334/= to the government as compensation. Pursuant to the Plea Agreement, the first accused person pleaded guilty to the charged offence whereby, he was convicted and sentenced to pay fine of Tshs.1,000,000/= or in default to serve a term of six months imprisonment. In addition, he was ordered to pay Tshs.65,903,334/= to the government as compensation.

The trial proceeded with the second accused person whereas, Ms. Adelaide Kassala, learned Senior State Attorney, Ms. Alice Mtenga and Mr. Hatibu Ahmed, learned State Attorneys represented the Republic and on the other hand, the second accused person enjoyed the services of Ms. Mariam Saad, learned Advocate.

It was the prosecution evidence that, on 19th June, 2017, ASP James Kilosa (PW3) received information from his informant about illegal dealing in lion claws expected to be conducted in Arusha. Upon receiving such information, he contacted his colleague, one Raymond Mdoe so that they can follow up the said transaction. On 21st June, 2017, PW3 was tipped off about a suspicious motor vehicle parked at Arusha Star area. On reliance of such information, PW3 took his colleague Raymond Mdoe and went to Arusha Star Makao Mapya area where they found the motor vehicle with Reg. No. T649 DCH make Toyota IST silver in colour with two persons therein. He went closer and knocked the side window which was opened by those persons. Thereafter, PW3 introduced himself and informed them that, he wanted to conduct search in their motor vehicle. They allowed him and the search began. According to him, he conducted the search in the presence of Raymond Mdoe and independent witness, Daniel Turere (PW4). In the course of search, he found one ruler and khaki envelope on the dashboard. Within the khaki envelope, they found 10 teeth and 18 claws of lion. The

teeth and claws in question together with ruler and motor vehicle in question were seized by PW3 via the certificate of seizure (Exhibit P8) which was signed by both accused persons, PW3, the independent witness, PW4 and Raymond Mdoe. Then accused persons and the seized items were taken to Anti-poaching Unit Northern Zone (KDU) offices. On arrival, PW3 handed over 10 teeth of lion, 18 claws of lion, one ruler and one motor vehicle make Toyota IST with Reg No. T649 DCH to exhibit keeper, PW1 via handing over form (Exhibit P1) in the presence of both accused persons and Raymond Mdoe. PW1 labelled them and stored in the exhibits room.

On 22nd June, 2017, PW1 handed over the claws and teeth in question to Chacha Manamba (PW2) for identification and valuation via handing over form (Exhibit P3). After being satisfied that they were lion's teeth and claws, PW2 carried out valuation by using ten teeth in order to get exact number of lions which were killed. According to him, all teeth were canines whereby one lion has four canines, and hence, after calculating he got a total of three killed lions. Thereafter, he went on by adding value of each lion which is USD 4,900 whereby he got a total of USD 14,700 equivalent to Tshs.32,951,667/= at the exchange rate of Tshs.2,241/61 prevailing over that day. He then filled in trophy valuation certificate (Exhibit P7(a)) and handed over back the claws and teeth to PW1 who stored the same until the

day he came to testified before this Court. Ten teeth of lion and eighteen claws of lion were admitted as Exhibit P4.

In his defence, the second accused person (DW1) denied to be arrested with the teeth and claws in question. He also denied to know the first accused person prior to 5th July, 2017 when he met him for the first time when they were arraigned in court. It was the evidence of DW1 that, on 21st June, 2017 around 1900 hours, he was at a grocery owned by Farii located near his house at Kikatiti. He was with other young men including Estomii Nicolao (DW2). Then he asked DW2 to meet him tomorrow as he wanted to assist him to shift debris from a pit hole. The duo parted and DW1 went home to sleep. On 22nd June, 2017, while he was working with DW2, a child from his neighbourhood came and told him that, there were persons who want to lease a house. He left and went to meet them. Upon arrival, he saw one man and one woman and after conversation, he went inside with the said man to show him the house.

