

TANZANIA / JUDGMENT

KALEKWA MASANJA 2
OTHERS ECO BARIADI

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DECIDED
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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB - REGISTRY OF SHINYANGA AT SHINYANGA CRIMINAL APPEAL REF. NO. 202407182000020180 KALEKWA MASANJA 1st APPELLANT SUBUYA DANIEL 2nd APPELLANT TUNDA MBOJE 3rd APPELLANT VERSUS REPUBLIC..... RESPONDENT [Appeal from the Decision of the Resident Magistrate’s Court of Simiyu at Bariadi] (Hon. C.E. KILIWA PRM) dated the 27th day of June, 2024 in Economic Case No. 70 of 2023

JUDGMENT

23rd October & 15th November, 2024. S.M. KULITA, J. This is an appeal from the Resident Magistrate’s Court of Simiyu at Bariadi. The appellants herein above were convicted and sentenced serve the 1 imprisonment of 2 (two) years each for the 1st and 2nd counts respectively, which are; “Unlawful Entry into the Game Reserve” contrary to section 15(1) and (2) of the Wildlife Conservation Act [Cap 283 RE 2022], and “Unlawful Possession of Weapons in the Game Reserve” contrary to section 17(1) and

- (2) of the Wildlife Conservation Act [Cap 283 RE 2022], read together with Paragraph 14 of the 1st Schedule to, and sections 57(1) and 60(2) of the Economic and Organized Crime Control Act [Cap 200 RE 2022]. For the 3rd to the 7th counts, which involve the offence of “Unlawful Possession of Government Trophies” contrary to sections 86(1) and (2)(b)(c)(ii)(iii) of the Wildlife Conservation Act [Cap 283 RE 2022], read together with Paragraph 14 of the 1st Schedule to, and sections 57(1) and 60(2) of the Economic and Organized Crime Control Act [Cap 200 RE 2022], the Appellants were convicted and sentenced to 20 (twenty) years’ imprisonment for each offence. The brief history of the case in a nut shell, as it can be gathered from the record is that; on the 22nd day of September, 2023 the Conservation Rangers for Maswa Game Reserve, PW1 and PW2, while in patrol over the Game Reserve, found the Appellants at Mwamatila area and that they had no permit from the Director of Wildlife to enter into the Game Reserve. It is 2 alleged that while there, the Appellants were found in Unlawful Possession of Weapons, to wit; 3 (three) knives, 3 (three) bush knives

(Pangas) and 6 (six) animal trapping wires, of which they failed to satisfy the authorized officers that the same were intended to be used for purposes other than hunting, wounding or capturing wild animals. The record further reveals that the culprits were also found in possession of Government Trophies, to wit, 1 (one) dry skull of Giraffe, 1 (one) fresh head of Impala, 2 (two) horns of Wildebeest, 2 (two) dry tails of Zebra and 2 (two) fresh noses of Hyenas. That, the Appellants had no permit to hold those things. Aggrieved with both, convictions and sentences, the appellants herein lodged this appeal with 3 (three) grounds as follows;

1. That, the trial Magistrate erred in law and in fact to hold conviction while there was a contradiction in the prosecution case on a place where the appellants had been arrested, whether it is Mwamaliza or within the Game Reserve.
2. That, the trial Magistrate erred in law and in fact to receive and admit the inventory that involved a dry meat, instead of the physical dry meat itself. 3
3. That the case at the trial court was not proved beyond all reasonable doubts. The matter was argued through oral submissions. The Respondent (Republic) is represented by Ms. Rose Kimaro, Learned State Attorney while the Appellants are unrepresented. In their oral submission in support of the appeal the appellants prayed for the grounds of appeal in their joint Petition to be adopted as the submission for their appeal. They concluded by praying for the appeal to be allowed and they, accordingly be acquitted. In the reply thereto the Learned State Attorney, resisted the appeal. In her oral submission in reply to the 1st ground of appeal, the State Attorney, Ms. Rose Kimaro, stated that, before the trial court, there was no contradiction in the prosecution case regarding a place where the appellants had been arrested. She said that the record is clear that the appellants had been found and arrested at Mwamatila, the area which is within Maswa Game Reserve. She sought for this court to refer the testimonies of the Park Rangers, PW1 and PW3, who are the arresting officers. The Counsel further stated that PW4, who is an expert in map construction, also stated that upon 4 inserting the coordinates presented to him by PW1, the GPS coordinates revealed that the premise was Mwamatila within Maswa Game Reserve. The Counsel concluded her submission on this ground by stating that, she finds no contradiction regarding a point where the appellants had been arrested. Submitting on the 2nd ground of appeal, that, the trial Magistrate erred in law and in fact to receive and admit the inventory that involved a dry meat, instead of the physical dry meat itself, the counsel stated that, among the trophies that the Appellants had been found possessing, dry meat was not there. She added that, the fact that the Appellants signed on the certificate of seizure (exhibit P1) and the Inventory (exhibit P4), impliedly they admitted to have been found with the exhibits listed on those documents which include the said trophies. In her reply to the 3rd ground the State Attorney submitted that the case at the lower court was proved beyond all reasonable doubts. She referred this court to the proceedings of the lower court which reveal that on 22 nd September, 2023 at about 1630 hours, the Conservation Rangers, PW1 and PW3, who were in patrol at Mwamatila area within Maswa Game Reserve found the appellants therein, and

