IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
TABORA SUB-REGISTRY
AT TABORA
DC. CRIMINAL APPEAL NO. 32 OF 2023
(Arising from the Decision of Nzega District Court in Economic Crime Case No. 01 of 2023)

MANJAJA SHIJA ..... APPELLANT
VERSUS
THE REPUBLIC..... RESPONDENT

JUDGMENT

Date of the Last Order: 12/02/2024
Date of Judgment: 08/04/2024

KADILU, J.

In the District Court of Nzega, the appellant was charged with two counts namely, unlawful possession of Government trophies contrary to Sections 86 (1) and (2) (c) (iii) of the Wildlife Conservation Act (WCA), [Cap. 283 R.E. 2022] read together with paragraph 14 of the First Schedule to, and Sections 57 (1) and 60 (2) both of the Economic and Organized Crime Control Act, (EOCCA) [Cap. 200 R.E. 2022]. The particulars of the offence are that on the 15th day of November 2022 at Nyasa area along Singida Road within Nzega District in Tabora Region, the appellant was found in unlawful possession of Government trophies to wit, two pieces of hippopotamus skin and one pangolin shell.

In the second count, the appellant was charged with unlawful possession of Government trophies namely, two horns of common duiker and one porcupine thorn. After a full trial, the appellant was found guilty of the charged offences hence, he was sentenced to serve 20 years imprisonment for each count, and both sentences were to run

concurrently. Dissatisfied with the conviction and sentence, the appellant filed the present appeal containing the following grounds:

1) *That, the case for the prosecution was not proved against the appellant beyond reasonable doubt as required by the law.*
2) *That, the trial Magistrate erred in law and facts for failure to address his mind to the issue of material discrepancies between what was stated in the particulars of the offence in the 1st count namely, two pieces of meat suspected to be of hippopotamus and what was testified by PW3, PW5, and PW2.*
3) *That, there was a break in the chain of custody of the trophies allegedly seized from the appellant in that the trophies were handed to one G.3539-CPL Hamis (did not testify) on 20/11/2022 and brought back to PW5 on 22/11/2022 without evidence on how the same were stored, more so in light of the discrepancies in the testimonies of PW1, PW3 and PW5 on one hand and that of PW2 on the other.*
4) *That, the cautioned statement (exhibit P5) allegedly made by the appellant before PW4 was wrongly admitted into evidence as an exhibit.*
5) *That, PW2 did not lay a foundation of his expertise which enabled him to identify and value the exhibits sent to him.*
6) *That, the learned trial Magistrate erred for failure to address his mind to the issue of indefinite detention as raised by the appellant in his defence.*

On the strength of the above grounds, the appellant prayed this court to allow his appeal by quashing the conviction, setting aside the sentence, and ordering his immediate release from prison custody. When the appeal was called on for hearing, the appellant appeared in person as he had no legal representation whereas the respondent Republic enjoyed the legal services of Ms. Suzan Barnabas, the learned State Attorney. The

appellant asked the learned State Attorney to submit first and that he would reply.

In submitting on the 2nd ground of appeal, Ms. Suzan stated that there were no discrepancies in the particulars of the offence and evidence presented before the trial court. According to her, the accused was charged with unlawful possession of two pieces of hippopotamus skin, not meat as he alleges. She added that even if there was any discrepancy, it was not fatal as it was just a minor one that did not go to the root of the matter. To support her argument, she referred to the decision of the Court of Appeal in the case of ***Issa Hassan Uki v R.***, Criminal Appeal No. 129 of 2017 in which it was stated that the discrepancy that does not go to the root of the matter is not fatal.

Concerning the 3rd ground of appeal, the learned State Attorney submitted that the proceedings of the trial court show clearly how the exhibits were moved thus, the chain of custody was not broken as complained by the appellant. She stated in addition that, it is not true that the investigator of the case, G.3539 – D/CPL Hamis did not testify because proceedings display that he testified on 8/2/2023, as PW6. Ms. Suzan argued that the chain of custody was established rightly from the testimony of PW1, PW2, and PW5, and the chain of custody form was admitted as exhibit P3. She argued that even without the said exhibit, oral evidence that was adduced before the trial court was sufficient to support the appellant's conviction. To buttress her argument, she cited the case of ***Jason Pascal & Another v R.***, Criminal Appeal No. 615 of 2020, Court of Appeal of Tanzania at Bukoba.