Upon completion, they got out where he found two motor vehicles with many people holding guns. They put him under arrest on allegation of stealing motor vehicle. They searched him and seized keys of the house and motor vehicle as well as his mobile phone. From there, they took him to Njiro at Engutoto police station where he stayed shortly and taken to Ngorongoro

police station. He claimed to be beaten while being forced to name the persons involving in stealing motor vehicles. He stayed there until 25th June, 2017 when he was taken back to Engutoto where they kept on giving him food and medicine as he was in bad condition. Two days later, he was taken back to his house at Kikatiti where after search, they took motor vehicle registrations cards and other documents. Thereafter, he was taken back to Engutoto. Two days later, he was taken to a good house which he later came to realise as KDU offices and forced to sign in many papers without knowing their contents. From there, they took him back to Engutoto and later to Arusha Central Police Station. On the following morning, he was taken to KDU together with other persons. At KDU one woman approached him and asked him about the issue of stolen motor vehicles but she was speaking romantically. Later in the evening, he was taken back to Central Police. Thereafter, he was routinely taken to KDU and back to Central until 5th July, 2017 when he was arraigned to Court with the first accused whom he didn't know. He denied to commit the alleged offence or to have ever dealt with government trophy. According to DW2 on 21st June, 2017 from evening he was with DW1 at Farii's place until they departed around 2000 hours. He also claimed to be with him on 22nd June, 2017 until a child from their neighbourhood came to call DW1.

In a nutshell, that was the evidence of the prosecution and defence side. Having considered the evidence on record, the main issue before the Court for determination is whether the prosecution has proved the case against the second accused person beyond reasonable doubt.

It is worthwhile to underscore that, according to section 3 (2) (a) of the Evidence Act [Cap. 6 R.E. 2019], in criminal matters, a fact is said to be proved when the court is satisfied by the prosecution beyond reasonable doubt that such fact exists. That is to say, the guilt of the accused person must be established beyond reasonable doubt. Generally, and always, such duty lies with the prosecution except where any other law expressly provides otherwise. Section 100 (3) (a) of the Wildlife Conservation Act is one of such exceptions. The provisions of this section are very clear that, the burden to prove that possession of government trophy was lawful shall lie on the accused person. However, it is a settled principle that, when the burden proof shifts to the accused person, the standard of proof is on a balance of probabilities. Refer the case of **Said Hemed v. Republic** [1987] TLR 117.

In the light of the principles underscored above, and considering the ingredients of offence charged, it is the duty of the prosecution to prove beyond reasonable doubt that the trophy in question is the government trophy and the accused person was found in possession of the said

government trophy. Likewise, it is the duty of the accused person to prove on balance of probabilities that, the possession of the said trophy was lawful; that is, with the permit of the Director of Wildlife.

As highlighted above, there is one main issue to be determined by this Court, that is, whether the prosecution side has proved the case beyond reasonable doubt. However, the determination of this issue rests on other three specific issues, namely, **one**, *whether the accused persons were found in possession of teeth and claws in questions*, **two**, *whether Exhibit P4 is government trophy* and **three**, *whether chain of custody was maintained.*

Starting with the first issue, the prosecution evidence shows that, on 21st June, 2017, a search was conducted in the motor vehicle with Reg. No. T649 DCH make Toyota IST. The first and second accused persons were in the said motor vehicle. In the course of search, a khaki envelope was found on the dashboard. Within the envelope, there were ten lion teeth and eighteen lion claws. After retrieving those items, PW3 seized them through the certificate of seizure which was signed by both accused persons by their handwritten signatures and thumb prints. PW3 successfully identified Exhibit P4 as the one he seized from the accused persons. Also, he identified the second accused person at the dock as the one they arrested together with the first accused person in possession of the teeth and claws in question on

21st June, 2017 by pointing at him. His evidence is supported by the evidence of the independent witness, PW4, who also saw khaki envelope containing ten teeth and eighteen claws of lion retrieving from the dashboard of the motor vehicle in question. It was also his evidence that, upon completion search, the certificate of seizure was prepared and he signed together with the first and second accused persons. This witness has managed to identify Exhibits P4 as the one which was found and seized in the motor vehicle with the accused persons. He also identified the second accused person as among the persons he saw at the crime scene in the said motor vehicle. This evidence of PW3 and PW4 in respect of identification of the accused person as the one he was arrested on 21st June, 2017, in possession of government trophy in question did not receive a backlash from the defence. In addition, PW1 also identified the second accused person as the one he saw on 21st June, 2017 during handing over of seized exhibits at KDU. Once again, his evidence did not receive any backlash from the defence.

