

TANZANIA / JUDGMENT

20141027 TZHC Mwanza

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IN THE HIGH COURT OF TANZANIA AT MWANZA HIGH COURT CRIMINAL APPEAL NO. 37 OF 2014. (Original Economic Case No. 1 of 2010 of the District Court of Serengeti District _ at Mugumu) MAGOIGA.S/0 MAGUTU WANSIMA APPELLANT

• I ~ VERSUS THE REPUBLIC •..... ■ I , I • • ■ • ■ ... I : ■ ■ ■ , • •
-RESPONDENT

JUDGMENT

BUKUKU, J.: In the District Court of Serengeti at Mugumu, Musoma Region, the appellant, Magoiga Magutu Wansima, was charged with, and convicted of . . the offence of unlawful possession of. Government trophies contrary to section 86 (1) and (2) (c) of the Wildlife Conservation Act, No. 5 of 2009 read together with paragraph 14(d) _of _the first schedule to, -and section 57(1) and 60(2)_ of the Economic and Organized Crime Control Act, Cap 200 R.E. 2002. He was sentenced to pay a fine "bf T.shs: 500,000/= or serve 20 years imprisonment. He now appeals: against the conviction as well as the sentence. 1 " .. The prosecution's evidence was that, on 13th May, 2010 at around . 13.00 hours, a police officer b/C Mauzi and four park rangers of the Serengeti. . . . National Park (SENAPA); ..Reriatius Izack Aaron (PW1), Steven . , , Muta}.efnv.Ja (PW2), Thadeus 'Manongwa' and mainland. ~ _ .. Mapunda, were driving from SENAPA to Mugumu to Wn; -As soon as they were approaching a ~:iace ~a}fed Tabora B prison, they saw in front of them, the appellant • dd:dg a. bicycle, and was carrying something in a resin bag. According to PW1 and PW2, as soon as the appellant saw their car, he immediately .', threw the baggage and took to his heels. They then stopped the car and

• I C ~ • • > • • . ~ started chasing him. Within a distance of 20 feet, they caught and arrested him. They then took him to where he threw the bag, and proceeded to search the same. According to PW1 and PW2, in the bag they found two dry leopard skins. They then took the appellant to Mugumu police station where he was remanded and later on arraigned in court. While the case was at the hearing stage at the trial court, on 28th January, 2011; the court was informed that, on 11/01/2011, the appellant had jumped from the lorry while being returned to remand prison from the Out. and had disappeared while in police custody, as such, judgment was. "I' • . . , delivered without the appellant defending himself. He was convicted and 2 I sentenced in absentia on 13th June, 2013. Luckily enough, the appellant was re-arrested and on 8th October, 2013, he was ~ ' .. brought in court, ~ - . i',

(i) That the prosecution did not call the material witnesses i.e D/C ~, ... Mauzi and Thadeus Manongwa. (ii) That independent prosecution witness from the locus testified. (Hi) That no official permission or documents were tendered by the .. .P.;G-Se'-- u ,...f. t'. lun . I" (-i:v) That, the aHeged bic_ycie which the appellant r<;>de was not tendered . . . in evidence to prove arid corroborate the points of the matter. ' . " 4 .. , ' On his part, the appellant ~dopted his grounds of appeal as contained in his petition of appeal and added that, in his testimony, PW3 did not take into consideration the evidence tendered by the police. . , Mr. Kajungu gave his reasons why he did not support the appeal to be as follows: First, with regard to the prosecution witnesses, Mr. Kajur1gu - argued that, PW1 and PW2 who were both park rangers, testified. There is also the testimony of PW3, who is also a park ranger, and who did the valuation of the trophies and who .tendered in court Exhibit P2. It is thus Mr. Kajungu's submission that, the non testification of other witnesses did not water down the prosecution case. He thus surmised that, the . testimonies of the three- prosecution witnesses were competent and credible. : ' Submitting further, Mr. Kajungu is of the opinion that, considering that the appellant had escaped under lawful custody while he _was in remand, it shows that he was guilty. Mr. Kajungu further arg~ed that, the appellant admitted to have been facing another charge of entering into the national park. F0r that reason, Mr. Kajungu prayed that the appeal be dismissed since it has no merit. -- . ifF;fi~t+Jf;t"": _ r ~- f.:. i 'A>:' ' ..: . . ~ :;,:;-~ ' i' ' , ..

