

TANZANIA / JUDGMENT

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (IN THE SUB REGISTRY OF SHINYANGA) AT SHINYANGA CRIMINAL APPEAL NO. 35805 OF 2024 (Arising from decision of the District Court of Bariadi at Bariadi before M.M NYANGUSI -SRM dated 17th October 2024 Economic Case No 23922 of 2024) KAHENA ENOS @NGAMBAAPPELLANT
VERSUS THE REPUBLIC.....RESPONDENT

JUDGMENT

17th February & 12th March, 2025 Massam, J The appellant herein above was charged before the District Court of Bariadi at Bariadi with two counts. One, unlawful possession of weapons in the National Parks C/s 17 (1)(b) and (2) of the National Parks Act Cap 282 RE of 2002. Second, Unlawful Possession of the Government Trophies Contrary to Section 86 (1) and (2) b of the Wildlife Conservation Act [Cap 283 R: E 2022], read together with paragraph 14 of the First Schedule to; and Section 57 (1) and 60 (2) of the Economic and Organized Crime Control Act [Cap 200 R.E 2022]. The briefs facts of the case are that, on the 4th day of August 2024 at “Mlima Serena” area in Serengeti National Park within Bariadi District in Simiyu Region, was found in unlawful possession of weapons to wit; 1 one panga, one knife and four trapping wires without the permit and failed to satisfy the authorized officers that the same were intended to be used for purpose other than hunting, killing, wounding or capturing of wild animals. Likewise, on the same date and place was found in unlawful possession of Government Trophy to wit; one fresh fore limb of zebra, one fresh hind limb of zebra and one fresh tail of zebra equivalent to one zebra unlawful killed valued at a total of USD 1200 equivalent to Tanzania Shillings three million two hundred sixteen thousand (3,216,000/=) only, the property of the United Republic of Tanzania. After the full trial, the appellant was found guilty with two offences, convicted and sentenced, to pay fine of Tshs. 100,000/= or to serve one year (1) imprisonment for first offence and to serve (20) twenty years’ imprisonment for second offence. Aggrieved therein, the appellant rightly lodged his appeal in this court with 2 (two) grounds as follows; -

1. That, the trial magistrate erred in law and in fact when he failed to consider that the prosecution side failed to establish the case beyond reasonable doubts. 2
2. That, the prosecution side failed to prove the case beyond all reasonable doubts even a magistrate did not testify that where and when the exhibits were disposed. During the hearing, the appellant appeared in person unrepresented, while the respondent was

represented by Mr Goodluck Saguya Learned State Attorney and the matter was heard orally. In submitting his appeal, the appellant submitted that a trial court did not do justice to him and prayed this court to consider his grounds of appeal as it has merit. In response, the learned State Attorney for respondent strongly opposed the appeal and supported both conviction and sentence imposed by the trial court and he prayed to argue ground of appeal separately. Responding to the first ground of appeal, appellant complained that the prosecution side failed to prove their case beyond reasonable doubt. Mr Saguya said that the case was proved beyond reasonable doubt by using four witnesses and six exhibits. PW1 testified that he arrested appellant with four trapping wires, one panga and one knife, zebra meat and tail of zebra. He took GPS map to show that the appellant was found in National Park Area and the said weapons were tendered to the court and admitted as exhibit P3. Likewise, PW2 3 identified the said exhibits and his evidence collaborated the evidence of PW1. More on that, PW3 being a wildlife officer evaluated and identified the said trophy to be a zebra meat and filled the trophy evaluation certificate and inventory was admitted as exhibit P4 and P5 respectively. Also PW4 tendered the chain of custody and was admitted as exhibit P6 and was the one who took the said meat to the magistrate in order to be destroyed. Finally, Mr Saguya prayed to this court to find the said grounds with no merits and dismiss the same. Regarding to the 2nd ground of appeal, appellant complained that the magistrate was not called to testify to the court where and when the exhibits were disposed. Mr Saguya submitted the law does not require magistrate to testify before the court how the said trophies were destroyed. Finally, he prayed ground no 2 to be found with no merit and the same to be dismissed. In the way of rejoinder, the appellant had nothing to add. Upon going through the entire records and carefully considered the submission from both sides, there is no doubt that the appellant is challenging the conviction and sentence meted against him on the 4 reasons that the prosecution did not prove its case against him beyond reasonable doubts. Therefore, the main issue to be determined by this court is to whether the prosecution proved the case against the appellant beyond reasonable doubt. It is a trite law that onus of proving in criminal cases is always in the side of the prosecution, as elaborated in the case of Joseph John Makune vs. Republic (1986) TLR 44 at page 49 where the court of appeal held; - "the cardinal principle of our criminal law is that the burden is on the prosecution to prove its case, no duty is cast on the accused to prove his innocence. There are a few well known exceptions to this principle one example being where the accused raises the defence of insanity in which case he must prove it on the balance of probabilities." The importance of this requirement was underscored, yet again in the case of George Mwanyingili vs Republic, Criminal No 335 of 2016 it was restated as follows; "We wish to restate the obvious that the burden of proof in criminal case always lies squarely on shoulders of the prosecution, unless any particular statute directs otherwise. Even then however, that burden is on the balance of probability and shift back to prosecution" Also, under section 3 (2) (a) of The Evidence Act provides the standard of proof that "A fact is said to be proved when - (a) in criminal matters, except where any statute or other law provides otherwise, the court is satisfied by 5 the prosecution beyond reasonable doubt that the fact exists;" See Edward Nyegela Vs. The Republic, Criminal Appeal No. 312 of 2019 (unreported);

