

DECIDED
26 June 2015

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JUDGEMENT

MADAM SHANGALI, J. In the District Court of Iringa, the trial court, in Economic Case No. 20 of 2013, the appellant, Gaitan ., Susuta, was charged with and convicted of the offences in three Gaunts namely: Fir:st count:· Unlawfully entry into the National .. __, __ 1 :~::~~::l-... ": ;;; }, ::-' ;t~r-' ' ; ~ ; :-<t<:-_\'::.::/t;/:~, -./rJ::;~~\~,--' ;!.. .. " ·i_:>{:~:");{tf!'<;~;;<- ~?:::, . . ,J~:: <<:~.-:-,Y(~::~j!t !!:~}[' . " "' . " . •• , :- ~ "-, I'\ · 1 • f ~ :~:::/:~:: . ~ ~: , :-' ~ ' ' ; , , ' . ____i," 1 :~: ... Patks,:co.n.r~rY _sections 21 (1); (2) and 29. (1),> ··· Nat'ional Parks Act:Cap:- 2s2 ·R.E 2002;~:' · {2} ~f the , . ~ ' '~ , , , . . . , . ' · .. -::

- r • • ... • ' .: Second count: -Unlawfully possession of .Government trophies contrary to sections a6 (1),
- (2) (C) . (ii) 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; -i: .. Third count~ Being in an unlawful possession of . Arms and Ammunition contrary to section-s:4 (1), (2) and 34
- (1) and (2) of the Arms and Ammunition, Cap. 223 R. E 2002 as amended by section 46 of the Written Laws (Miscellaneous Amendments) Act No. 17 of 2011. On the first count he was sentenced to pay fine of T.Shs.50,000/= or to serve six (6) months imprisonment in default of payment. On the second count he was sentenced to pay fine of T.Shs.80,000,000/= or to serve twenty (20) years imprisonment in default of payment and on third count he was sentenced to pay a fine of T.Shs.50,000/= or to serve six (6) months imprisonment in default of payment. 2 . 1 • • ~ I". • r ~:-- • " ,:.. ~ ~ • ."/t,: ~ ~-,~!~J"i;-~i?~--'i> :.,!/i! • . <-:-~ ~;;,-... \;;!~:~/,::; _ • .. ::>:-_,::;,:! :_ ¥ :1.~:- • . :~:-! _ • . __.,, .. f At the trial, the prosecution had adduced evidence to the effect that, on 22.8.2013, 1 Sofaret VVanjara (PVV1) and Steven Mlagombi. (PW2), park rangers, while on patrol at Changuu within Ruaha National Park they got-

information from the staff of Kilombero North Company that they heard gun shot. On: their follow-ups they found the appellant in the reserve. When searched the appellant's bag, it was found with 10 elephant tusks, one weigh machine, 16 bullets of 458 calibre and 19 bullets of rifle with 416 calibre. Three dead elephants which were shortly killed were shown to them by the appellant. Majid Seleman (PW3), the valuer through his valuation report in (Exhibit P2) respect of ten (10) elephant tusks (Exhibit P1) finds that their value was worth Tshs. 120,000,000/=. The appellant defence was to the extent that the case against him was fabricated and that he was framed-up by the park rangers. Upon being aggrieved by the decision of the trial court the appellant appealed to this Court challenging the same. Before this Court, the appellant was fending for himself, unrepresented whereas the respondent Republic had the services of Ms. Pienzia Nichombe, learned State Attorney. The appellant filed a total of eight grounds of appeal which in essence they all intend to mean that the prosecution has failed to prove its case. The appellant's contentions in this regard are:

- The prosecution fails to establish his guiltiness. On the 2nd ground his conviction was based on one sided evidence that of the park rangers without considering the independent evidence. On the 3rd ground the trial court's decision only used the evidence from one side instead of calling other witnesses like ballistic to testify on ammunitions found with the appellant alleged to have killed the elephant. On the 4th ground the search of his bag was improperly conducted as there was no leader to witness the same. On the 5th ground his defence was not considered or was disregarded. On the 6th ground the prosecution had failed to prove its case beyond reasonable doubt. On the 7th ground the trial court ... failed to summon other witnesses to testify such as the CO or police officer. On the 8th ground the sentence meted by the trial court is brutal, excessive and punitive. The appellant, being a layperson had a little to add on his grounds of appeal which seems to have been prepared by someone else with some legal knowledge. When this appeal was called for hearing on 15th April, 2015 the appellant lamented to the effect that he was ready to proceed with the hearing in the absence of his advocate because he was not aware of his whereabouts. However, the alleged unnamed advocate has never appeared before this court since the appeal was filed on 26th May, 2014.
- Being a layperson had a little to add on his grounds of appeal which seems to have been prepared by someone else with some legal knowledge. When this appeal was called for hearing on 15th April, 2015 the appellant lamented to the effect that he was ready to proceed with the hearing in the absence of his advocate because he was not aware of his whereabouts. However, the alleged unnamed advocate has never appeared before this court since the appeal was filed on 26th May, 2014.
- As it may be, the appellant was fairly brief in his submission in support of the appeal. He completely denied involvement in the commission of the alleged offences, totally denied the prosecution evidence and accusation against him while labelling the prosecution story as a mere fabricated story against him. He

contended that on the day he was found by the Park rangers on his way home. He claimed that the alleged ammunitions found in his possession were not proved because there was no ballistic evidence. He further complained that the search was not conducted in his house and that he was not found in possession of a bag. The appellant argued that it is unfortunate that the trial Magistrate disregarded his defence and instead relied on the prosecution evidence which was not sufficient to prove the charges against him. The appellant also complained that the sentence meted against him by the trial District Court was brutal and excessive. Ms. Pienzia Nichombe, learned State Attorney representing the respondent/Republic forcefully resisted the appeal and fully support the decision of the trial District Court on conviction and sentences. In response to the grounds of appeal, Ms. Nichombe started with the 2nd ground at the appeal and submitted that the

- The learned State Attorney submitted that the appellant did not provide evidence for the 1st, 2nd and 3rd grounds of appeal. She submitted that even a single witness can be used to prove a case. She argued that PW1
- PW1 and PW2 were the Park rangers who arrested the appellant within the game reserve, red-handed in possession of a bag containing ammunitions and government trophies (elephant tusks), Exhibit P1. Thus there was no need of any other evidence to prove the arrest and possession as proved by PW1 and PW2 who were credible witnesses.
- On the 3rd ground of appeal, the learned State Attorney submitted that there was no need of summoning ballistic evidence because the appellant was arrested in possession of both the ammunitions and elephant tusks. She contended that the appellant was not charged with the offence of killing elephants rather the gist of his charges were based on the unlawful entry to the game reserve and unlawful possession of both the government trophies and ammunitions. On the 4th ground, Ms. Nichombe submitted that the appellant has already admitted that he was found in possession of the bag. Furthermore the prosecution evidence (PW1 and PW2) entails in detail on how the appellant was arrested within the game reserve area, his bag searched and the items found therein. She submitted that when the bag and the whole Exhibit P1 was produced, in evidence that the appellant had no objection and he never challenged the bag and its items. Ms. Nichombe argued that since that evidence was not contested by the appellant during trial, it is a mere afterthought to challenge it at the appellate stage. Responding on the 5th ground of appeal the learned State Attorney submitted to the effect that in reaching its decision the trial court rightly considered both the prosecution and defence evidence. She pointed out page 6 of the judgement of the trial court where the Magistrate discussed the defence evidence and correctly rejected it. On the 7th ground of appeal Ms. Nichombe submitted that PW3 was the Expert valuer of the value of the trophies and therefore there

was no need of calling for other supporting evidence from the Regional Crime Officer or any other police officer. She contended that during the trial PW3 produced his Valuation Report Exhibit P2 which was not contested by the appellant. On the 1st and 6th grounds of appeal the learned State Attorney argued them together to the effect that the prosecution evidence is sufficient to prove the case against the appellant beyond all reasonable doubts. On the 7th ground, she submitted that the sentences were proper and correct in law. She contended that the sentences were fair and minimal because the appellant could have been sentenced