- ,~... :~••rw••• ,; ,?~:~11}~;~:~> .~~ .f.,: .~• .- .f,~: .~•• { : , . . , : ~...; ,withesS,e:s,. Le police officer D/C Mauzi and Thadeus Manongwa were not .. :~. , ~-~ .~ .. --~--\~ ,,,,~ :~' . . . ' 1 .ff called. t0 testify, relying on the case of Aziz Abdallah V. Republic, •• [1991] TLR 71. It is trite that, all persons shall be competent to testify unless a court considers that they are prevented from understanding the question put to them or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. In fact; the only disqualification given about witnesses is inability to understand the question or give a rational answer to it. Even children, under special circumstances, can be competent witnesses. It is not disputed. In this particular case that, D/C Mauzi and Thadeus Manongwa did not testify. These two were with PW1 and PW2 when the appellant was arrested with the trophies on the fatal day. Now can it be said that these two were the material witnesses in this case without whom the court may draw an adverse inference to the prosecution case as suggested by the appellant? I think with due respect no. I will tell why. Evidence consists of statements made by a witness or contained in a document. In case of oral evidence, only that person who has actually perceived something by that sense by which it is capable of perception, ... :~< .~ should make the statement about it and no one else. In this particular case, both PW1 and PW2 were at the locus on that day. They saw the appellant. PW1 chased and apprehended the appellant and searched the appellant's bag. PW2 was the driver of the car with which they were using, and which the appellant also boarded after he was arrested. For that matter, therefore, (two witnesses are in my considered view, enough to prove the case, against the appellant. The rule now accepted in all systems of jurisprudence is that, statement, evidence should be weighed, not counted. Even if there is only one witness, and the court is satisfied that he is speaking the truth, it is sufficient; the fact that there are a number of witnesses, means nothing, the court thinks that they are not speaking the truth. It is trite that, no particular number of witnesses shall in any case be required for the proof of any fact. In the olden days, quantity rather than quality was emphasized. There is no rule of law of evidence that no conviction can be based unless a certain number of witnesses have identified a particular person. Accused though it may be prudent to insist on at least two reliable witnesses in cases of unlawful assembly of a large number of persons, 7 fundamental principles; it is not shaken in any manner. It is quality not quantity that counts. Evidence is weighed but not counted. From the above therefore, I find this ground of appeal has no merit. The two prosecution witnesses, are witnesses of the truth. They testified on what they saw. PW1 arrested the appellant, searched him and found the trophies. He then took him to Mugumu police station. PW2 was the driver of the car. He saw the whole incident as to how the appellant was apprehended. To make matters worse, the appellant was reported to have been
- I based on a certain number of witnesses have identified a particular person. Accused though it may be prudent to insist on at least two reliable witnesses in cases of unlawful assembly of a large number of persons, 7 fundamental principles; it is not shaken in any manner. It is quality not quantity that counts. Evidence is weighed but not counted. From the above therefore, I find this ground of appeal has no merit. The two prosecution witnesses, are witnesses of the truth. They testified on what they saw. PW1 arrested the appellant, searched him and found the trophies. He then took him to Mugumu police station. PW2 was the driver of the car. He saw the whole incident as to how the appellant was apprehended. To make matters worse, the appellant was reported to have been

escaped under unlawful custody on 11th January, 20~1 when he was being ferried back to remand police from the court, and that, he had committed ..:;;>an0ther~s!;nllar offence. It is tr,te that, the conduct of any party, or of any agent to any party, t to any suit or proceeding, in~ reference to such suit or proceeding, or in reference to .. any fact in issue . therein or relevant thereto, and the conduct ~ cf ~my person an offence against whom is the subject of any proceeding, is ~ . rerevant, if ~such conduct influences or is influenced by any fact in issue or relevant fact, aild whether it was p~evio~s or subsequent thereto .. 8 .. , . . _ . :~:~. In this particular case, the act of the appellant jumping out from the ,

