

TANZANIA / JUDGMENT

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA¹⁴

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA SUMBAWANGA SUB-REGISTRY
AT SUMBAWANGA ECONOMIC APPEAL No. 12671 OF 2024 (Originating from decision of Hon.
IRONDO, J.R. (SRM) in DC Economic Case No. 13 of 2023 at Mlele dated 12th April 2024)
BETWEEN MARTIN S/O KAZEMBE MAFUNDAAPPELLANT VERSUS THE
REPUBLIC.....RESPONDENT Last order: 16th December 2024
Judgement: 23rd December 2024

JUDGMENT

NANGELA, J.: Martin s/o Kazembe Mafunda, the appellant herein, is appealing to this court expressing his dissatisfaction with the decision of the District Court of Mlele District at Mlele (herein after referred to as the trial court). The appellant was arraigned before the trial court and was charged with four different counts. The First count, unlawful possession of government trophy contrary to section 86 (1) and (2) 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 second Page 1 of 14 count was unlawful possession of firearm contrary to section 20(1)(b) of the Firearms and Ammunition control Act No. 2 of 2015 read together with paragraph 31 of the first schedule to and section 57(1) and 60(2) of the Economic and Organized Control Act [Cap 200 R.E. 2022]. The third count was unlawful possession of ammunitions contrary to section 21(a) and (b) of the Firearms and Ammunition Control Act, No. 02 of 2015 read together with section 57(1), 60(2) and paragraph 31 of the first schedule both of Economic and Organized Crime Control Act, Cap 200 R.E. 2022 and, the fourth count was the offence of unlawful possession of explosives contrary to section 3(1), (2) and 20(1) (a) of the Explosive Act, Cap 45 R.E. 200. In all first three counts the appellant was found guilty, convicted and was sentenced to serve a 20years imprisonment in each count. Likewise, he was found guilty of the fourth count and was sentenced to serve a three-years' jail term. The sentences imposed on him were ordered to run concurrently. He has now appealed challenging both his conviction and sentence and has raised six grounds of appeal, to wit, that: Page 2 of 14

1. The trial court erred in law when it convicted the appellant while the evidence relied adduced by the prosecution was inconsistent, doubtful and contradictory.

2. That, the trial court erred in law when it admitted the seizure certificate which was procured in contravention of the law and for no issuance of certificate or reporting the search before a magistrate, hence contrary to the law.
3. That, the trial court erred in law when it admitted the evidence of Pw-9 together with Exh.P-14 which was procured contrary to the law, as the prosecution did not summon one William Mayala who claimed to be present during search as an independent witness. It is no wonder the Appellant claims that no independent witness was called.
4. That, the trial court erred in law when it admitted and acted upon the Page 3 of 14 extrajudicial statement which was procured contrary to the law.
5. That, the trial court erred in law as it failed to properly analyse the evidence adduced, hence, arriving at a wrong decision.
6. That, the trial court erred in law when it convicted the appellant while the offences were not proved beyond reasonable doubt and instead grounded its conviction on the weakness of the defence. Based on the above six grounds of appeal, the appellant has urged this court to grant his appeal, quash the conviction and set aside his sentence, and release him. On the 15th of October 2024, when this appeal was called for hearing, the appellant appeared in person and was unrepresented. On the side of the Republic, it was Mr. Camilius Kapinga, SSA, who appeared for the Respondent. During the hearing of the appeal, the appellant had nothing to add to his grounds of appeal. He urged this court to consider his grounds and set him free. For his part, Mr. Kapinga opposed Page 4 of 14 this appeal. In his address, he chose to address the 1st, 5th, and 6th grounds together while addressing the 2nd, 3rd, and 4th grounds separately, commencing with the 2nd ground. In his submission regarding the 2nd ground, Mr. Kapinga contended that, the appellant's contention that the seizure certificate was issued contrary to the law is a misconceived argument. He argued that, in matters regarding economic crimes, a search is governed by Section 106 of the Wildlife Conservation Act, Cap. 283 R.E. 2022, read together with Section 38(3) of the CPA, Cap. 20 R.E. 2022. According to Mr. Kapinga, these provisions provide the procedure and who may conduct a search and issue a receipt. He contended that the issue of non-issuance of a receipt was a non-starter. Relying on the case of *Papa Olesikaladai @ Lendemu and Another vs. R*, Criminal Appeal No. 47 of 2020, Mr. Kapinga argued that the Court of Appeal had held that lack of issuing a receipt cannot have any effect where a certificate of seizure is issued. As such, Mr. Kapinga contended that, since there was a certificate of seizure that was issued and received in court as exhibit, the appellant's second ground is baseless. He further Page 5 of 14 added that, Pw-1, the person who prepared the certificate, was the same person who tendered it. On that point, he relied on the case of *Nassib Abubakari Mwaziege @ Ras vs. Republic*, Criminal Appeal 146 of 2021 to support his submission. He contended, therefore, that the second ground lacks merit. Concerning the third ground of appeal, it was Mr. Kapinga's submission that, the same is also misplaced and misconceived since the witness who was recalled was Pw-6. Besides, it was his submission that Section 34(B) of the Evidence Act Cap. 6 R.E. 2022 does allow the tendering of statements of a witness who could not be available to