and Sosthenes Myazagiro @ Nyarushashi Vs. The Republic, Criminal Appeal No. 276 of 2014 (unreported). Remarkably, the same principle was stated in the case of Woodmington Vs. DPP (1935) AC 462, the court held *inter alia* that, it is a duty of the prosecution to prove the case and the standard of proof is beyond reasonable doubt. This is a universal standard in criminal trials and the duty never shifts to the accused, See also the case of Christian Kale & Another Vs. The Republic (1992) T.L.R 302 CAT and John Makorobera & Another Vs. The Republic

(2002) T.L.R 296, where it was firmly held that the accused person should only be convicted of an offence, he is charged with on the basis of the strength of the prosecution case not on the weakness of the defense case. Having gone through the rival submission by both parties and going through the trial records and before tackling grounds of appeal. It is important to note that under rule 4(1) of the Judicature and Application of Laws (Electronic Filing) Rules, 2018, G.N. No. 148 of 2018, the Chief Justice has been given a mandate to establish an electronic filing system and make provision for specified documents to be filed, served, delivered or otherwise conveyed using that system. Rule 4(2) provides for functional equivalence by providing that where a document is required to be filed, served, delivered or otherwise conveyed to the court under any other provision of the Rules, it shall be so filed, served, delivered or otherwise conveyed using the electronic filing service. In line with rule 4 above, the Judiciary of Tanzania established the Judiciary Statical Dashboard System (JSDS), The system operated for the large part of 2020-2023. In November, 2023, the judiciary implemented a new and comprehensive electronic case management system (eCMS). The eCMS is a much complex and comprehensive system covering both court processes as well as non-court (trial) process. The eCMS also serves as the electronic filing system envisaged under rule 4. Rule 8 of the Rules provide further that all pleadings, petitions, applications, appeals and such other documents must be filed electronically through an electronic management system. In accordance with rule 9 the official records shall be those contained in the electronic case file (ECF). 7 Now, in the instant case, I have a privilege to access the records of the eCMS regarding the present case. In accordance with the digital file system, there is no dispute that the matter was filed on 26th December 2024 however a charge, consent and certificate as to jurisdiction was not filed and therefore it is difficult before this court to ascertain whether the trial court was vested power to entertain the matter or not. It is well settled that the proceedings of the court are presumed to be accurate and authentic such that they represent what really transpired in court. See the case of Alex Ndendya Vs Republic, Criminal Appeal 207 of 2018) [2020] TZCA 688, Masalu Ipiringa vs Republic (Criminal Appeal No 263 of 2019) [2003] TZCA 17401, Felick Kilipasi vs Republic (Criminal Appeal No 260 of 2021) [2023] TZCA 17941, Security Group T. Limited vs Steven Gerson Kizinga (Consolidated Civil Appeal No 386 of 2020 & 50 of 2021) [2024] TZCA 107 Remarkably, in the case of Halfan Sudi Vs Abieza Chichili [1998] TLR 527 in which, the Court of Appeal, relying on what it earlier stated in Shabir F. A. Jessa Vs Rajkumar Deogra Civil Reference No. 12 of 1994 (unreported) held: "A court record is a serious document; it should not be

lightly impeached" 8 And, restating what the High Court of Uganda (Bennett, Ag. CJ) stated in Paulo Osinya Vs R [1959] EA 353, the Court of Appeal added: "There is always a presumption that a court record accurately presents what happened" Guided by the authorities above, and going through the trial records, Indeed the trial proceedings shows that certificate of seizure, map, the trophy valuation form, inventory and chain of custody were admitted as exhibit P1, P2, P4, P5 and P6 respectively, but the same are not found in digital file or elsewhere in the eCMS. In the premises it is difficult before this appellate court to ascertain whether exhibits were accurate and its authenticity to manifest the conviction of the appellant. In view of the aforesaid. I allow this appeal and quash the conviction and set aside the sentence. I further order the appellant be released from prison forthwith unless held for any other lawful cause. It is so ordered. DATED at SHINYANGA this 12th day of March, 2025. R.B. Massam Judge 9 10

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