- e . up to 30 years term of imprisonment but he was only given ,: 20 years. She also submitted that the: appellant was found: in. possession of ammunition but was given a sentence of fine _of T.Shs. 50,000/. or six months imprisonment instead.. of 15 years . term of imprisonment or fine . of up T.Shs.30,000,000/= The two important issues in this appeal are whether the charges laid against the appellant were _proved beyond all . re 9? onable doubts and whether the sentences meted against the accused are proper in law. Having gone through the record of proceedings and the 1 Judgement . of the trial District Court and having seriously . ' considered the appeal grounds and arguments from both sides, I am satisfied that this appeal is short of merits. In the first instance I agree with the learned State Attorney that .there is no •fixed number of witnesses required to testify in a given case or to prove a certain fact. Section 143 of the Evidence-Act, (Cap. 6 R.E. 2002) states:- .. "Su_bject to. The pro_visions of any other writteo 8 la_w1 .no par~icufar number of Mtitr;esses . - shall . in any ~ : .case be required for proof of any fact." In_ law, w-r,iat is required is the .demeanou_r . and credibility . of a witt:less. • See the cases of Shehe • Hamza Vs. Republic, , .. •Criminal Appeal No. 114 of 2004, CAT at Tanga --- ,. . . (unreported); Yohanis Msigwa Vs. Republic (1990) TLR .. 148; .Saada Abdallah and Others Vs. Republic: (1994) • TLR 132 and luma Senge -Vs. Republic, Criminal App~al No. 164 of 2008 (unreported). Furthermore the prosecution side have a liberty to call the witnesses of their choice whom they consider important to prove their case • before the court. See the case of Anuary Nungu and Another Vs.. Republic Criminal Appeal No. 109 of 2006 (unreported). Therefore the appellant's complaints that the . prosecution called only PW1 and PW2 to prove the case and that there was no ballistic evidence and/or the Regional Crime Officer and other police officers who were involved should have been called to establish the value of the .. trophies have no substance at all. The value of the trophies; found in possession of the appellant were. determined by an,. .. expert PW3. In my considered opinion the prosecution _.. ~vid-e_r,C:e (com PW1, PW2 • 9 nd PW3 w~s C(?rrectly: admitted ,,, , 9 ~~~? t.. ~-:-:-\,.. ,,, . . _ , ~1» : : ~.1r... ::~. . ~~-/- ~-...tli.~" _ ~-1-;:-~ ¼ • ' . ' . ~ ;,,- \.. .. := ~- . . ,;:-..... :4 ::~;-; , ... ,,, ,. WO: ~""~ , , ~""~: .. r ~ , ..Y: . . . , ~ ; :-,• • .:~::~~J'r • • .~,~,;. •~!,: • • • • .1'~::~7::,;.. _i; , -7:_;::~~;r~√• _ , ~ ~rrl . \/:):: ' ~? ~r;:'t~?y:f; , ?~; ~ ;:.. " : " . • ' . ~ , :- . : .. . • f • • ~ 1 • , ~ ~F- • I , ' , , 'I. JI" .. \ I by the trl~I Dlstrict Court: ' , I • • "

- I am also in agreement with Ms. Nichombe that the issue of search raised by the appellant is not significant in the circumstances of this case. The evidence on record indicate that soon after the information from the staff of Kilombero North Company that they heard gun shot in the game reserve area, PW1 and PW2 quickly responded to the information and managed to arrest the appellant red-handed in possession of the trophies and ammunitions (Exhibit P1) within the game reserve area. The appellant's co-felony managed to escape. There was no need of the so called proper search because the appellant was openly found in possession of Exhibit P1. Furthermore the allegation by the appellant that the case was framed against him are unfounded. The trial District Court critically scrutinized the defence evidence and prosecution evidence and found that there was nothing to establish any prior enmity between the rangers (PW1 and PW2) and the appellant. There was no element of ill-motives from PW1 and PW2 against the appellant. It is my considered opinion as rightly submitted by Ms. Nichombe that "the prosecution managed to prove the case against the appellant beyond all reasonable doubt. The prosecution evidence especially that of PW1 and PW2 was cogent to ground a conviction against the appellant. In the circumstances the grounds of appeal Nos. 1, 2, 3, 4, 5, 6, and 7 are hereby rejected and dismissed. Concerning the issue of sentences I have no quarrel with the sentences imposed by the trial District Court and in that regard I accept the learned State Attorney's opinion. The problem with this case is that the trial Resident Magistrate had a wide range of sentencing field. He elected to employ the provisions of Section 86 (2) (b) instead of either Section 86 (2) (c) (ii) of the Wildlife Conservation Act or The Economic and Organized Crimes Control Act, Cap. 200. In my considered opinion the sentences imposed by the trial District Court are fair, minimal and in compliance with the law. In the end result, I hereby dismiss the appeal in its entirety for want of merits and confirm the decision of the trial District Court. M. S. SHANGALI JUDGE 26/6/2015

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