testify and, that all conditions for the recall and tendering of statement as per that provision were fully satisfied. For that matter, he urged this court to find that the third ground of appeal is also baseless. As regards the fourth ground, it was Mr. Kapinga's submission that, there was no error whatever was committed by the trial court since the extrajudicial statement was procured in line with what Section 51 of the Magistrates' Courts Act, Cap.11 R.E. 2019 together with the CJ's guidelines provide. Based on that, he contended that, when that fact is coupled with the testimony of Pw-7, the fourth ground should be found to be without merit. Page 6 of 14 Concerning the 1st, 5th, and the 6th grounds of appeal, Mr. Kapinga addressed these jointly. He submitted that these grounds are likewise without merit. According to Mr. Kapinga, when one looks at the testimonies of Pw-1, Pw-3, and Pw-4 who testified in court, it will be clear that these witnesses were people who went to the scene of the crime, and they had accompanied the witness whose statement was issued as Exh.P14 (as he was unavailable). Mr. Kapinga contended that, these witnesses the court how the search was carried out and what was recovered from the appellant, which included a gun and bullet cartridges. He submitted further that, after the search exercise, the issued search and seizure certificate was signed in the presence of the witnesses, and the appellant signed it. Based on that submission, he argued that there is nothing like inconsistencies or contradictions in the testimonies of Pw-1, Pw-3, and Pw-4 and, further that, Pw-2 was even able to identify the pieces of meat which the appellant was found to be in possession of as being buffalo meat. Based on the above submission, Mr. Kapinga urged this court to dismiss the appeal in its entirety. The appellant had no rejoinder submission. Having considered the grounds of appeal, Page 7 of 14 the proceedings of the trial court, its judgement as well as the submission made by Mr. Kapinga, the issue which this court is invited to considered and determined is whether this appeal has merit in it. As the appellant's second ground of appeal which Mr. Kapinga has flouted, the contention there is that the seizure certificate which was tendered in court was procured in contravention of the law as there was no issuance of a receipt. In his submission, Mr. Kapinga has argued, and correctly so, in my view, that, since there was issuance of a seizure certificate the issue of non-issuance of a receipt was not fatal. In the *Papaa Olesikaladai's* case (supra) the Court of Appeal of Tanzania was quite clear on that point. It noted that: "non-issuance of a receipt will have no place in cases where a certificate of seizure is issued. This stance is fairly settled in our jurisdiction. We discussed this position at some considerable length in *Gitabeka Giyaya v. Republic*, Criminal Appeal No. 44 of 2020 (unreported), a judgment we rendered on Page 8 of 14 28.12.2022. In that appeal, we relied on a number of previous decisions including *Ramadhan Idd Mchafu v. Republic*, Criminal Appeal No. 328 of 2019 *Abdalah Said Mwingereza v. Republic*, Criminal Appeal No. 258 of 2013 (both unreported) and *Matata Nassoro and Another* (supra) to underscore the point that where, like here, a certificate of seizure is issued and is signed by the accused person, the same constitutes evidence even without a receipt." It is from that position this court is fully in support of Mr. Kapinga's submission that the second ground of appeal lacks merit and stands to be dismissed. As regards the third ground, the same faults admissibility and reliance on Exh.P14. This was a statement of a person who could not be procured to testify before the court. According to Mr. Kapinga, the statement was procured