Regarding the 4th ground of appeal, Ms. Suzan refuted the appellant's allegation that his cautioned statement was wrongly admitted. She submitted that PW4 laid a good foundation for the tendering of exhibit P5 (cautioned statement), and that is why the appellant did not object to its admission. To cement her point, she explained that the rule established in ***Robinson Mwanjis & Others*** [2003] TLR 218 was fully complied with in the case at hand.

Submitting on the 5th ground of appeal, the learned State Attorney stated that the appellant claims that PW2 did not lay down his expertise before testifying. She opined that this ground is baseless because, on page 19 of the trial court's proceedings, PW2 explained his qualifications very well. She cited Section 4 of the Wildlife Conservation Act and Regulation 4 of the Wildlife Conservation (Valuation of Trophies) Regulations, G.N. No. 207 of 2012 that recognize a Wildlife Officer like PW2 as a competent person to examine and value Government trophies.

On the 6th ground, the appellant alleges that he raised the issue of indefinite detention in his defence during the trial, but the trial court ignored it. Ms. Suzan submitted briefly that this was a matter of fact that needed proof by presenting evidence at the trial court. She explained that the appellant failed to prove that he was detained indefinitely before he was arraigned to the trial court. She lastly submitted on the 1st ground of appeal in which she argued that the case against the appellant was proved without leaving any reasonable doubt because the prosecution called 6 witnesses and tendered 7 exhibits to prove that the appellant was found in unlawful possession of government trophies.

She added that the appellant signed a certificate of seizure and did not object to its admission. The learned State Attorney cited the case of ***Emmanuel Lyabonga v R.,*** Criminal Appeal No. 257 of 2019 to support her argument on this ground of appeal. She urged the court to dismiss the appeal and uphold the decision of the trial court.

When the appellant was given the floor, he submitted that the case against him was not proved beyond reasonable doubt. He informed the court that he could not explain each ground of appeal so, he prayed his petition of appeal to be adopted by the court with all the grounds of appeal.

I have carefully examined the grounds of appeal and submissions by both sides. I find the point for determination is whether the appeal is meritorious or not. I will start with the second ground of appeal in which the appellant laments that the trial Magistrate erred for failure to consider that there were material discrepancies between the particulars of the offence in the 1st count, and the testimonies of PW2, PW3, and PW5. His concern is that the particulars of the offence show that he was found with two pieces of meat suspected to be of hippopotamus while PW2, PW3, and PW5 testified that he was found in possession of two pieces of hippopotamus skin. The particulars of the offence in the first count reads partly as follows:

"Manjaja s/o Shija, on the 15th day of November 2022 at Nyasa area along Singida Road within Nzega District in Tabora Region was found in possession of Government trophy to wit; ***two pieces of hippopotamus skin*** *valued Tshs. 3,558,000/= ..."*

On the other hand, PW2 told the trial court that on 18/11/2022 he received two pieces of hippopotamus skin from G.3539 – D/CPL Hamis for the examination. PW3 testified that he witnessed when the appellant was searched and **two pieces of meat** suspected to be of hippopotamus were retrieved from him. PW5 who was the exhibits keeper at Nzega Police Station stated that on 15/11/2022 he received exhibits including **two pieces of wild animal skin**. I have scrutinized a letter from the Head of Investigation of Nzega Police Station to the Wildlife Conservation Office requesting the examination and valuation of the exhibits in this case.

It shows that among the said exhibits were **two pieces of meat** suspected to be of hippopotamus or elephant. Moreover, the search and seizure certificate (exhibit P1) is apparent that **two pieces of meat** suspected to be of hippopotamus were seized from the appellant after the search. The chain of custody form (exhibit P3 indicates that **two pieces of meat** suspected to be of hippopotamus were received from the appellant on 15/11/2022. However, the trophy examination report and trophy valuation certificate (exhibit P4) consist of **two pieces of hippopotamus skin** as one of the trophies that are involved in the case at hand.

