

TANZANIA / JUDGMENT

19711018 TZHC Arusha

COURT
TZHCDECIDED
18 October 1971

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

L ; - JvO y IN THE HIGH COURT OF TANZANIA AT ARUSHA . HIGH CQURT CRIIVIINAL APPEAL NO.186/1971 ORIINAt.CRIMINAL CASE NO. 008 OF 19706..H.E DISTRIC2 COURT OF ARU,HA DISTRICT AT ARTJH Before LBiaganga, q. Senior Reidnt Mggist'rate MOHAJYJED HUSSEIN Appeilant (Original Abcused) Versus THE REPUBLIO Repondent (Original Proseouor) CHARGE: 1. thnting animals as shown in the third schedule without asame licence. c/s 12(1)(3) and 53(1)(a)(i)2(a)(2B),2(c)(4) and (5) of Cap.302. of the. Fauna Conservation Ordinance. 2nd count: Huntj ania1s in controlled area without the written permission of the game warden previously saught andbtained c/s 1l(1)(a) and 2 and 53(1)(a)

- (i) of Cap302 of the Fauna Conservation Ordinance, th count; Uillawful Possession of Govt.Trophy c/s49 .(l).(2) and 3(1)(11),(2A) of the Fauna Conservation Ordin ance Cap& 302 of the Tanzania Revised Laws. 6th count: UfAawful ossession of Govt Trophy c/s(1)
- (2) and 53(1)(ii)(2A)(2B)2(C) of the Fauna Conser- vation Ordinand6 Cap302 of the Tanzanian Revised Laws. J U B G MEN T. V 971 PATEL,AG.J. The appellant was originally charged with offences under the Fauna Conservation.Ordinance under six counts and was acquitted for offences under two counts and convicted for offences under four counts. He now appeals against convic- tion and sentence on these four counts. They are as follows:- let count: Hunting animals as shown in the third schedule without a game licence c/s 12(1)(3) and 53(1)(a)(i)2(a) (2B),2(c)(4) and (5) of Cap. 302, of the Fauna Conserv- ation Ordinance. ñd count: Hunting animals in controlle area without the written permission tf the game warden previously saught and obtained c/s ii(i)(a) and 2 and 53(1)(a)(i) of Cap. 302 of the Fauna Conservation Ordinance. 5coünt: Unlawful posseSion of Govt.trophy c/949. 1)(2) and 53(1)(11) (2A) of the Fauna CcgLe- ervation Ordinance Cap.302 of the Tanzania Revised Laws. 6th count: Unlawful possession of the Trovt.Trophy c/s (1)(2) and 53(1)(ii)(2AX2B)(2C) of the Fauna Conservation Ordinance Cap.302 of the Tanzania Revised Laws, The appellant was sentenced as follows:- 1st count: Fines shs.3,000/-' or in default 4 months Imprisonment. 2nd count: Fii.és ahs.2,0001- or 2 months imprisonment in default4 th count: Fine shs.2,00/- or 2 months imprisonment

- in default. 6th count: Pined she5,000/- or 4 months imprisonment in default Evidence adduced by prosecution witness before trial court is that on 20.4.70 a party of staff of the Ministry of Agriculture accompanied by a Police Officer went to a place called Mafereji within Monduli District to move some Masai herdsman from a Rangwe Development area. On their way back, they saw several carcasses of Zebra and Ostrich which were freshly killed and skinned. They became suspicious and made inquiries. At about 7.p.m.4 while on their way to Monduli they found a landrover which was being repaired. The Police Officer got suspicions and on checking he found six knives with blood on them behind driver's seat. ' He noticed the vehicle was recently washed. As he walked around he found a heap of raw skins in the bus about 10 yards, from the landrover and. the skins were covered with tarpaulins and blankets. There was a bed nearby. . Police Officer saw two persons nearby hiding in the bush whom he arrested. Accused was one of the two. .. Two loaded guns were found near these two persons. Police Officer (PWi) arrested these persons and seized the guns ammunition and skins. There were 16 (sixteen) Zebra skins and 5 (fives ostrich skins and one Impala skins. The accused was there after charged on six counts for offences against the Fauna Conservation Ordinance. In his unsworn statement the appellant said he was hired by two Maasai persons to collect a sick person so he went to Mafereji and took the sick person to a local medic man, that sick person had wounds and as a result there was blood all over the landrover. On the way his landrover broke down and while it was being repaired P W 1 came to the scene. He said he was surprised to see freshly killed animal carcasses and skins near his landrover. The learned trial magistrate rejected appellant's version and believed prosecution witnesses and thereafter found the appellant guilty for offences on four counts. .../3.. IC.. 3.... r : As for grounds of appeal the appellants state that the trial magistrates failed to take into consideration the inconsistencies and discrepancies between the prosecution witness and he erred in believing the evidence of prosecution witnesses and in rejecting the evidence of the appellant and his reasons for doing so, and erred in holding that the appellant hunted animals, stated in the third schedule without a game licence,
- These grounds refer to offences under the 1st and 6th count. It is pertinent to remember that the appellant did not give sworn evidence as alleged in his memorandum of appeal but merely gave unsworn statement and called no defence witness. The District magistrate thoroughly dealt with all points in issue before him concerning the offences under the first and 6th count He also dealt with inconsistencies and discrepancies in the evidence of prosecution witnesses but concluded that substantially they gave the same evidence and only differed in small details and believed all they said and accepted their evidence. I have gone through the record and the judgment in details. I find nothing wrong whatsoever in the manner in which these points have been dealt with by the trial magistrate. He has weighed the evidence correctly and most fairly and has come to a correct conclusion. He has believed prosecution witnesses as he is entitled to do so and has accepted their version of the incident. I find nothing wrong in his arguments, reasoning and conclusions. In fact evidence for offences under the first and sixth count is consistent and so overwhelming as to leave no doubt whatsoever about the guilt of the appellant and the learned trial magistrate could not

