

TANZANIA / JUDGMENT

20180523 TZHC Dar es Salaam

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TZHCDECIDED
23 May 2018

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IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM. CRIMINAL ,APPEAL NO. 275 OF 2016
ALEX JOHN SAM ■■■■ ■ ■ ■■ ■ .. ■ ■■■■■■■■■■■■ I .. ■■■■■■■■■■ APPELLANT
VERSUS REPUBLIC .. ■ I ■■■■■■ ■■■■ I ■ .. ■■■■■■ .. ■■■■■■ .. ■■■■■■■■ I I ■■
RESPONDENT 19/4/2018 & 23/5/2018

JUDGMENT

I.P.KITUSI, J. Alex John Sam the appellant was charged with being in possession of Government Trophies Contrary to Section 86(1) (2) (b) and (3) of the Wildlife conservation Act No. 5 of 2009 (Cap 283 read together with paragraph 14(a) of the First Schedule to and section 57(1) and 60(2) of the Economic and Organised Crime Control Act, [Cap 200]. It was alleged that the appellant, on 19th February 2014 at Kivukoni area within Ulanga District in Morogoro Region was found in possession of two Elephant Tusks which are Government Trophies, weighing 2 Kilograms, valued at Tshs 24,000,000/= the property of the Government of United Republic of Tanzania without any permit or licence. The prosecution case was that on 19 February 2014 Thadei Anthoy (Pw1) a security guard, Said Hamis @ Mngavi (Pw2) and Spyron Assey (Pw3) Game Wardens were at Kivukoni area within Ulanga District. Pw2 and Pw3 are employees of Selous Game Reserve. While there, a passenger bus arrived and Pw1 Pw2 and Pw3 conducted a routine search in it by demanding all passengers to alight and all obeyed except the appellant. The appellant refused to disembark on the ground that he was ill, but when his bag was checked it was found to contain two pieces of Elephant tusks in it. Before opening the bag the Game Wardens asked the appellant as to that was in it and he told that there was a gun that he had inherited from his grandfather. The appellant was arrested and taken to police where Pw4 identified the substance in his bag as Elephant Tusks. He valued them and prepared a Report which was tendered Exhibit P2. The appellant was thereby charged as shown earlier. In defence the appellant made a long narrative of how he got into the bus that was eventually searched by the Game Wardens at Kivukoni area and the pieces of Elephant Tusks found in one bag. He denied the allegation that the bag belong to him as well as the allegation that he did not disembark from the bus. The appellant accused the prosecution for fabricating this case against him on the ground that he had a Nolle Prosequi entered in his favour in respect of another case so the authorities were all out to get even with him. The trial court's findings of fact were that the appellant was in the bus and that during the search he was arrested. The court also made a finding that the appellant was in possession of a bag. It is the contents of the bag that was and is a subject of controversy. The trial Court

concluded that the pieces of elephant tusks were found in the appellant's bag. It convicted the appellant and sentenced him to twenty(20) years imprisonment to run from the day he was remanded in custody. The appellant has filed four grounds of appeal and prayed that this court be pleased to quash the conviction and set aside the sentence. In the first ground of appeal, the appellant raises the alleged omission by the prosecution to file the certificate of consent by the Director of Public Prosecution (DPP) as required by the Economic and Organized Crime Control Act Cap 200. The appellant was not represented while the respondent Republic was represented by Ms Nandwa Sekimanga, learned State Attorney and Ms. Tuli Helela also learned State Attorney. In his brief submission on the first ground of appeal the appellant stated that the consent from the DPP was not read over and that this omission violated his right. In response to this Ms. Sekimanga, learned State Attorney submitted that it is not a legal requirement that the consent should be read over. She submitted referring to page 13 of the proceedings that the consent and certificate were read over in court. With respect the position of the law as stated in the case of Adam Seleman Njalamoto V. Republic, Criminal Appeal No. 196 of 2016, CAT at Dar es Salaam (unreported) is that the certificate of transfer and consent by the DPP must be endorsed and be part of the proceedings. In this case the certificate and consent were not endorsed by the trial court in violation of that requirement. Going by the decision in the case of Adam Selemani Njalamoto, I quash the proceedings for being a Dullity. I order a retrial before a court of competent jurisdiction. I do not need to discuss the rest of the grounds. It is so ordered. ~~' I.~i;USI JUDGE 23/5/2018.

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