that they were holding a camp. She further 5 said that, upon been asked for a permit the appellants had no it. Hence, the said Conservation Rangers arrested them. The State Attorney further submitted that the said Park Rangers (PW1 and PW3) also narrated that they found the culprit holding weapons which were admitted at the trial court as exhibit P2 collectively. She mentioned those weapons being 3 (three) knives, 3 (three) bush knives (Pangas) and 6 (six) animal trapping wires, of which they failed to satisfy the authorized officers that the same were intended to be used for purposes other than hunting, wounding or capturing wild animals. The State Attorney continued to narrate that the record further reveals that the culprits were also found in possession of Government Trophies, to wit, 1 (one) dry skull of Giraffe, 1 (one) fresh head of Impala, 2 (two) horns of Wildebeest, 2 (two) dry tails of Zebra and 2 (two) fresh noses of Hyenas. She added that, the Appellants had no permit to hold those things. The Counsel further submitted that, in his testimony PW1, the Conservation Ranger, testified to have filled a Certificate of Seizure (exhibit P1) upon seizing the trophies, whose inventory was admitted as Exhibit P4. She added that the said PW1 also seized the weapons which were admitted to court as 6 exhibit P2 collectively. She further said that a list of those weapons was also incorporated in the said Seizure Certificate (exhibit P1). The State Attorney stated that, PW1 also recorded the GPS coordinates for the point where the appellant had been found. He took it to the printing office where PW4 who is a Map Driver entered the said GPS coordinates into a computer and extracted the GPS map (exhibit P3). The said map revealed the location being Mwamatila area, which is found at 14.7 Km. from the barricades of Maswa Game Reserve. The State Attorney further stated that exhibits P1, P2 and P3 mentioned above were also identified by PW3, a Conservation Ranger who was together with PW1 during the arrest of the appellants and seizure of the above mentioned weapons and trophies. Hence, he corroborated the testimony of PW1. It is the submission of the State Attorney that, during trial the Prosecution side called PW5, a Police Officer who had filled a chain of custody (exhibit P6) regarding the movements of trophies and weapons from the time they were received at the Police Station. 7 She added that, the Wildlife Officer (PW2) who is an expert in wildlife matters testified to the effect that he had seen the trophies at Bariadi Police Station upon been called to identify them. The counsel further stated that, in his observation PW2 identified them being 1 (one) dry skull of Giraffe, 1 (one) fresh head of Impala, 2 (two) horns of Wildebeest, 2 (two) dry tails of Zebra and 2 (two) fresh noses of Hyenas. She further submitted that, the record transpires that the said witness (PW2) made specifications/clarifications for the identities/particulars that he had noted from the said trophies. The Counsel added that the said witness (PW2) also filled the Trophy Value Certificate (exhibit P3). She further stated that, as the said trophies could have not stayed longer, that they are easy to decay, PW2 filled the Inventory Report (exhibit P4) for the disposal purposes. For this submission, the State Attorney sought for the 1st ground of appeal to be dismissed for having no merit, as the case at the trial court was proved beyond reasonable doubt. That was the end of the reply submission by the State Attorney. The Appellants had no rejoinder, hence the submissions ended up there. 8 From the above submission, I find the issue to be determined is whether the appeal is meritorious. Starting with the 2nd ground of appeal, in which the appellants alleged that the trial Magistrate erred