have concluded otherwise. He has directed himself correctly to the issues before him. As for the trial magistrate rejecting what the appellant said in his unsworn statement he was absolutely correct in what he did and he is entitled to do so. The reasons for rejecting it are correct and I find nothing wrong in it. The explanation given by the appellant is so highly improbable, so unreasonable and so absurd that the trial magistrate could do nothing but reject it straightaway. What he said is so much incompatible with the surroundings, the finding of exhibits i.e. freshly skinned animals near his landrover, blood on it, guns and ammunition that it leaves no doubt whatsoever about the guilt of the appellant for offences under the first and sixth count. The appeal has no merit as for conviction for offences under the first and sixth count and it fails to that extent and is rejected that far. As far as sentence on first count the appellant is sentenced to a fine of shs.3000/- or 4 months imprisonment in default and on sixth count he is sentenced to a fine of shs.5,000/- or five months imprisonment in default. The appellant submitted that this sentence is harsh and excessive in all circumstances of the case. Mr. Behal for the appellant referred to the case of *Khmed s/o Osman ir R*, Cr.App.383/68 1. H.C. Digest Case No.145. ...o. .4.. ...,

1. In this case the appellant was charged with failing to report entry to an immigration officer and for being unlawfully present in Tanzania without a permit. The trial Magistrate ordered the appellant to a fine of shs.1000/- on first count with an alternative of four months imprisonment and shs.1500/- on the second count with an alternative of nine months imprisonment. The appellant was unable to pay the fine and was imprisoned and was serving a sentence of thirteen months. *Georges CJ.* in his judgment said the sentence was excessive. He went on to say "As has been stated over and over again the court which decides to offer an accused person an alternative of paying a fine should attempt some assessment of his means in order to make the option meaningful. To impose a fine which is so high as to be clearly beyond the means of the accused person is to engage in futile exercise." Worse still, it places the accused person at disadvantage as the terms of imprisonment to be suffered in the fine is not paid must necessarily be consecutive, whereas if terms of imprisonment are imposed, without the option of a fine, they can be made concurrent. Had the magistrate not imposed a fine in this case, but had decided to send the appellant to prison, it is doubtful whether he would have made the term consecutive as clearly both offences arise out of a single act." Thereafter *Georges CJ.* reduced the sentence on first count to a fine of shs.200/- or one month imprisonment and on the second count to a fine of shs.300/- or two months imprisonment. In the present case the appellant is serving the sentence of imprisonment of twelve months because he was unable to pay the fine. In addition his landrover in question has been forfeited to the Republic. Offences under the first and the sixth count arise out of a single act. Considering all these facts as in mind I find the sentence imposed on first and sixth count to be excessive. Accordingly I shall vary the sentence on the first count to a fine of shs.1500/- or two months imprisonment in default and on the sixth count to a fine of shs.2,500/- or three months imprisonment in default. Now I will deal with ground (a) in the memorandum of appeal which concerns the conviction in second count which states that the trial magistrate erred in arriving at the conclusion that animals were hunted in a controlled

