IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE SUB-REGISTRY OF SHINYANGA)
AT SHINYANGA

CRIMINAL APPEAL NO. 40911/2023

(Originating from Criminal Case No. 23/2023 from the District Court of Bariadi at Bariadi)

MWIGULU s/o DAUDI .....APPELLANT

VERSUS

THE REPUBLIC .....RESPONDENT

JUDGMENT

Date of Last Order:07.03.2024

Date of Judgment:05.04.2024

MWAKAHESYA, J.:

In the District Court of Bariadi District, the appellant Mwigulu Daudi was charged with three offences to wit: Unlawful Possession of a Weapon in a National Park c/s 24(1) and (2) of the National Parks Act; Unlawful Possession of Government Trophy c/s 86(1) and (2)(b) of 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 Organized Crime Control Act; and Unlawful Possession of Government Trophy c/s 86(1) and (2)(c)(iii) of the Economic and Organized Crime Control Act.

The particulars of the first count being that on the 16th April, 2023 at Subeti area within Serengeti National Park in Bariadi District, Simiyu Region, the appellant without a permit, was found in possession of a *panga* and a knife and failed to satisfy authorized officers that the said weapons were intended to be used for purposes other than hunting, killing, wounding or capturing wild animals.

With regard to the second and third counts the particulars read that the appellant was found in possession of one tail of a zebra and five dry pieces of eland meat, respectively, the property of the Government of Tanzania.

Having disputed the charge, the prosecution paraded a total of four witnesses and tendered six exhibits. Meanwhile, the appellant was the sole witness for his defence. At the end of the trial the appellant was convicted on all three counts and sentenced to a fine of Tsh. 100,000/= or one year imprisonment in lieu of fine with regard to the first count and twenty years imprisonment for each of the remaining counts. It is against the conviction and sentence that the appellant has preferred this appeal.

The appellant's petition of appeal rests on three grounds which are to the effect that: there was contradiction in the evidence of the prosecution witnesses; the charges he faced were trumped up by game rangers who

have a habit of arresting citizens who live near the National Park by claiming that they are engaged in killing animals; and that his conviction was based on weak evidence and no independent witness was called to prove how he possessed the said trophies.

During hearing of the appeal, the appellant appeared in person, unrepresented, while the respondent Republic enjoyed the services of Ms. Nyamnyaga Magoti, learned State Attorney.

The appellant adopted his petition of appeal and had nothing to add to elaborate his grounds of appeal. He requested for the respondent to make a reply and reserved the right to make a rejoinder afterwards.

The learned State Attorney made it clear that, the respondent was resisting the appeal and went on to respond to the appellant's grounds of appeal.

Replying to the first ground of appeal, the learned State Attorney submitted that, the appellant has failed to point out the alleged contradictions in the evidence given by the witnesses for the prosecution and how the same prejudiced him. She went to add further that, upon her perusal of the trial court's records she saw very minor contradictions in the testimony of PW1 and PW2. This was with regard to the response given by

the appellant when asked about the use of the weapons he was arrested with. PW1 testified to the effect that the appellant had responded that the panga was for cutting big meat; while the knife was for skinning. Meanwhile, PW2 testified to the effect that the appellant had responded that the panga was for killing animals and the knife was for skinning animals.

Ms. Magoti was of the view that, such minor contradictions do not go to the root of the case and did not have any effect on the outcome of the case. She cited the Court of Appeal's decision in **Metwii Pusindawa Lasilasi vs The Republic**, Criminal Appeal No. 431 of 2020 (unreported), where the Court held that, contradictions among witnesses cannot be avoided. She urged the court to disregard the first ground of appeal.

Responding to the second and third grounds of appeal conjointly, Ms. Magoti submitted that, at the trial, there was ample evidence from the prosecution to ground a conviction. There was the evidence of PW1 and PW2 who arrested the appellant with the weapons and government trophies. PW1 filed the certificate of seizure of which the appellant appended his thumbprint and when the said certificate was tendered during trial as Exhibit P1 the appellant did not object, showing that he acquiesced to its contents.

Ms. Magoti submitted further that, PW1 also tendered the panga, knife, zebra tail and the five dry pieces of eland meat. Meanwhile, one Michael Shirima (PW3), a wildlife officer, who examined the government trophies and made a valuation of the same, testified and tendered a trophy valuation certificate (Exhibit P4) and an inventory form (Exhibit P5). The appellant failed to cross examine this witness. The same was for PW4 an investigator who tendered the chain of custody form (Exhibit P6).

