

TANZANIA / JUDGMENT

MAYUNGA MUGUTA

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THE JUDICIARY OF TANZANIA IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
SHINYANGA SUB REGISTRY AT SHINYANGA CRIMINAL APPEAL NO. 24903 OF 2024 MAYUNGA
MAGUTA NOLE APPELLANT VERSUS
REPUBLIC RESPONDENT (Arising from Economic Case No.
22 of 2024 before Bariadi District Court) (Hon. Maria Matei Nyangusi - SRM) Dated the 22nd
August 2024

JUDGMENT

4th & 28th November 2024 F.H. MAHIMBALI, J The appellant herein was arraigned before the trial Court and faced an economic charge that contained two counts being: Unlawful Possession of Weapons in the National Park -Contrary to section 17 (1)

- (b) and (2) of the National Parks Act and Unlawful Possession of Government Trophies, to wit: three pieces of wildebeest meat, contrary to section 86(1)(2)(c) (iii) of the Wildlife Conservation Act, read together 1 with paragraph 14 of the First Schedule to and sections 57 (1) and 60 (2) of the Economic and Organised Crime Control Act. It was alleged that on 12 /6/2024 at Mto Duma area in Serengeti National Park within Bariadi District in Simiyu region the appellant was found in possession of one panga, one knife and four animal trapping wires unlawfully and thus on the material date and time he was found in possession of Government trophies to wit; three pieces of fresh meat of wildebeest equivalent to one wildebeest unlawfully killed valued at a total of Tanzania Shillings One Million Seven Hundred Thousand and Seven Hundred (1, 701,700/=) the property of the United Republic of Tanzania. The plea of not guilty was entered. PW1 and PW2 who were park rangers testified that on the material date when they were in patrol together with their one fellow, saw a man within the National Park, they surrounded and arrested him, they found him in possession with weapons like Panga, knife and animal traps wires. The appellant had also in possession of Government trophies which were three fresh pieces of wildebeest meat. Thus, they filled a certificate of seizure. They also proceeded to take Coordinate of that place using the GPS. Together with the appellant they went to the control room where they printed a map of the place where they arrested the appellant. Both certificate of seizure 2 and map were admitted in Court as exhibits P1 and P2 respectively. Whereas, weapons arrested thereto were also admitted as exhibits P3. PW3 wildlife officer

identified the trophies at arrest and handled to DC Bwire via chain of custody, which was admitted as exhibit P4, similarly inventory form was admitted as exhibit P5. In his defence, the appellant denied to have committed the offence. He alleged that he was arrested when cutting trees for making charcoal. Surprisingly he was taken to the camp and later to the police station. After interrogation he was taken to the court. The trial Court after a thorough consideration, entered its verdict by convicting the appellant on both counts and sentenced him to pay fine of Tshs 100,000/= in default to serve one year imprisonment for the first count and for the second count the appellant was sentenced to serve twenty years imprisonment, sentences to run concurrently. The appellant is aggrieved by both conviction and sentences and thus has appealed before this Court basing on three grounds, which all fall under the question of evidence; that the prosecution case was not sufficiently proved. During the hearing of this appeal, the appellant was present in person and unrepresented while the respondent/republic was represented by Ms Caroline Mushi learned State Attorney. 3 Amplifying for the appeal via Court interpreter, the Appellant had no much to say other than praying for his grounds of appeal be adopted by the court to form part of his appeal submission. He further fortified that this Court be pleased to consider his grounds and allow his appeal by ordering his immediate release. He denied to have committed the offence and thus the prosecution evidence was weak to prove his criminality. On her part, Ms Mushi resisted the appeal as it is devoid of any merit. On the first ground of appeal, she submitted that, on the admission of inventory form in lieu of the real exhibits, she considered that ground as a misconception as the said trophies were fresh, thus under position of speedy decay (See PW3's testimony), the inventory form was filled. This process is a legal one as per section 101(1)(a)(i) of the Wildlife Conservation Act, Cap 283. She clarified that, looking at the said inventory form (exhibit P.5), So long as the appellant himself was present and participated into the said proceedings, then, he is precluded from denying it. With the second and third grounds of appeal, Ms. Mushi on her view submitted that the same is devoid of any merit as the case was proved beyond reasonable doubt and thus its evidence was properly evaluated. A total of four witnesses were called to testify. The PW1 and PW2 are 4 arresting officers. That at River Duma, is where the appellant was spotted being with the said weapons: One panga, one knife, four animal trapping wires, and the three pieces of fresh meat alleged to be of wildebeest. They signed a seizure certificate. The GPS map was tendered and admitted in court as exhibit P.2. The weapons and the said trophies were admitted as court's exhibits. Whether the alleged meat was nyumbu/wildebeest, PW3 described the peculiar features of it and was admitted in court as exhibit P.4 As the said meat was in fresh, it was of speedy decay. Thus, in its place, the inventory form was preferred and is descriptive by itself. Therefore, the evidence by the Prosecution was water tight, argued Ms. Mushi. As regards to the testimony of the appellant himself at the trial court, the evidence by the defence was weaker and not one which raises any legal doubt. Thus, prayed for the appeal be dismissed and conviction and sentences meted against the appellant be upheld. Resting his submission by way of rejoinder, the appellant maintained his submission in chief. He added that the charges were not established beyond reasonable doubt. All that testified is not water tight against him. 5 Having heard both

