

TANZANIA / JUDGMENT

20171129 TZHC Mwanza

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. IN THE HIGH COURT OF TANZANIA IN THE DISTRICT REGISTRY AT MWANZA HIGH COURT
CRIMINAL APPEAL NO. 161 OF 2015 . MURUMBE MARWA -----
APPELLANT . VERSUS THE REPUBLIC. -----;-----RESPONDENT

JUDGEMENT

Ebrahim, J.: Murumbe Marwa was charged together with Daudi Ouya@ Udundo. They were charged with four counts One, entering into the National Park without written permits c/s 21(1) and (2) of the National Parks Act, Cap 282 R.E. 2002; two, unlawful possession of weapons in the National Parks c/s 24(1)(b) and (2) of the National Parks Act, read together with paragraph 14(c) of the 1st Schedule to the Organized Crimes Control Act, Cap 200, R.E. 2002; three, unlawful hunting into the National Park c/s. 23(1) National Parks Act, Cap 282; and four, unlawful possession of Government trophies c/s 86(1) and (2)(b) of the Wildlife Conservation Act read together with paragraph 14(d) of the first 1 schedule to the Economic and Organized Crime Control Act. They were absolutely discharged in respect of the 1st, 2nd and 3rd counts; and sentenced to 20 years imprisonment for the 4th Counts. It is the conviction and sentence that aggrieved the appellants and preferred an appeal in this Court on the following grounds:

1. THAT, the reception and admission of the inventory form into court as evidence without being approved violated both the Evidence Act and CPA
2. THAT, the trial Magistrate erred in law and fact to rely on PW2 evidence whose qualifications was not established. So incompetent
3. THAT, the prosecution exhibits P1 and P2 were unprocedurally introduced and admitted into court as the appellant was deprived his basic rights.
4. THAT, the trial Magistrates assessment of evidence between two parties (prosecution and defence) was unbalanced; and
5. THAT, the prosecution charge against the appellant was not proved to the hilt. 2 When the appeal came for hearing today, the appellant added supplementary grounds of appeal. However, save for the ground challenging the absence of Consent from OPP and failure of the Court to visit locus in quo, the rest were the repetition from the main grounds of appeal. Further, I would not discuss the issue of Consent and Certificate from DPP because the same

where timely filed in court. At the hearing of the appeal, the appellant being lay a person and unrepresented had nothing much to say. He briefly told the court that he was unfairly convicted at the District Court because there was no any exhibit that he was found with when arrested. In response, Ms. Mwandambo, learned State Attorney who represented the Republic supported the appeal on 4th count following the flaunt of procedural irregularity on disposing of the trophy contrary to Section 353 of Criminal Procedure Act, Cap 20 read together with Section 101 of Cap 283. She also supported the appeal on the ground that PW2 was not a competent witness as he introduced himself as a Wildlife Warden whilst the law, i.e. Section 114(3) of Cap 283 requires a Wildlife Officer to evaluate the trophy. 3 Submitting further on the disposition of trophy, Ms. Mwandambo stated that in terms of Section 353 of Cap 20 and S.101 of Cap 283, the exhibits should first be tendered in court in the presence the appellant before they are disposed. However proceedings in this case depicts otherwise. She was therefore of the view that since the evidence was received contrary to the requirement of the law, then the case was not proved. I have dispassionately gone through the proceedings on record. As intimated earlier, the appellant was absolutely discharged in respect of the 1st to 3rd counts. He was convicted on the 4th count of being found with Government trophy. PW2 testified at page 11 to 12 of the typed proceedings that he filled an inventory form and the court ordered the same to be destroyed. He tendered the Evaluation and Identification Certificate and Inventory Form which were collectively admitted as exhibit P2. The law allows for the disposal of the exhibits which are prone to speedy decay as provided for under section 353(2) of the Criminal Procedure Act, Cap 20 R.E. 2002. Nevertheless, according to Section 101 of the Wildlife Conservation Act, Act No.5 of 2009, the same should be done after the exhibit has been tendered and tested in court. 4 \ - . • The said position was illustrated in the cited case of Emmanuel Saguda @Salukuka and Another, Criminal Appeal No. 4228/ 2013, CA (Tabora) unreported which I fully subscribe. In our present case, exhibit P2 shows that it was signed by the Resident Magistrate of Bunda on 19th August 2013. However, nowhere does it show that the appellant was availed the chance to see the actual meat of Wildebeest and Thompson Gazelle and challenge them before they were disposed. Infact, there is nowhere in the proceedings which shows that such proceeding was conducted during the trial. As stated in the cited case above and I quote, "the procedure is not simply to refer to it theoretically as was the case here, but to have it physically produced and referred to by witness before the court either by display or describing it and then have it admitted as exhibit"~ In the instant case, the inventory form was relied upon by the trial court without the same being tendered in court. Much as the appellant did not object tendering of the said report during the trial, still it was procedurally incorrect. Non-adherence to the procedure of disposing the purported Wildebeest and Thompson Gazelle make exhibit P2 to be of no 5 weight. I accordingly expunge it from the records. Consequently, count number four was not proved as required by law. In the final results, I hereby allow the appeal in respect of the fourth count. I quash and set aside the conviction and sentence of twenty years. The appeal is allowed and I hereby order that the appellant be released from prison forthwith unless otherwise lawfully held. Ordered accordingly Judge 6

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