Looking closely at his defence, the second accused person attempted to introduce and rely on the defence of *alibi* because he claimed not to be at the crime scene on 21st June, 2017. However, his defence of *alibi* flawed the procedure under section 42 (1) and (2) of the EOCCA which reads as follows;

"(1) Where a ***person charged*** *with an economic offence* ***intends to rely upon an alibi*** *in his defence,* ***he shall first indicate to the Court the particulars of the alibi at the preliminary hearing.***

(2) Where an accused person does not raise the defence of alibi at the preliminary hearing, ***he shall furnish the prosecution with the particulars of the alibi he intends to rely upon as a defence at any time before the case for the prosecution is closed."*** (Emphasis supplied).

What I gathered from the extract above is that, the second accused person ought to have notified the Court his intention to rely on *alibi* as his defence during the preliminary hearing. But he did not do so. He also failed to furnish the prosecutions with the particulars of his *alibi* before the closure of prosecution case as required by subsection (2) above. If his alibi was genuine, it was expected to be revealed from the beginning in the course of testimony of PW3 and PW4. But the questions pertaining his *alibi* were not asked when the seizing officer (PW3) and independent witness (PW4) were testifying. In other words, the defence did not cross-examine PW3 and PW4 in this aspect. This alone is a clear indication that, his so-called *alibi* is nothing but an afterthought. Although the second accused person brought his witness in a bid to support his alibi, but I had the opportunity of observing DW2 in the witness box. His demeanour was not impressive at all. Besides,

DW2 parted with DW1 around 2000 hours which is before the offence was committed and hence, at the time of commission of the offence around 2130 hours, it is apparent that, DW2 was not with DW1. Moreover, during cross-examination, DW2 admitted that, on 22nd June, 2017, when the said child came to call DW1, he did not hear anything else apart from the words he was called by two persons. If at all DW2 was with DW1 on 22nd June, 2017 he couldn't have missed to hear that child telling DW1 that, there were two persons who want to lease his house as claimed by DW1 in his testimony. Taking this all together, it is the considered view of this Court that, the second accused 's *alibi* is an afterthought other than genuine one. Thus, I completely reject it.

Apart from that, in his defence, the second accused person did not deny to have signed the certificate of seizure, Exhibit P8 or the handing over form, Exhibit P1. Likewise, PW3 and PW4 were not cross-examined on the issue of accused person signing in Exhibit P8. This connotes that, the defence was comfortable with the contents of testimony of PW3 and PW4 in respect of signing the certificate of seizure. It is a settled principle that, failure to cross-examine a witness on a relevant matter ordinarily connotes acceptance of veracity of the testimony. This was stated in case of **Cyprian A. Kibogoyo v. Republic**, Criminal Appeal No. 88 of 1992 CAT (unreported) it was held that;

"As a matter of principle, a party who fails to cross-examine a witness on a certain matter is deemed to have accepted that matter and will be estopped from asking the trial court to disbelieve what the witness said."

See also the cases of **Issa Hassan Uki v. Republic**, Criminal Appeal No. 129 of 2017 [2018] TZCA 361 at www.tanzlii.org and **Haruna Mtasiwa v. Republic**, Criminal Appeal No. 206 of 2018 [2020] TZCA 230 at www.tanzlii.org and other unreported decisions of the Court of Appeal of Tanzania in the cases of **Nyerere Nyague v. Republic**, Criminal Appeal No. 67 of 2010, **Niyonzima Augustine v. Republic**, Criminal Appeal No. 483 of 2015 and **Damian Ruhele v. Republic**, Criminal Appeal No. 501 of 2007. Since PW3 and PW4 stated that the second accused person signed the certificate of seizure on 21st June, 2017 and they were not cross-examined on that aspect, it is the considered view of the court that, the second accused person signed Exhibit P8 to acknowledge that, Exhibit P4 was actually found in his possession. See the case of **Song Lei v. The Director of Public Prosecutions and Others**, Consolidated Criminal Appeals No. 16 A of 2016 & 16 of 2017 [2019] TZCA 265 at www.tanzlii.org where it was insisted that upon signing the certificate of seizure, the accused person acknowledges to be found with the exhibit in question. Thus, in the light of the position of the law, it is clear that the certificate of seizure, Exhibits P8, is valid, and it proves that on 21st June, 2017 at Arusha Star Makao Mapya area, the search was

conducted in the motor vehicle (Exhibit P10) and Exhibit P4 was found in the possession of the first and second accused persons. Basing on the evidence on record, there is no possibility of Exhibit P4 to have been planted to incriminate the first and second accused persons. Hence, the first issue is answered in affirmative.