On the issue of the absence of an independent witness, the learned State Attorney submitted that, the geographical location of where the appellant was arrested was not favourable for the presence of an independent witness. She went further to submit that; it is not a requirement of the law for there to be an independent witness as provided under section 106(1) of the Wildlife Conservation Act. She also cited the Court of Appeal decision of **Jason Pascal and Another vs Republic**, Criminal Appeal No. 615 of 2020 (unreported) which held that, search and seizure in certain circumstances does not become invalid due to the absence of an independent witness.

She prayed that, the second and third ground of appeal as well as the appeal in its entirety be dismissed.

In rejoinder, the appellant had nothing to add.

The court then invited the parties to address it on the propriety of the conviction. The respondent was of the view that it violated section 312(2) of the Criminal Procedure Act (the CPA), since the offence and the provision of the law was not stated, but she was adamant that the same was not prejudicial to the appellant and thus curable under section 388 of the CPA. The appellant could only insist that his appeal be allowed if the conviction was not proper.

Having heard from the appellant and the learned State Attorney this court is now in the position to determine the appeal. I will determine the grounds of appeal seriatim as they appear in the petition of appeal.

The first ground of appeal, is to the effect that there was contradiction in the evidence adduced by the prosecution witnesses. As correctly submitted by the learned State Attorney for the respondent Republic, the appellant did not pinpoint the alleged contradictions and elaborate on how the same prejudiced him. However, going through the prosecution's witnesses' testimonies there is a slight variance in what was testified by PW1, one Antony Msumi, and PW2, Maulid Akilimali, as to what was the appellant's response in relation to the purpose of the panga and knife that he was arrested with within Serengeti National Park, this can be found at pages 7 and 11 of the typewritten proceedings of the trial court.

PW1 had testified that, the appellant had responded that the panga was for cutting big meat and bones while the knife was for skinning. Meanwhile, PW2 testified that, the appellant had said that the panga was for killing animals and the knife for skinning.

It is the duty of this court to decide whether the discrepancies are minor or whether they go to the root of the matter, see **Ado Aron@ Nziku v. The Republic, Criminal Appeal No. 499 of 2021**, CAT (unreported). This court is of the view that, a witness might testify on the context of what he heard and not necessarily on the exact words that were spoken. Saying that a panga is for cutting big meat and bones and saying that the same is for killing animals seems akin in the context of wildlife. Therefore, the said contradictions seem minor and do not vitiate the evidence put forward by PW1, PW2 and the prosecution in total.

Moreover, the trial court, which was in a better position to assess the credibility of the witnesses, found the witnesses credible and this court sees nothing to suggest otherwise.

To emphasize, as submitted by the learned State Attorney, the position regarding contradictions by a witness or among witnesses is that the same cannot be escaped or avoided and are also healthy as they show

that the witnesses were not rehearsed before testifying, see **Metwii Pusindawa Lasilasi vs The Republic** (supra).

Having said that, I find that the first ground of appeal is wanting in merit and accordingly dismiss it.

Turning to the second ground of appeal which is to the effect that, the appellant did not commit the offences he was convicted with but rather it was the habit of game rangers to frame citizens that live near national parks that they engage in killing animals, as submitted by the learned State Attorney, there was ample evidence produced during trial to ground a conviction on all three offences the appellant was charged with.

The evidence PW1 and PW2, park rangers working at Serengeti National Park, was to the effect that, they arrested the appellant on 16.04.2023, at Subiti area within Serengeti National Park, in possession of a knife, a panga, a fresh tail of zebra and five dry pieces of eland meat, the said items being weapons and government trophies. PW1 filled a certificate of seizure, Exhibit P1, of which the appellant appended his thumbprint. On 19.04.2023 PW3, Michael Shirima, a wildlife officer, was tasked to identify and evaluate the government trophies and he duly identified the five dry pieces of eland meat and the fresh zebra tail and valued them at USD 1700 and USD 1200, respectively (each based on the value of a full animal). The

valuation report was tendered as Exhibit P4 without any objection from the appellant, apart from claiming that the trophies were not his.