parties on merit, I have now to determine this appeal and the major issue for consideration is whether this appeal has been brought with sufficient cause. The appellant had complained for the trial Court to receive inventory form instead of the alleged trophies purported to have seized from scene of crime. To him the alleged trophies were to be brought before the trial court. I have gone through exhibit P5 which is inventory form, indeed it signifies that the trial Magistrate witnessed the alleged trophies to wit; three pieces of wildebeest and they were prone to decay and ordered it to be disposed. Interestingly when all that was transpiring before the Court, the accused was present and given an audience to air his opinion and he signed. At the trial, PW3 tendered exhibit P5 and the appellant did not object its admissibility. See at page 13 of the trial Court's proceedings. In law matters not raised at the trial cannot be raised at appeal stage. See Anna Moises Chissano vs Republic, Criminal Appeal No. 273 of 2019. As to whether the procedures for disposal of perishable Government trophies like game meat under section 101 of the WCA extend to police officers handling these trophies during the investigation stage. I think, a 6 distinction must be drawn between the disposal of perishable Government trophies by the police during their investigations; and the disposals of perishable Government trophies during the course of court proceedings which is outlined under section 101 of the WCA. It is apparent to me that section 101 of the WCA can only apply to perishable Government trophy when the court with requisite jurisdiction is already seized of the matter, and does not extend back to the period when the police are still carrying their investigations over the same matter. The relevant section 101 states: 101 (1) (b), "... at any stage of the proceedings under this Act, the court may on its own motion or on an application made by the prosecution in that behalf order that any animal, trophy, weapon, vehicle, vessel or other article which has been tendered or put in evidence before it and which is subject to speedy decay, destruction or depreciation be placed at the disposal of the Director." The phrase 'at any stage of the proceedings in section 101 of the WCA implies the proceedings are already in court with requisite jurisdiction over the matter. Again, the phrase "be placed at the disposal of the Director' in the same section seems to indicate that the end result 7 of the order of the court over perishable Government is to hand over the exhibit to the Director of Wildlife for disposal. The police, while carrying out investigations have a very different procedure for handling perishable Government trophies. This different procedure is provided for under the Police General Orders (PGOs). According to paragraph 2 (a) of the Police General Orders (PGO), the Police Force recognizes the above duty to protect every exhibit, perishable or otherwise, which comes into their possession: 2.(a) "The police are responsible for each exhibit from the time it comes into the possession of the police, until such time as it is admitted by the Court in evidence, or returned to its owner, or otherwise disposed of according to instructions" Concerning the way, the Police are required to handle perishable exhibit when still at the stage of criminal investigation, paragraph 25 of PGO No. 229 (INVESTIGATION - EXHIBITS) applies, and states:

25. Perishable exhibits which cannot easily be preserved until the case is heard, shall be brought before the Magistrate, together with the prisoner if any so that the Magistrate may note the exhibits and order immediate disposal. Where 8 possible, such exhibits should be photographed before disposal. The above paragraph 25 envisages any nearest Magistrate, who may issue an order to dispose of perishable exhibit. This paragraph 25 in addition emphasizes the mandatory right of an accused (if he is in custody or out on police bail) to be present before the Magistrate and be heard. As earlier stated, when the matter was before the trial Court, the prosecution applied for an order of disposal of the alleged trophies as they are in speed decay. The trial magistrate after had seen the same and upon hearing the accused, she issued an order for disposal. Therefore, with the above findings it is clear that there was no other option of tendering inventory form instead of the alleged trophies. Thus, the trial Court was rational in its findings. See Mohamed Juma @ Mpakama vs Republic, Criminal Appeal No. 385 of 2017. With the second and third grounds of appeal on failure by prosecution to prove its case on required standard and thus the trial Court when evaluating the evidence reached irrational decision. I have gone through the trial court's records to find out the same. During the trial the prosecution side paraded four witnesses and six exhibits. PW1 a Park ranger at National Park, stated that on 12/6/2024 while was with his 9 fellow's park rangers at Mto Duma area within Serengeti National Park. they saw a person in the bush and managed to arrest him. They found him with weapons and trophies. The appellant had one panga, one knife and four animals trapping wires, he had also three fresh pieces of wildebeest. When asked as to why has weapons in National Park, the appellant replied that panga was used for cutting bones, knife was for skinning and cutting smooth meat, and wires were for trapping animals. He took GPS coordinate of that place. He filed seizure certificate where also the accused signed it, exhibits P1 (certificate of seizure) and P2 (being a map of scene of crime) were admitted. On the other hand, the alleged weapons were admitted as exhibit P3. This evidence was collaborated by testimony of PW2. PW3 a wild officer, testified that on 12/6/2024 while at Dutwa received a phone call from police officer Bwire requiring him to go at Bariadi police Station. He went there and handed to him trophies for identification and evaluation. This was done via chain of custody. He examined them and found that they were wildebeest meat by checking the pieces of meat, some of pieces had wildebeest skin which had dark brown and covered with hairs which had no good arrangement and the meat has type muscle fibers which are small diameter and thin. The 10 muscle fibers are parallel, when cut the meat has white colour with many fibers (capillaries) which helps the animal to transfer oxygen into the body. The meat has also deep red colour, through those features concluded that the meat seized was of wildebeest animal. He evaluated it and found its value to be USD 650, the valuation report was admitted as exhibit P4, similarly inventory form was admitted as exhibit P5. PW4 a police officer, on material date while at work he received a file from OCCID with reference NO.BAR/IR/723/2024, with the accused. He called PW3 who went and identified the meat to be three pieces of fresh meat of wildebeest PW4 handled the trophies to PW3 through chain of custody which was admitted as exhibit P6. The accused defence denied all testimonies by prosecution. He however denied to have committed the offence. He alluded that he was just cutting trees for