in law and in fact to receive and admit the inventory that involved a dry meat, instead of the physical dry meat by itself. I can agree with the State Attorney that, according to the lower court record including the charge sheet, dry meat was not among the trophies that the Appellants had been found possessing. However, my scrutiny on this ground of appeal is that, the allegation by the appellants on this is that, the case at hand involves some trophies which are not perishable in nature of which the prosecution could have tendered them physically, instead of the inventory. The said trophies, though not mentioned by the Appellant, in my view, includes 1 (one) dry skull of Giraffe, and 2 (two) dry tails of Zebra of which the Appellants predict to be un-perishable. As far as the allegation is concerned, the said trophies were not supposed to be incorporated in the inventory, instead they could have been tendered in court physically. My view on this is that, the fact that the Appellants signed on the certificate of seizure (exhibit P1) and the Inventory (exhibit P4), impliedly they admitted to have been found possessing the things listed on those documentary 9 exhibits which include those said trophies. Further, it is my considered view that, save for things like ivory, basically almost all parts of the dead animals' body are perishable, that's why they are mostly used to be ordered for disposal and the inventory is substituted thereof. In the case at hand, the Magistrate before whom the trophies had been taken ordered for disposal as she found them perishable, hence could decay. As there is no evidence or submission on contrary as to whether the said trophies, namely, 1 (one) dry skull of Giraffe, and 2 (two) dry tails of Zebra, could have stayed longer without decay, this argument cannot stand. Section 101(2) of the Wildlife Conservation Act provides that inventory is a sufficient proof of existence of the subject matter in dispute. Therefore, without hitting into the bush, it is obvious that the appellants herein had been found in possession of the said trophies which have been listed in the inventory (exhibits P4) and Seizure Certificate (exhibit P1). Further to that, the said trophies being tendered to court in a form of inventory has not prejudiced the appellants as there is an ample evidence, as stated herein before that the appellants were actually found in possession of the said trophies. I thus find this ground of appeal unmeritorious, hence failed. 10 My analysis on the 1st ground of appeal, that the trial Magistrate erred in law and in fact to hold conviction while there was a contradiction in the prosecution case on a place where the appellants had been arrested, whether it is Mwamatila or within the Game Reserve, is as follows; the record is clear that the appellants had been found and arrested at Mwamatila, the area which is within Maswa Game Reserve. The testimonies of the Park Rangers, PW1 and PW3, who are the arresting officers, transpire that situation. The record further reveals that PW4, who is an expert in GPS map construction, stated in his testimony that, upon inserting the GPS coordinates presented to him by PW1, the map extracted therefrom revealed that the premise was Mwamatila, the area which is located within Maswa Game Reserve. Therefore, as rightly stated by the State Attorney, Ms. Rose Kimaro, there was no contradiction in the prosecution case in respect of a place where the appellants had been arrested, that it is Mwamatila, the area which is located within Maswa Game Reserve. I therefore find this ground of appeal with no merit as well. Regarding the 3rd ground of appeal which based on the proof of a case at the subordinate court. While the Appellants allege that the case at the trial court was not proved