based on section 34B of the Evidence Act, Cap.6 R.E. 2019 (now R.E 2022). In the case of Ramadhani s/o Hamisi Mwenda vs Republic (Criminal Appeal No. 116 of 2008) [2013] TZCA 460 (23 April 2013, Page 9 of 14 the Court of Appeal of Tanzania had an opportunity to consider the requisite conditions that need to be fully satisfied if a deposition of a witness is to be received under section 34B of the Evidence Act. Cap.6 R.E. 2022. According to the contemplation of the Court, for an exhibit (a deposition) to have been admitted in evidence, the prosecution had first to prove that the entire requirements laid down in the section were satisfied. In other words, all such conditions must be taken in their cumulative effect. These are, that: “One, the maker of the statement could not be called as a witness because he is dead, unfit because of bodily or mental condition, he was out of Tanzania, or reasonable steps were taken to secure his attendance but failed. Two, the prosecution must also show that the maker of the statement signed it. Three, the statement must also contain a declaration of the person who made it, that it is true to his knowledge and belief, and that it was made Page 10 of 14 while the maker knew that it would be tendered in court as exhibit and he would be liable for perjury if the maker wilfully stated something in the statement which he knew to be false or he did not believe it to be true. Four, a copy of the statement must be given to the accused person before it is produced in evidence. Five, there should be no notice of objection served by the accused person to the prosecution within ten days after receipt of the copy of the statement. Six, if the statement is made by a person who cannot read it must be proved that it was read to him before he signed it.” As argued earlier by Mr. Kapinga, the Exh.P-14 was tendered in line with section 34B of the Evidence Act and the record of the proceedings does show that its admissibility was tested before the trial court, and it was found to have passed the test. The record shows that the witness could not be found after Page 11 of 14 the prosecution had taken reasonable steps to secure his attendance. Moreover, the prosecution also indicated that the witness had signed it by way of fixing his RHT on it. Further, the witness had made a declaration on the statement as per the law and a notice of availed to the accused together with the statement. This means there was compliance with the law and the exhibit P-14 was rightly admitted. The third ground of appeal, thus, will have to crumble to ashes. The fourth ground will also crumble. It questions the propriety of the extra-judicial statement received in court as Exh.P-12. According to Mr. Kapinga, Exh.P-12 was procured in line with what Section 51 of the Magistrates’ Courts Act, Cap.11 R.E. 2019 together with the CJ’s guidelines provide. The same is backed up by the testimony of Pw-7. In my view, the appellant cannot fault Exh.P-12. Its procurement and admissibility were properly done. I, therefore, reject his fourth ground without further ado. Lastly is the 1st, 5th and 6th grounds of appeal which, as Mr. Kapinga addressed them jointly, befits to be addressed so. These in short are centred on the alleged inconsistency, contradictoriness, evaluation and sufficiency of the evidence in Page 12 of 14 proving the offences charged beyond reasonable doubt, a standard employed in proving criminal offences. First, as Mr. Kapinga correctly asserted, looking at the testimonies of the witnesses as they appear to be recorded on the record of appeal, nothing like inconsistency or contradiction is discernible in their testimonies. The alleged contractions or inconsistencies are therefore a misconception and an untenable argument. Secondly,

concerning whether the trial court properly analysed and/or evaluated the evidence, the response should be in the affirmative. As a matter of law, it is the duty of the court to evaluate the evidence of each witness as well as his or her credibility. The cases of Paulina Samson Ndawavya vs. Theresia Thomas Madaha, Civil Appeal No. 45 of 2017 and Stanslaus Rugaba Kasusura and Another vs. Phares Kabuye, [1982] T.L.R 338, as well as Exim Bank Tanzania Limited vs. SAI Energy & Logistics Services Limited, Commercial Case No.2 of 2022 (unreported), are all apt to that point. As I look at the decision of the trial court, however, I find that the court did perform its duty of evaluating the evidence Page 13 of 14 adduced by both sides of the case. In doing so, the court arrived at a finding that the prosecution side had established its case to the required standards. In that finding, I find nothing warranting an interference as having gone through the record I would as well arrive at such a finding. For that matter, the 1st, 5th, and 6th grounds of appeal lack merits and should as well be dismissed. In the upshot of all that, I find the entire appeal to be lacking merit, and I hereby dismiss it. Order accordingly. DATED AT SUMBAWANGA ON THIS 23RD DAY OF DECEMEBR 2024 DEO JOHN NANGELA JUDGE Right of Appeal Explained. Page 14 of 14

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