area without the permission of the Uhief Game Wa±'den. Particulars of this offence as stated in the charge state that the accused Mohamed Hussein on 20.4.1970 at about at Mafereji did hunt 16 Zebra, 5 ostrich, and one Impala in the Mto Wa Mbu controlled area without the permis- sion of the Chief Game Warden previously sought and obtained. Mr..Behal submitted that Mto Wa Mbu is a controlled are as defined in para 79 of the VIIth schedule of the Fauna Conservation Ordinance Cap.302 but the ca'casses were found at Mafareji area within Monduli District which is not in a controlled area. 'p. II I.' ...5 0 He submitted that in para 79 of the VIIth sdhedule boundaries of Mto wa MTou controlled area are defined but Mafereji is not mentioned Itihere. He said the trial magistrate came to the conclusion that Mafereji is in controlled area on supefloUs gr'ounde where it is not proved to be so by evidence on record and all PW1 said is that they went to Range Development Area within controlled area and on their way back they found the cárcases. He said no witness said the cac ses were found in controlled area, and referred to page 3 of the Judgment of the trial magistrate. The relevant portion of the Judgment read: " - As I have stated in my ruling earlier Mtp wa Mbu is a controlled area d is it is so mentioned in the schedule to the Fauna Conservation Ordinance And the court has to take Judicial notice of this, .Accrding to PW4 they went to Mafereji area to move Masai tribesman fror National Park area and it was in that area where they found the carcasses of animals. Though there is no direct evidence to show that Mareji is within Mto wa Mbu I have decided to accept this wi esses's evidence that the animals were killed in National Pa or controlled area." With due respect, the learned trial thagistrate blows hot and clold in the same breath. Having concluded that there is no direct. evidence to show that Mafereji is within Mto Wa bu which is a controlled area under the present laws, he decides to accept the off-hand evidence of a witness and cong- luded that the animals were killed in National Park or contro- lled area, with respect I find the learned, trial magistrate misdirected himself on this. The prosecution has to prove beyond all reasonable daub - s that Mafereji Yas in Lito wa Mbu which is a controlled area under Para 79 of the VIIth schedule of the Fauna conservation Ordinance Cap.302. It is not so proved and is so canceled by the trial magistrate. Thus he erred in convicting the appellant for the offence under the ser.ond count and in this he seriously misdirected himself. HL. conclusion is not based on the evidence before him. On the contrary on the evidence as is on record he could only cc 'lude that the prosecution failed to pve beyond all reas- on.ole doubts that Mafereji is within Mto via IVfbu which is a controlled area. This conviction is not lawful and the appellant succeeds, against the conviction for the offence under the second count. He is ac.uitted theredf. Last ground of appeal is (e) as stated in the memorandum of appeal wherein it is stated that the trial magistrate erred in holding that the appellant was in possession of Government trophies the subject matter of the fifth count solely on the strength of certificates hi ownership and game licences. The reasons for arriving at such conclusion would appear to be superflows and was supported by evidence and erred in admitting and relying upon secondary evidence. Particulars of the offence under the fifth count as stated in the charge state that Mohmed Hussein the appellant between 30.8.1969 and 30,4.1970 within the District and Arusha Region was unlawfully found in possession of 14 Zebra skins valued at shs. 5600/- without a valid certificate of lawful ownership. II It is

partient to note that 14 Zebra skins which are the subject matter of this offence were not produced before the trial court as e2hibit8 but only certificates of ownership were produced eidehce was not clear at close of prosecution case it is a e1'ious misdirection to look to the defence to fill the gaps. The burden of proving the case beyond all reasona- IDle doubts it on the prosecution 4 Evidence as is on record falls that of the required proof and there are doubts about appellant's role. Benefit of doubt must be given to the app- ellant. It is clear that the offence under the fifth count is not proved beyond all reasonable doubts. The appellant su- cceeds on this ground. Fined order is as follows:- 1st. count: Appeal against conviction dismissed. Fine of shs. 3000/- or 4 months imprisonment reduced to % a fine of shs. L500/- or 2(two) months imprisonment in default. 2nd count: Appeal allowed and appellant acquitted. count: Appeal allowed and appellant acquitted. 6th count: Appeal against conviction dismissed.. Pine of shs. 500/- or 4 months imprisonmentreueed to a fine of shs. 2,500/- or 3 months imprisonment in default. Pb M (J.B. PATEL) AG. J U D 0- E Delivered in court this 18th day of October, 1971. 21st day of October, 1971 in present of Mr. Behal and Mr. chambakare. (J.B. PATEL) AG. J U D 0- E. /.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://media.tanzlii.org/media/judgment/347576/source_file/9c956c59526c1846/19711018_TZHC_Arusha.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/mohamed-hussein-v-the-republic-faunaconservation-tzhc-1971

Prepared on 24 October 2026 · Esheria