

TANZANIA / JUDGMENT

ELISHA BASO UMBE

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB- REGISTRY OF
MANYARA AT BABATI CRIMINAL APPEAL NO. 16541 OF 2024 (Appeal from the conviction and
sentence of the District Court of Babati in Economic Case No. 1 of 2024) ELISHA BASO
UMBE.....APPELLANT VERSUS
REPUBLIC..... RESPONDENT

JUDGMENT

5th August & 17th October 2024 KAM U ZORA, J. The appellant was aligned before Babati District Court (hereinafter referred to as the trial court), charged with one count of unlawful possession of government trophy contrary to section 86(1) and (2)(b) of the Wildlife Conservation Act [Cap 283 R.E 2022], (hereinafter referred to as WCA) read together with paragraph 14 of the 1st schedule to and sections 57(1) and 60(2) of the Economic and Organized Crimes Control Act [Cap 200 R.E 2022]. The particulars of the offence as captured from the charge sheet show that, on 29/8/2022 at Mwinkasi village within Babati District in Manyara region, the appellant was found in possession of government trophy namely, Page 1 of 14 7.40 Kilograms of eland meat equivalent to one killed eland valued at USD 1,700\$ equivalent to TZS 3,898,780/= (as per then exchange rate), the property of the Government of the United Republic of Tanzania without permit from the director of wildlife. The appellant pleaded not guilty and the matter proceeded to a full trial. In attempt to prove its case, the prosecution paraded five witnesses and tendered 7 exhibits and the defence had two witnesses; the appellant and his son. A brief factual background underlying the instant appeal as can be gathered from the record is that, PW1 (a park ranger) had on 29/8/2022 received a tip from an informer that there were poachers at Waloa area. PW1 acting on such information, went to PW4 who was the hamlet chairman who led PW1 and his fellow park rangers to the appellant's house. PW1 and his team conducted search in the appellant's house and recovered two buckets with fresh meat which was later identified to be eland meat. The certificate of seizure (exhibit PEI) was prepared and signed by PW1 together with the appellant and PW4. The record also shows that PW2 who was a police officer recorded the appellant's cautioned statement (exhibit PEIII). PW3 who was a wildlife officer identified and valued the meat allegedly seized from the appellant. He identified the meat as that of eland based on Page 2 of 14 account that its muscles were very light and inter muscles fat was very few. He valued the meat based on the market value of the eland which was TZS 3,898,780/=. The trophy valuation certificate was admitted as exhibit PEVI. PW5 who is a police officer and exhibit keeper at Babati

police station admitted to have received from PW1, fresh meat suspected to be of wild animal. He later handed over the meat to PW3 for identification and valuation and later on was handed the same to E. 8080 D/Sgt Jimmy to take the same to measurement and disposal. The chain of custody form was admitted as exhibit PEVII. In his defence, the appellant denied being at the scene and claimed that on the material date he was in his house sleeping when the park rangers went to his house. That, when the appellant told the park rangers to call the hamlet chairperson first, but the park rangers pushed the door open, entered the house and forced the appellant out. That, he saw another person (a suspect) who was inside the motor vehicle but he fled away. That, one of the park rangers called the hamlet chairperson and when he arrived, he found the appellant under arrest with two buckets under his legs. That, the park rangers informed the hamlet chairperson that the buckets had meat they asked him to be their witness. He informed the park rangers that inside Page 3 of 14 his house there was fresh sheep meat. The appellant claimed to have been forced to sign certificate of seizure in the presence of hamlet chairperson and later was sent to Babati police station where he was forced to sign a statement. DW2 the appellant's son gave more or less similar evidence with that of the appellant. He narrated that, after the park rangers had arrested the appellant and took him outside the house, one of them took two buckets from the truck and gave them to the appellant. That, the hamlet chairperson was called later and asked to sign. After hearing evidence, the trial court was convinced that the offence was proved to the standard required hence, convicted and sentenced the appellant to serve 20 years imprisonment. The appellant was displeased with the conviction and sentence meted out against him thus, preferred the instant appeal with six grounds of appeal which can be conveniently summarized and reduced into 2 grounds as follows;

