

TANZANIA / JUDGMENT

Criminal Appeal 19506 Judgment NangelaJ

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA SUMBAWANGA SUB-REGISTRY
AT SUMBAWANGA CRIMINAL APPEAL No. 19506 OF 2024 (Originating from Economic Case
No.23 of 2023, the District Court of Mlele, at Mlele, Katavi) GODFREY s/o MWAKA @
SHANKOMO..... APPELLANT VERSUS THE
REPUBLIC..... RESPONDENT Last order: October 3, 2024
Judgement: November 28,2024

JUDGMENT

NANGELA, J.: Godfrey s/o Mwaka @ Shankomo, the appellant, is a miserable individual. His unhappy state of mind results from his conviction and sentence imposed on him by the District Court of Mlele, hereinafter “the trial court,” in Economic Case No. 23 of

2023. He was sentenced to serve a 20-year imprisonment term. According to the case's brief facts, the accused and other individuals not involved in this appeal were discovered inside the Rukwa Game Reserve in the Kabuliwazi area of the Mlele District in the Katavi Region on June 16, 2023, without any written authorization. Impala tails, one Reedbuck tail, buffalo dry meat and tail, warthog meat, bush pig dry meat, one Civet cat carcass, Page 1 of 11 two Gobore muzzle loading guns, 28 muzzle loading gun ammunitions, four knives, one axe, two traps, and explosives were among the government trophies they were in possession of. Having been arrested, the appellant and his co-accused, who are not involved in this appeal, were arrested and charged with a number of offenses, including unlawful hunting, unlawful possession of a firearm, unlawful possession of ammunition, unlawful possession of weapons in a game reserve, unlawful possession of explosives, unlawful entry into a game reserve, and unlawful possession of government trophies in violation of Sections 86 (1) and 2 (c) (iii) of the Wildlife Conservation Act, Cap. 283, R.E. 2022, read in conjunction with paragraph 14 of the First Schedule to and Sections 57(1) and 60(2) of the Economic and Organized Crimes Control Act, Cap. 200 R.E. 2022. Upon hearing, the appellant and his co-accused persons were found guilty and sentenced accordingly. As a third convict (accused) in the case before the trial court, the appellant was upset by the decision and came to this court contesting both his conviction and sentence. His appeal is based on five grounds, which are as follows: Page 2 of 11

1. The trial court erred in law when it admitted and worked upon a seizure certificate, which was made contrary to the law.
2. That the trial court erred in law when it admitted the geographical position prepared by an employee of Big Safari (the claimant/complainant in this case) without the participation of the appellant.
3. That the trial court erred in law when it admitted the appellant's caution statement while it was procured contrary to the law.
4. That, the trial court erred in law when it admitted the testimonies of Pw-4 and Pw-6, despite the fact that Pw-4 and Pw-6 were not at the scene of the crime at the time when the appellant was arrested; hence, the evidence was hearsay.
5. That the trial court erred in law when it convicted the appellant while the offence, he was charged with was Page 3 of 11 not proved beyond reasonable doubt. Based on those five grounds, the appellant urged this court to consider granting this appeal, quashing both the appellant's conviction, setting aside the sentence and discharging the accused from prison. In court, the accused appeared in person to prosecute his appeal, while Mr. Calistus Kapinga, a senior state attorney, appeared for the republic (the respondent). In defending his appeal, the appellant urged this court to consider his grounds, as they are adding nothing more than that the court should not hesitate to release him. For his part, Mr. Kapinga was clear and forthright. He declared his opposition to the appellant's prayers, which aim to reverse the trial court's

judgment.

Regarding the first ground, Mr. Kapinga argued that the "Certificates of Seizure" were appropriately prepared. He maintained that Pw-6, who prepared the certificates, did testify before the trial court that he was among the arresting officers who detained the appellant and his associates. Furthermore, he contended that the appellant was discovered in possession of every item specified on the certificate Page 4 of 11 and that the entire procedure was directed by the law, specifically Section 106 of the Wildlife Conservation Act, Cap. 283 R.E. 2022. To support his submission on the legality of the seizure certificate, he relied on the case of Abdulrahim Selemani Hassan vs. Republic (Criminal Appeal No. 27 of 2023)

[2023] TZHC 22861 (31 July 2023), a case law that provides elaborate explanations regarding that provision. Based on such a submission, Mr. Kapinga contended, therefore, that the first ground has no basis and should be dismissed. As regards the sketch map that was tendered before the trial court as Exh.P-1, Mr. Kapinga submitted that the same was based on the coordinates that Pw-6 had recorded, marked, and submitted to Pw-2. He submitted that such coordinates were interpreted by Pw-2 and finally a map of the areas where the appellant was found and arrested was prepared. Mr. Kapinga submitted that, this being a process of collecting evidence, there is no law that requires that when such coordinates are interpreted, the accused should be present. To support his submission,