- , . . . J ~ ~; , _ ~; ' . \ police van and disappearing, creates a~n inference ~ of guilt, as rightly
- . . t # f ~ _ I ' f- J; ~ .. , . : ' ~:~: .., _ ,;,. submitted by Mr. Kajungu, Learned Sate Attorney for the respondent ' t > ' ; ' , . : : " , t ~ , ; " ~ W. ' : . . ~ ~- .. , : : : ' . 1 Republic. - . , , .. , .. To add salt into wound, when the~ appella~t was re- arrested, he
- . . ~ . . . ' t } . f . . ~ pleaded guilty, not only to the charge ~facing him, but t9 the other charm~s ' . ' . . ' t " . . . - ' ! . : _ . ' that were facing him. All this goes to show t~at, ~he p~ose.cu_tion. has~ , ' < \ " . l - I
- . . ' . . . : , ~ ~ ' . . . " . . . ' proved its case on the stand~rd required, i.e. beyond reasonable doubt. ' , . . , , , I The other issue raised by the appellant is that, . there was' no prosecuti.on witness who came from the~. locus in quo to testify how h~ _ , . threw the bag containing the trophies. With . due . respect, .. there is no ;. law
- , . '(, (. .. compelling the prosecution to call a witness . from the crime . scene; ~ _ . What-is~ . , . I ~ required is for the prosecution to prove its. case beyond reasonable doubt. . I • . . . It is immaterial where the witnesses came from. What
- • I ~ ~ is requireQ is to.
- " : < : - + ..
- o • c • a • : # . , . ~ satisfy the court beyond reasonable doubt that, indeed it is the aP,pellant ;i. ~ . , - , , ~ - t • ' • ' , . ; : ' • , " l : : { , , _ , . i " who committed the. offence, . and nothing . else.. This g~rouno , , , " - of .. appeal. .., has - , , , _ , ~; ~ - . , ~ - : ") no merit. It is equally dismissed. As far as tendering of exhibits is concerned, I think this ground l1eed , . , , ~ - ' . ; ~ , ; , ~ , ~ . not detain me. From what I have gathered from the _proceedings, PW1, 9 ft" ~ / " , t . i : ~ " " t : ? t • / { " : , ! : , ; ' ~ : _ : : " • - ~ ~ : - : : ~ . ' - : " . • ; c , \ , • - - • , . Reilat~us Izack, tendered in court Exhibit P1, the two pieces of the ~leopard skin . . ? W3, one Athuman Kitenana' a game war9er informed the court . that; op. 14th May 2010 at 7.00 am upon _ instructions, he proceeded to ~Mugumu police station. While there, he identified~ two dry skins of a leopard. He also told the court how he valued the trophies, and signed the • , ~ certificate'of Government trophies. This certificate was tendered in court by " PW3 and was admit;ted as Exhibit P2 without objection from the ~- appeilant. This being an official document, togeth.er with the trophies . tendered. as Exhibit P1, the appellant cannot claim

that no official documents were tendered in court. This ground too is dismissed. _ F:rya!iy, the appellant claimed that, the alleged bicycle which he was

- , · ;-idii1g>ori·the . . fateful day-was . . not tendered as evidence. With due respect, I ·_thi\lk tllle appellant here has missed the point _The issue in dispute is not the bicycle. The issue here is whether the appellant was found with the tr<?pbies. \he trophi~s were tendered in court and admitted in court as · :Ex;efblt ;Fl without any objection from the appellant. I fail to understand ·.·.· ' ! ' how the issue of tendering the bicycle becomes an issue in the first place. · 10 ·-
- "I, . Under the circumstances, I fin9 that, the appeal is. lacking . , in . merit . I ! ·_, . accordingly dismiss it in terms of conviction . and. sentence. ' .. · ' I uphold. ~', ' the..i:. decision of the District Court. Order accordingly. ' , A.E. BUKUKU JUDGE Delivered at Mwanza This 27th October, 2014 11

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