It should also be noted that, PW3, being a wildlife officer, is an authorised officer in terms of the Wildlife Conservation Act and thus he has authority derived from section 114(3) to certify the value of trophies and a certificate signed by him is *prima facie* evidence of the matters stated therein. The said provision reads:

> *"114. -(1) N/A*
>
> *(2) N/A*
>
> *(3) In proceedings for an offence under this section, a certificate signed by the Director or wildlife officers of the rank of wildlife officer, 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."*

In the first count, the prosecution had to prove that, the appellant was, without a permit in writing signed by an authorised officer, found in possession of weapons and that the the same was for hunting, killing or wounding of an animal, PW1 and PW2 proved this in their respective testimonies as at page 7 of the proceedings PW1 stated, *"...we asked him and he said he have (sic) no permit to possess weapon (sic) within the*

national park and government trophies", meanwhile, at page 11 of the same proceedings PW2 stated that, *"...when we asked him for permit, he said he did not have any."*

In the second count, the prosecution had to prove that, the appellant was found in possession of a government trophy that is part of an animal specified in Part I of the First Schedule to the Wildlife Conservation Act and the value of the trophy exceeded one hundred thousand shillings. Through the evidence of PW1 and PW2 it was proved that the appellant, was in possession of a fresh tail of a zebra, an animal listed under the First Schedule to the Wildlife Conservation Act. PW3 put the value of a zebra at USD 1200 and considering the prevailing exchange rate of TZS 2345 at the time, which was testified by PW3, meant it was over one hundred thousand shillings. Undoubtedly, it was prudent to charge the appellant with the full value of a zebra as logic will have it that, one cannot sever the tail of a zebra and for the same to remain alive roaming in the bush.

In the third count, the prosecution had to prove that, the appellant was in possession of a government trophy of an animal, other than a domestic animal, and the value of the trophy exceeded one million shillings. This was done through PW1 and PW2 who testified that the appellant, was found in possession of five dry pieces of eland meat and

PW3 put the value of an eland at USD 1700 and, again, considering the prevailing exchange rate of TZS 2345 at the time, which was put forward by PW3, meant it was over one million shillings. The eland is an animal listed under Part II of the First Schedule to the Wildlife Conservation Act.

The appellant's defence that, he was arrested while he was tending to his farm seems imaginary as there is no plausible reason as to why PW1, PW2 and their fellow park ranger, who did not testify, would leave their duty stations and wander off to the village to arrest innocent people and frame them with unlawful possession of weapons in a national park and possession of government trophies. It was rather a limp attempt by the appellant to evade accountability. Thus, the suggestion that, the appellant was framed is incredible. I find that, the second ground of appeal lacks merit and proceed to dismiss it.

The fourth ground of appeal in which the appellant is faulting the trial court for convicting him without proof from an independent witness as to how he was found in possession of the government trophies need not detain us. Section 106(4) of the Wildlife Conservation Act provides that:

> *106.-(4) It shall be lawful for any authorised officer to stop and detain any person who he sees doing, or suspects of having done, any act for which a licence, permit, permission or authority is required under the provisions of this*

Act for the purpose of requiring such person to produce the same or to allow any vehicle, vessel or aircraft of which he is the owner or over which he has control to be searched.

PW1 and PW2 being authorised officers in terms of section 3 of the Wildlife Conservation Act were acting within the dictates of the law when they apprehended the appellant and searched him and found him in possession of the government trophies. The need for an independent witness to such search is not mandatory and due to the geographical location of the place where the apprehension took place, as submitted by the learned State Attorney, the same was not favourable for the presence of such a witness.

Therefore, on the basis of the stated reasons, the third ground of appeal is also dismissed.

Turning to the issue of propriety of the conviction that was raised by the court, I subscribe to the submission by the learned State Attorney that, although the conviction seems to flout section 312(2) of the Criminal Procedure Act for not specifying the offence of which, and the section of the Penal Code or other law under which, the accused is convicted and the punishment to which he is sentenced, the same is not fatal and does not impair the judgment, see **Abubakari Msafiri vs The Republic, Criminal**

Appeal No. 378 Of 2017 and also **Emmanuel s/o Phabian vs Republic, Criminal Appeal No. 259 of 2017** (both unreported).

In the end I find that, the appeal lacks merit and proceed to dismiss it in its entirety.

It is so ordered.

DATED at **SHINYANGA** this 5th day of April, 2024

N.L. MWAKAHESYA
JUDGE
05/04/2024

The Judgment delivered this 5th day of April, 2024, in the presence of the Appellant in person and Ms. Mboneke Ndimubenya, Learned State Attorney for the Respondent, is hereby certified as a true copy as original.

A.H. MWETINDWA
DEPUTY REGISTRAR
05/04/2024