reliance was placed on the case of Shinje Page 5 of 11 Mabala @ Mahembo vs. R. Crim. Appeal No. 13 of 2023 (HC) (Morogoro) (unreported). Concerning the third ground, Mr. Kapinga submitted that it was Pw-7 who recorded the caution statement of the appellant and tendered it in court as evidence. According to Mr. Kapinga, at the time of its tendering in court, the appellant objected, and the trial court conducted a mini trial to clear the statement. He contended that, at the time, the appellant had jumped bail and, thus, was not in court to enter his defence. According to Mr. Kapinga, since the appellant was the one who failed to appear in court at the time when the exhibit was tendered, the court was right when it proceeded to rely on the statement. As such, Mr. Kapinga surmised that the third ground, like the first and second grounds of appeal, are without merit and should also be dismissed. As regards the fourth ground of appeal, Mr. Kapinga argued that the same is as well baseless since Pw-4 and Pw-6 were directly involved in the arrest of the appellant. For that matter, he contended that nothing could be raised about their Page 6 of 11 testimonies as hearsay given that no one raised such an issue during their cross-examination. Further, as regards the fifth ground, which was about whether the prosecution proved the case beyond reasonable doubts, Mr. Kapinga did not hesitate to regard that ground as being baseless. He argued that Pw-6, Pw-4, and Pw-1's testimonies do reveal the location and circumstances of the appellant's arrest, the time and method of the search and seizure of different items, and the identity of the person found in possession of them. According to Mr. Kapinga, among the items confiscated were government trophies; Pw-3 was able to clearly identify other items such as knives, axes, and firearms. Most importantly, he added, the appellant had no legitimate permit to be found in the restricted area with such items. He further argued that based on the coordinates taken from the location where the arrest was made, it was clear that the appellant and his other colleagues, who are not part of this appeal, were arrested within the Rukwa Game Reserves, as Pw-1 and Pw-2 testified. In this respect, Mr. Kapinga humbly argued Page 7 of 11 that the appellant and his other co-accused, not before this court as appellants, were rightfully convicted and sentenced by the trial court because the evidence was intact. Submitting on the issue of the chain of custody, Mr. Kapinga submitted that the chain of custody was properly explained and demonstrated in court via Exh.P-4. He argued, therefore, that justice was meted out on the appellant, the lower court's decision was correct, and this appeal should be found wanting and be dismissed forthwith. Having considered the rival submissions, the issue for my deliberation is whether this appeal has any merit in it. I do not think that it has any merit. I am in agreement with Mr. Kapinga's submission that the evidence table before the trial court was watertight. Regarding the seizure certificate, the appellant's concerns are unfounded. The Certificates of Seizure were appropriately prepared, as Mr. Kapinga correctly argued, and Pw-6 was the right person to present them in court because he was the one who prepared them and testified that he was among those who detained the appellant and his co-accused persons, not parties to this appeal. Page 8 of 11 Nothing indicates that the aforementioned certificate was created unlawfully. The record demonstrates that the certificate (Exh.P-5) was accepted without the appellant raising any objections. As regards

the second ground, I also find it to be lacking merit. As Mr. Kapinga argued, this was an evidence-based case, and the appellant had the burden of refuting the prosecution's findings once they proved the coordinates were inside the restricted area. For this reason, Exh.P-1 was a piece of evidence that was presented and accepted in court. In essence, once the party bearing the onus of proof has made out a prima facie case, his opponent is burdened with an onus of rebuttal. Should s/he fail to discharge this onus of rebuttal, the prima facie evidence would be regarded as sufficient evidence for purposes of discharging the main onus of proof. See, for that matter, the South African case of Senekal vs. Trust Bank of Africa Ltd., 1978 (3) SA 375, at 382-383A. Nevertheless, this does not negate the prosecution's overall burden of proof, which should always rest on the prosecution to prove the entire case beyond a reasonable doubt. But taken cumulatively, there is no doubt that the prosecution side Page 9 of 11 discharged its duty of proving that the appellant was found within the game-controlled area without having a valid permit. Concerning the admissibility of the appellant's caution statement, I do not think I need to waste time on that point. Pw- 7 was the witness who recorded the appellant's caution statement. As correctly stated by the learned state attorney, an inquiry was carried out as per the requirements of the law following the appellant's objection to the admissibility of his caution statement. However, on the date when the appellant was to enter defence when the inquiry proceedings were on, he chose to absent himself in court. In view of that, he cannot challenge the admissibility of the caution statement as he had a chance to show why the same was to be rejected by chose not to appear in court when an inquiry was being carried out. As for grounds four and five, these are also baseless. Looking at the testimonies of Pw-1, Pw-2, Pw-3, Pw-4, Pw-5 and Pw-6 all point to one fact that the appellant was among those arrested with various items listed in Exh.P-1. In my considered view, therefore, the evidence was sufficient and weighed heavily Page 10 of 11 on the appellant. His conviction and sentence, therefore, cannot be overturned as he urges this court to do. In view of what I considered here above, the appellant's appeal lacks merit, and I hereby dismiss it. It is so ordered. DATED AT SUMBAWANGA ON THIS 28th NOVEMBER 2024 DEO JOHN NANGELA JUDGE Right of Appeal is Hereby fully Explained. Page 11 of 11

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