Since the offence with which the appellant was charged was unlawful possession of Government trophies, the prosecution was expected to establish the exact type of trophy that the appellant was found in possession of. Notwithstanding, Section 85 (1) (d) of the Wildlife Conservation Act defines a Government trophy to include any trophy

which is in the possession of any person who is unable to satisfy the Director of Wildlife that he lawfully acquired the same. Further, under Section 3 of the same Act, the term 'trophy' is defined as any animal alive or dead, and any horn, ivory, tooth, tursh, bone, claw, hoof, **skin, meat**, hair, feather, egg or other portion of any animal and includes a manufactured trophy.

Therefore, although some witnesses referred to the alleged trophy as two pieces of hippopotamus skin whereas others recognized it as two pieces of hippopotamus meat, the difference was immaterial because the law criminalizes unlawful possession of hippopotamus skin or meat. It is a settled position of the law that minor contradictions and inconsistencies are bound to happen in any criminal case and the court is not supposed to deal with contradictions that do not go to the root of the case. See for example the case of ***Maramo Slaa Hofu & 3 Others v R.,*** Criminal Appeal No. 246 of 2008.

In ***Metwii Pusindawa Lasilasi v R.***, Criminal Appeal No. 431 of 2020, Court of Appeal of Tanzania at Arusha, it was held that contradictions by any particular witness or among witnesses cannot be escaped or avoided in any particular case and are healthy as they show that the witnesses were not rehearsed before testifying. In the case at hand, I find the discrepancies raised by the appellant were minor and which did not touch the root of the matter. Consequently, I dismiss the second ground of appeal for being devoid of merit.

The other grievance by the appellant is that there was a break in the chain of custody of the trophies allegedly seized from him. The basis

of his complaint is that the trophies were handed to one G.3539-CPL Hamis on 20/11/2022 and brought back to PW5 on 22/11/2022 without evidence of how the same were stored. He also claims that there were discrepancies in the testimonies of PW1, PW3, and PW5 on one hand and that of PW2 on the other. I have already resolved the question of inconsistent evidence in the second ground of appeal. Concerning the chain of custody, the law is clear that it is necessary to establish a paper trail where the nature of the exhibit is that which can easily change hands and be tempered with, for example, paper notes. In ***Vuyo Jack v DPP***, Criminal Appeal No. 334 of 2016, it was observed that:

> *".. since rhino horns are items which cannot easily change hands and in the absence of any evidence that Exhibit P. 13 was mishandled or handled by any other unidentified person; we are satisfied that it was at all time, from seizure to its tendering at the trial under the control and supervision of PW5 and the chain of custody was not broken."*

In the instant appeal, I am satisfied that the appellant was arrested red-handed in possession of the trophy listed in exhibit P1 and there was chronological documentation showing the seizure, custody, control, transfer, examination, and valuation of the trophies retrieved from him. The testimonies of PW1, PW2, PW3, and PW5 sufficiently explained the handling of the exhibits from their seizure to exhibition at the trial. Apart from the chain of custody, the appellant alleges that G.3539-CPL Hamis did not testify. The record reveals that G.3539-CPL Hamis testified in the trial court and his evidence was recorded from pages 24 to 26 of the trial court's typed proceedings. Thus, the third ground of appeal fails too.

On the fourth ground of appeal, the appellant laments further that the cautioned statement (exhibit P5) allegedly made by him before PW4

was wrongly admitted into evidence as an exhibit. The trial court's proceedings reveal that exhibit P5 was tendered by PW4, WP 7676 – CPL Neema Benson. On page 18 of the trial court's typed proceedings, it is indicated that the appellant's cautioned statement (exhibit P5) was admitted after he was asked if he had an objection and he replied that he had none. For this reason, I have failed to understand why he has raised this ground of appeal, particularly considering that he failed to elaborate on his grounds during the hearing of the appeal. Therefore, the court holds that the 4th ground of appeal has not been established.