at the required standard, the State Attorney disputed the said allegation. She alleged that the case at the lower court was proved beyond all reasonable doubts. In resolving this issue, I went through the proceedings of the lower court and noticed that on 22nd September, 2023 at about 1630 hours, the Conservation Rangers, PW1 and PW3, who were in patrol at Mwamatila area within Maswa Game Reserve found the appellants who were also holding a camp over that there, and that, the said PW1 and PW3 arrested the appellants. As rightly submitted by the State Attorney, the record further reveals that the said arresting officers (PW1 and PW3) found the appellants herein holding weapons. The said weapons, to wit, 3 (three) knives, 3 (three) bush knives (Pangas) and 6 (six) animal trapping wires, were admitted at the trial court as exhibit P2 collectively. The State Attorney's submission as well as the testimonies of the arresting officers in the record, also transpire that the bandits failed to satisfy the said arresting officers that the said weapons were intended to be used for purposes other than hunting, wounding or capturing wild animals. According to the testimonies of PW1 and PW2, upon interrogating them in respect of the said weapons, the appellants replied that they were for trapping wild animals, slaughtering them, cutting meat and bones, as well as peeling the skin. This can be seen at pages no. 11 and 12 19 of the trial court's proceedings. Therefore, the appellants' aim of holding the said weapons was for the said unlawful acts against the wild animals. The record also reveals that the culprits were also found in possession of Government Trophies, to wit, 1 (one) dry skull of Giraffe, 1 (one) fresh head of Impala, 2 (two) horns of Wildebeest, 2 (two) dry tails of Zebra and 2 (two) fresh noses of Hyenas. The evidence in record also shows that the Appellants had no permit to hold those things. The State Attorney submitted the same during the appeal before this court. The record further transpires that PW1, the Conservation Ranger, filled a Certificate of Seizure (exhibit P1) upon seizing the trophies, whose inventory was admitted to the trial court as Exhibit P4. The said witness (PW1) also seized the weapons from the bandits. The said weapons were collectively admitted to the trial court as exhibit P2 as stated herein before. It is the right submission of the State Attorney that, PW1 also recorded the GPS coordinates for the point where the appellant had been found. He took it to the printing office where PW4 who is a Map Driver entered the said GPS coordinates into a computer and extracted the GPS map (exhibit P3). The said map revealed the location being Mwamatila area, which is found at 14.7 13 Km. from the barricades of Maswa Game Reserve. That is also an ample evidence that a point where the appellants had been found was within the Game Reserve's boundaries. The record further reveals that the said exhibits P1 (seizure certificate), P2 (weapons) and P5 (map) mentioned herein before were identified by PW3, a Conservation Ranger who was together with PW1 during the arrest of the appellants and seizure of the above mentioned weapons and trophies. Hence, the evidence of PW3 corroborated the testimony of his fellow Park Ranger (PW1) that the Appellants were actually found at Mwamatila, the area which is found within Maswa Game Reserve As rightly submitted by the State Attorney, during trial the Prosecution side called PW5, a Police Officer who had filled a chain of custody (exhibit P6) regarding the movements of exhibits from the time that they were received at the Police Station. The said document ensures integrity of the exhibits in question and proves on the person who handled it at each stage.

The one in question (exhibit P6) qualifies on those said requirements. Further, there was no allegation in respect of any among the exhibits listed in the said chain of custody (exhibit P6) that it was tempered. Therefore, the trophies and weapons that had been tendered at the trial court are the ones that had 14 been found in possession of the appellants herein at Mwamatila area within Maswa Game Reserve. The record further reveals that the Wildlife Officer (PW2) who is an expert in wildlife matters testified to the effect that he had seen the trophies at Bariadi Police Station upon been called to identify them. In his observation, the said PW2 identified them being 1 (one) dry skull of Giraffe, 1 (one) fresh head of Impala, 2 (two) horns of Wildebeest, 2 (two) dry tails of Zebra and 2 (two) fresh noses of Hyenas. The record further transpires that the said witness (PW2) made specifications/clarifications for the identities/particulars that he had noticed from the said trophies. The said witness had not ended up to mention names of the animals from which the said trophies had been detached, but he also made clarifications/specifications for their peculiarity. Those descriptions by PW2, for the observation he had made were satisfactory for the trial court to declare that the trophies in question were parts of the wild animals' bodies. I also agree with it. I find this evidence intact for the matter at hand. The said witness (PW2) also filled the Trophy Value Certificate (exhibit P3). As the said trophies could have not stayed longer for being perishable in 15 nature, PW2 filled the Inventory Report (exhibit P4) for the disposal purposes. As the trophies in question are easy to decay, the appropriate procedure was for to the Wildlife Officer(s) to convert them into inventory under the provision of Section 101(2) of the Wildlife Conservation Act [Cap 283 RE 2022] as it was so done by PW2. Conclusively, I find the 1st ground of appeal, that the case at the trial court was not proved at the required standard, has no merit as the case looks to have been proved beyond reasonable doubt. This ground of appeal is thus dismissed for lack of merits. In upshot, I find the appeal unmeritorious, hence dismissed. Decision of the Resident Magistrate's Court that led to conviction, and the sentences imposed thereon, are hereby upheld. S.M. KULITA JUDGE 15/11/2024 DATED at SHINYANGA this 15th day of November, 2024. 16 S.M. KULITA JUDGE 15/11/2024 17

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