Returning to the second issue, according to the testimony of PW2, there is no doubt that, Exhibit P4 are teeth and claws of lion and thus government trophy. According to his evidence, he identified ten teeth as teeth of lion because among the wildlife of cats' species it is only lion which has big teeth. According to him, all teeth were canines whereby two are in upper part and two in lower part of lion's mouth which are used on preying by blocking air on the neck of animal subject to prey. They are also used to pick and break meat ready for other teeth to chew. Apart from that, he identified the claws because of the hook shape. Also, the part attached to the finger is flat and has hole for muscles to enter into the finger. In the course of prey, the claws are opened and when the lion is relaxed, the claws are hidden. It was also the evidence of PW2 that after satisfying they were teeth and claws of lion; he went on to evaluate the same basing on the value of the lion prescribed in the Regulations via GN No. 207 of 2012 which is USD 4,900. Since there were three killed lions, he multiplied and got USD 14,700 equivalent to Tshs.32,951,667/= at the exchange rate of

Tshs.2,241/61 prevailing on that date. His testimony is supported by Exhibit P7(a), Trophy Valuation Certificate. It is therefore the considered view of this court that, basing on the descriptions stated by PW2 there is no doubt that Exhibit P4 are teeth and claws of lion whose value is Tshs.32,951,667/=. In that regard, Exhibit P4 is a trophy in accordance with section 3 of the Wildlife Conservation Act. Besides, there was no evidence from the defence to prove otherwise considering the fact that, they had a duty under section 100 (3) (d) of the Wildlife Conservation Act to prove that, teeth and claws in question are not government trophies. Thus, the second issue is also answered affirmatively.

Now reverting to the third issue whether chain of custody was maintained, it is settled that, in cases involving movement of exhibits from one point to another, the evidence concerning chain of custody is of utmost importance. As a matter of principle, it is well settled that as far as the issue of chain of custody is concerned, it is crucial to follow carefully the handling of what was seized from the accused person, is the same which was finally tendered in court. There is a mammoth of authorities giving guidance on chain of custody including the landmark case of **Paulo Maduka and Four Others v. Republic**, Criminal Appeal No.110 of 2007 CAT (unreported). This case insisted on the proper documentation of the paper trail from the time of seizure up to the stage the exhibit is tendered in court as evidence.

However, documentation is not the only way of establishing chain of custody. The jurisprudence on this area has been developed cautiously over time. In several cases such as **Chacha Jeremiah Murimi and Three Others v. Republic**, Criminal Appeal No.551 of 2015 [2019] TZCA 52 at www.tanzlii.org and **Issa Hassan Uki v. Republic** (*supra*) demarcation was drawn between handling of exhibits which cannot change hands easily and those which can change hands easily. The position of the law is that, for exhibits which cannot change hands easily, oral testimony on handling the exhibit suffices to establish the chain of custody. On the other hand, for exhibits that can change hands quickly, such as narcotic drugs and the like, the most accurate method to establish chain of custody is documentation. However, with this jurisprudence, even in the latter type of exhibits, oral testimony is sufficient to establish the chain of custody. See also the cases of **Charo Said Kimilu and Another v. Republic**, Criminal Appeal No. 111 of 2015 CAT (unreported), **Chukwudi Denis Okechukwu and Three Others v. Republic**, Criminal Appeal No. 507 of 2015 [2018] TZCA 255 at www.tanzlii.org and **Marceline Koivogui v. Republic**, Criminal Appeal No. 469 of 2017 [2020] TZCA 252 at www.tanzlii.org. In that view, even oral testimony on handling the exhibit would suffice to establish the chain of custody. But this is not the case in the matter at hand as apart from oral testimony, there is chronological documentation showing the seizure,

transfer and custody of Exhibit P4 until it was finally brought before this court.