1. That, the learned trial magistrate erred in law and fact to convict the appellant while sections 38(1) and 41 of the Criminal Procedure Act [Cap 20 R.E2022] regarding search were not complied with. Page 4 of 14
2. That, the case against the appellant was not proved to the standard required as the prosecution evidence was unreliable, uncorroborated and contradictory. When the appeal was called for hearing, the appellant appeared in person while Ms. Bernadetha Mushi, learned state attorney represented the respondent. When invited to argue the grounds of appeal, the appellant adopted the grounds of appeal to form part of his submission. He submitted on the inconsistencies in prosecution evidence. He pointed out that, PW1 and PW4 claimed that there was wildlife meat and sheep meat but when he asked them on how they identified the meat, they only mentioned to have seen the head, legs and skin for the sheep. He further pointed out that, while PW1 claimed that the appellant's house contains one room and a living room, other witness claimed that it was only one room. The appellant also submitted that, the search was conducted without the presence of any leader for the chairman was called after the search was conducted. He insisted that, the bucket with meat was found outside and the same had sheep meat and the chairman verified so. That, the search was wrongly conducted by the wildlife officers. He therefore urged this court to quash the conviction, set aside the sentence and acquit him. Page 5 of 14 In reply to the 1st ground, the learned state attorney submitted that, the appellant was charged with the

offence under the WCA thus, the search which was conducted in his house was governed by section 106 of the WCA particularly sub-section (1) (b) which allows the wildlife officer to conduct search without search warrant where there is independent witness. That, in this case, the arresting officer, PW1 conducted search in the appellant's house in the presence of PW4, the hamlet chairman and the search warrant was signed by independent witness and the accused person. That, subsection (3) of section 38 of the CPA refers to issuance of receipt after search but in this appeal, there was no need for issuance of receipt since a certificate of seizure was filled and signed by the appellant and an independent witness. That, the certificate of seizure was therefore sufficient to prove that what is listed is what was seized from that house. To buttress her argument, she referred the case of Swalehe Ngoma and another Vs. Republic, Criminal Appeal No 4 of 2021, CAT at Arusha [2023] TZCA 17965 at page 7. In reply to the 2nd ground of appeal, the learned state attorney submitted that, the prosecution case was proved beyond reasonable doubt. She referred the evidence of PW1 whom after receiving the information that Page 6 of 14 the appellant was in possession wildlife meat, he gathered his team and they were led by an independent witness to the appellant's house and they seized the meat. She insisted that such evidence is supported by the certificate of seizure that was admitted as exhibit in court, the chain of custody form and the evidence of PW5 who kept the exhibit until when it was disposed by court order. Referring page 16 to 18 of the typed proceedings the learned state attorney further submitted that PW3 who is the wildlife officer identified the seized meat as wildlife meat and was able to explain how he identified it from other meat before coming to the conclusion that it was eland meat. That, his evidence was supported with the valuation certificate which was admitted as exhibit. She referred the case of William Maganga @ Charles Vs Republic, Criminal Appeal No 104 of 2020 [2023] TZCA 17742 page 9. She added that, PW4 who was the independent witness clearly stated what he saw and signed the certificate of seizure. That, the evidence by PW4 was good evidence as per the case of Sabato Nyabamba Mashauri vs Republic, Criminal Appeal No 27 of 2022 (unreported). The learned state attorney therefore urged this court to dismiss the appeal. Page 7 of 14 In a brief rejoinder, the appellant added that he was threatened and forced to sign the seizure certificate. He insisted that, he was found with sheep meat and not eland meat. Having gone through the parties' rival submissions and the record of the trial court, let me assess the merit of this appeal. On the 1st ground of appeal, the appellant's complaint is in two folds; one, that the search conducted was done without a warrant and no receipt was issued contrary to section 38(1)(2) and (3) of the CPA and two, that the search was conducted by wildlife officer instead of a police officer contrary to section 41 of the CPA. The learned state attorney was of the view that, since there was an independent witness, search could be conducted without warrant under section 106 of WCA. I will start with the argument on search and seizure of exhibits. I understand that sections 38 and 41 of the CPA govern procedures for search and seizure. However, the said provisions are applicable only when the search and seizure was conducted under the CPA. In this case at hand, the certificate of seizure was prepared under section 106 (l)(a)(b) and (c) of the WCA which is a specific provision governing search and seizure in wildlife cases. The said provision reads: - Page 8

of 14 "106. -(1) Without prejudice to any other law, where any authorised officer has reasonable grounds to believe that any person has committed or is about to commit an offence under this Act, he may-