On the fifth ground of appeal, the appellant contends that PW2 did not lay a foundation of his expertise to enable him to identify and value the exhibits sent to him. The appellant was charged with unlawful possession of Government trophies under Section 86 (1), (2) (c) (iii) of the Wildlife Conservation Act. Section 86 (4) of the same Act provides as follows:

> *"In any proceedings for an offence under this Section, a certificate signed by the Director or wildlife officers from the rank of a wildlife officer, stating the value of any trophy involved in the proceedings shall be admissible in evidence and shall be prima facie evidence of the matters stated therein including the fact that the signature thereon is that of the person holding the office specified therein."*

The Act does not stipulate the professional qualifications of a wildlife officer. It only defines a wildlife officer to include a wildlife warden and wildlife ranger engaged in enforcing the Act. Regulation 4 of the Wildlife Conservation (Valuation of Trophies) Regulations, 2012 requires the Trophy Valuation Certificate to be signed by the Director or wildlife officers

from the rank of wildlife officer. In the instant matter, PW2 informed the trial court that he got his professional training from the College of African Wildlife Management, Mweka – Kilimanjaro. He did not, however, state the level of his education such as the Basic Technician Certificate in Wildlife Management, Technician Certificate in Wildlife Management, Ordinary Diploma in Wildlife Management, Bachelor's Degree in Wildlife Management, or Postgraduate Diploma in Wildlife Management.

Surprisingly, on 7/2/2022 when PW2 testified before the trial court, he told the court that he was 25 years old and he had 16 years' work experience. This piece of testimony implies that PW2 was employed at the age of 09 years which is not practicable in the Tanzanian education and employment setup. I am conversant with Section 86 (4) of the Wildlife Conservation Act which allows the court to treat a certificate signed by the wildlife officer as a *premafacie* evidence of matters contained therein. I am also aware that the court is entitled to believe that at the time of signing, the wildlife officer held the office or had the qualifications that he professed to hold. However, in the circumstances of this case, I am inclined to agree with the appellant's contention that PW2 did not establish his expertise before testifying. He failed to describe his professional background and expertise before testifying, rendering the credibility of his testimony doubtful.

In ***Bashiru Rashid Omar v the DPP***, Criminal Appeal No. 309 of 2017, the Court of Appeal stated that:

> *"Opinion of the expert evidence is premised on a general rule that there are certain matters which cannot be perceived by the senses. Their existence or non-existence is ascertained by*

inferences drawn by persons specifically trained in the particular field with which the subject is connected. Nevertheless, the opinions of experts are not ordinarily conclusive and therefore not binding upon the judge. In this regard, the reasons for the opinion evidence must be carefully scrutinized and examined, and considered by the trial court along with all other relevant evidence in the record. The trial court therefore cannot surrender its opinion to that of an expert in disregard of the other relevant evidence for both sides of the case. The trial judge is therefore entitled to scrutinize the expert evidence and come to his own conclusion on the facts of the case."

From the foregoing, I allow the 5th ground of appeal and expunge from the record the trophy examination and valuation certificate (exhibit P4).

I now resolve the 6th ground of appeal in which the appellant argued that the learned trial Magistrate erred for failure to address his mind to the issue of indefinite detention that he had raised in his defence. A perusal of the record reveals that the appellant was arrested on 15/11/2022 and arraigned to the District Court of Nzega on 16/1/2023. Given the complex nature of the offence with which the appellant was charged, I am not convinced that there was indefinite detention as claimed. More so, because the court is usually on vacation from the 15th of December to the second week of February each year. The prosecution witnesses elaborated on how the case was handled from the arrest to the arraignment before the court. The investigation involved various authorities outside Nzega District where the offence was committed. In addition, the appellant was about to be released on bail, but he failed to

fulfill bail conditions. For these reasons, I find this ground of appeal devoid of merit and I dismiss it.

Concerning the first ground of appeal, it is apparent that the analysis of the evidence I have made has established that the prosecution proved the case against the appellant beyond reasonable doubt. As a result, I dismiss the appeal in its entirety. I uphold the trial court's judgment and the sentence meted upon the appellant after having found that he was convicted and sentenced according to the law.

Order accordingly.

KADILU, M.J.
JUDGE
08/04/2024

Judgment delivered on the 8th Day of April, 2024 in the presence of the appellant, and Ms. Tunosye Luketa, State Attorney, for the Respondent.

KADILU, M. J.
JUDGE
08/04/2024