It is on record that, after seizure by PW3 on 21st June, 2017 through Exhibit P8, the teeth and claws in question (Exhibit P4) were in the custody of PW3 until he handed over to PW1 through Exhibit P1 in the presence of the first and second accused persons who signed it. PW1 labelled the envelope by writing name of accused persons and date of handing over and then stored the same until the next morning on 22nd June, 2017, when he handed over to PW2 via Exhibit P3 for identification and valuation. It was on the same date when PW2 after completing the valuation process, handed back Exhibit P4 to PW1 via the same Exhibit P3 whereby, PW1 stored it until he brought and tendered before this Court.

It is the considered view of this Court that, in the case at hand the chain of custody has been established through prosecution evidence from the time the teeth and claws of lion were seized from the accused persons until they were brought before this Court. This has been established through Exhibits P8, P1 and P3 together with the testimonies of PW3, PW2 and PW1. In that regard, there is no any missing link or possibility of tampering with Exhibit P4 as the evidence is very clear how it changed hands from one

person to another and how it remained in the custody of PW1 who tendered the same to the Court. Thus, the third issue is also affirmatively answered.

Therefore, since all specific issues were answered in the affirmative, and considering the fact that the second accused person did not adduce any evidence to prove the possession of the government trophy was lawful as required under section 100 (3) (a) of the Wildlife Conservation Act, apparently, the prosecution side has managed to prove the case against the second accused person beyond reasonable doubt. Hence, the main issue is also answered affirmatively.

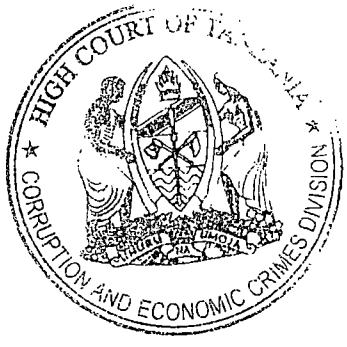
In the upshot, I find the second accused person, Daud Gabriel Maturo, guilty and I hereby convict him with the offence of unlawful possession of government trophy; contrary to section 86 (1) (2) (b) of the Wildlife Conservation Act, No. 5 of 2009 read together with Paragraph 14 of the First Schedule to and sections 57 (1) and 60 (2) of the Economic and Organised Crime Control Act [Cap. 200 R. E. 2019].

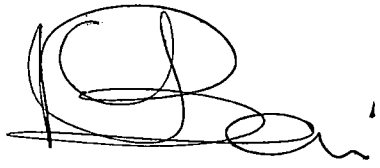
HIGH COURT OF TANZANIA * CORRUPTION AND ECONOMIC CRIMES DIVISION *

I. K. Banzi
JUDGE
08/12/2020

SENTENCE

I have considered the submission by learned Senior State Attorney and mitigation factors advanced by learned defence counsel. The accused is the first offender and section 60(2) of the Economic and Organised Crime Control Act [Cap.200 R.E.2019] imposes the maximum sentence of 30 years and minimum of 20 years. Since he is the first offender, I hereby sentence the accused person Daud Gabriel Maturo to twenty (20) years imprisonment.

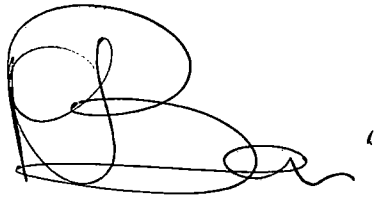




I. K. Banzi
JUDGE
08/12/2020

ORDER

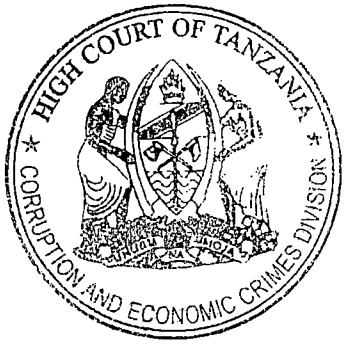
Exhibits P4, P5, P6 and the motor vehicle with Reg. No. T649 DCH make Toyota IST Silver in colour (Exhibit P10) are forfeited to the government of the United Republic of Tanzania pursuant to Section 111 of the Wildlife Conservation Act, No.5 of 2009.



I. K. Banzi
JUDGE
08/12/2020

Court:

Right of appeal against the conviction, sentence and order is fully explained.



I. K. Banzi
JUDGE
08/12/2020