- (a) require any such person to produce for his inspection any animal, game meat, trophy weapon in his possession or any licence, permit or other document issued to him or required to be kept by him under the provisions of this Act or the Firearms and Ammunition Control Act;
- (b) enter and search without warrant any land, building, tent, vehicle, aircraft or vessel in the occupation or use of such person, open and search any baggage or other thing in his possession: Provided that, no dwelling house shall be entered into without a warrant except in the presence of at least one independent witness; and
- (c) seize any animal, livestock, game meat, trophy, weapon, licence, permit or other written authority, vehicle, vessel or aircraft in the possession or control of any person and, unless he is satisfied that such person will appear and answer any charge which may be preferred against him, arrest and detain him." Based on the wording of the above provision, it is obvious that the law allows any authorised officer to conduct search without a warrant in any land, building, tent, vehicle, aircraft or vessel without warrant except that where search is conducted in a dwelling house it has to be witnessed by an Page 9 of 14 independent witness. The term "authorised officer" is defined under section 3 of WCA to include; director of wildlife, a wildlife officer, wildlife warden, wildlife ranger or police officer. Therefore, by virtue of section 106 of the WCA, a wildlife officer has powers to conduct search. Hence, the appellant's argument that search was conducted by a wildlife officer instead of a police officer is baseless. Having found that, PW1 was a competent officer to conduct search, the issue that follow is whether the search was witnessed by an independent witness as required sub-section (1)(c) of the above section. While the appellant claimed in his evidence that there was no independent witness at the time of search, the prosecution side claimed that PW1 and his team were led by the hamlet chairman one Revocatus Manamba Sanka (PW4) to the appellant's house who also stood as an independent witness and signed the certificate of seizure. Despite the appellant's claim which was supported by his witness DW2 that PW4 arrived after he was put under arrest, I see no reason to prefer the defence evidence on this point over the prosecution evidence. There is clear prosecution evidence showing that PW4 is the one who led the officer to the appellant's house as opposed to the defence evidence to which the appellant claimed that the appellant arrived later at Page 10 of 14 his house by a motorcycle ridden by one Aman Qwaray, and still the said Aman Qwaray was not called to corroborate the appellant's evidence. For that reason, I find that the search was conducted in the presence of an independent witness as required by the law. In concluding, I find the first ground to have no merit hence, dismissed. On the second ground, the appellant is faulting the trial court for convicting him based on unreliable, uncorroborated and contradictory evidence which did not prove the offence beyond reasonable doubt. In determining this ground, I will re-evaluate the evidence in totality and assess the weight of evidence which

the trial court relied upon in convicting the appellant. In his ground of appeal, the appellant questioned how the meat was identified without laboratory examination while he had claimed in his evidence that he was in possession of sheep meat and not wildlife meat. The fact that he was in possession of sheep meat was supported by PW4 during cross examination who however claimed that the appellant was in possession of both sheep meat and wildlife meat. But, PW1 who was at the scene and claimed to have seized the meat never mentioned the finding of sheep meat in the appellant's house. Since the prosecution evidence shows Page 11 of 14 that PW1 conducted search that was witnessed by PW4, it was expected for them to have similar evidence on what was found in the appellant's house. While PW4 agree with the appellant's evidence that there was sheep meat found in the appellant's house, there is no explanation as to why the allegedly sheep meat was not seized along with the allegedly wildlife meat to allow an expert to identify and differentiate the meat by their features. I therefore find that the appellant raised reasonable defence that he was in possession of sheep meat and not wildlife meat. It remained the prosecution duty to prove otherwise. While I agree with the learned state attorney that, PW1 had authority to conduct search in the appellant's house, I hold that such exercise was marred by serious doubts. Apart from that, the record shows that the appellant was convicted based on the oral evidence of the prosecution witnesses as well as accused's cautioned statement and the certificate of seizure. When the prosecution side sought to tender the cautioned statement and the certificate of seizure, the appellant objected on the ground that he was forced to sign the same. The record shows that, the learned trial magistrate did not say anything regarding the appellant's objection and proceeded to admit the seizure certificate as an exhibit. He also disregarded the appellant's argument that Page 12 of 14 he was beaten up to record and sign the statement and without further inquiry, the trial magistrate admitted the statement and used it in convicting the appellant. In his defence, the appellant objected its admission on ground that he was forced to sign the seizure certificate but, the magistrate admitted it without assigning reason why he disregarded the appellant's objection. It was expected for him to assign the reason during judgment as to why such evidence carried weight but instead, in his judgment at page 6, the learned trial magistrate observed that the appellant did not dispute the alleged seizure certificate contrary to what is recorded in the proceedings. Since no reason was advance by the trial magistrate for according weight on such evidence, it is in my view that, such evidence could not stand as strong evidence in convicting the appellant. Similarly, the oral evidence of PW1 and PW4 could not stand strong without corroboration to convict the appellant for it raised doubt in the whole search process. Based on the above discussion, this court finds that the offence was not proved beyond reasonable doubt. Therefore, I find the appeal with merits and I allow it. The conviction and sentence meted out against the Page 13 of 14 appellant are hereby quashed and set aside. I order the appellant be forthwith set to liberty unless lawful held. DATED at BABATI this 17th day of October, 2024. Page 14 of 14

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