making charcoal. Surprisingly he was arrested and taken to the camp, later to the police station and later to the court. He in total denied the allegations put against him. It is the trite law in criminal cases, that the prosecution is placed with a heavier burden to prove their case than that of the accused. See Mohamed Saidi Matela V. Rep, (1995) T.L.R 3 and John Makolobela & 2Others V. Rep, (2002)T.L.R 296. See also Joseph John Makune 11 vs. Republic [1986] TLR 44 at page 49 and Mohamed Haruna@ Mtupeni & Another v Republic, Criminal Appeal No. 25 of 2007; the first long-established principle in criminal justice is that of onus of proof in criminal cases, that the accused committed the offence for which he is charged with is always on the side of the prosecution and not on the accused person. This is reflected under Section 110 and Section 112 of the Evidence Act Cap.6 [R.E 2022] (The evidence Act). Glaring, the evidence by prosecution side, it is vitally clear that they managed to prove their case beyond reasonable doubts. Herein I scrutinized the evidence of both parties before the trial Court. The prosecution evidence was in line from a day of arrest to the date of charging the appellant. In essence, it is undisputed that the appellant was arrested while in Serengeti National Park. It is further undisputed that the appellant was arrested with the alleged trophies and weapons while in Serengeti National Park. All the said are vivid also through the testimony by the appellant at the trial Court who did not deny to have been found in possession of weapons, trophies while in National Park. PW3 had described on how he managed to identify the alleged trophies to be of wildebeest meat. He clarified its uniqueness features distinguishable with other meat of animal, which makes its uniqueness. I 12 once ruled in the case of Said Ndemla vs Republic, Criminal Appeal No. 19246/2024, HC Shinyanga that among of the evidence need to be proved in offences of possession of Government trophies is proof of peculiar features which such animal possess. In William Maganga @ Charles Vs. Rep, Criminal Appeal No. 104 of 2020 and Evarist Nyamtemba vs. Rep, Criminal Appeal No. 196 of 2020 (unreported), where in a case involving identification and valuation of elephant tusks, it was observed that: "The testimony of PW5 lacked all this information. As rightly submitted by the learned State Attorney, PW5 gave a generalized statement that exhibit PI was elephant tusks with no further explanation as to the peculiar features of it that led him to conclude that exhibit PI was truly elephant tusks hence a government trophy." That is the precise point the Court of Appeal was making in these cases above. A generalized statement is not acceptable, because anybody can make such a sweeping statement. In wildlife conservation related cases, identification of a particular specie of the animal affected or part of it in relation to an offence charged, is a matter of considerable significance. That aspect of the case, is provable by tendering a properly filled in Trophy Valuation Certificate, which is a standard form document created under the Wildlife Conservation (Valuation of Trophies) Regulations 2012, (Government Notice No. 207 of 2012) Tendering of that certificate must go hand in glove with a proper explanation of a wildlife expert detailing the distinctive features of a given animal. Such oral explanation or description may be based on animal science or the witness's experience in wildlife conservation and management (See William Maganga @ Charles, supra). The issue for consideration after all this discussion is whether this description is sufficient to be scientific features of wildebeest animal? Can those features not be borne by other domestic animals?

According to law, an expert witness is expected to furnish the court with necessary scientific criteria for testing the accuracy of their conclusions so as to enable the court to form its own independent judgment by application of these criteria to the facts proven in evidence (see Rep V. Kerstin Cameron

[2003] T.L.R 85). In my considered view as to the present facts of the case, the explanations offered by PW3, being an expert in animal science and having explained the distinctive features of wildebeest animal from other 14 animals –wild or domestic, I find no good reasons to fault that finding and as such, it has sufficiently enabled this court to form its own independent judgment by application of these criteria to the facts proven in evidence that what the appellant was arrested with is nothing, but the Government trophy known as wildebeest meat. With all the above discussion and the analysis made, I find this appeal to have been brought without any sufficient cause; and thus, it is accordingly dismissed. The trial court's decision on both findings: conviction and sentence is hereby upheld. Right of further appeal hereby explained. DATED at SHINYANGA this 28th November, 2024. F.H. Mahimbali Judge 15

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