

TANZANIA / JUDGMENT

teofrid stephano kabelege vs the republic 2023 tzhc 19938 7 august 2023

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TZHCDECIDED
7 August 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
SONGEA AT SONGEA CRIMINAL APPEAL NO. 10 OF 2023 TEOFRID STEPHANO KABELEGE
..... APPELLANT VERSUS THE REPUBLIC
..... RESPONDENT (Originating from the decision of the
District Court of Songea at Songea in Economic Case No. 4 of 2019)

JUDGMENT

10th July & 7th August, 2023 KISANYA, J.: The appellant, Teofrid Stephano Kabelege was charged with an offence of unlawful possession of Government Troph contrary to section 86(1) and (2)(c) (iii) of the Wildlife Conservation Act, No. 5 of 2009 (now R.E. 2022) (the WCA), read together with paragraph 14(d) of the First Schedule to and sections 57(1) and 60(2) of the Economic and Organized Crime Control Act, Cap. 200 R.E. 2019, (now R.E. 2022) (henceforth “the EOCCA”). It was alleged that, on 2nd July, 2019, at Mkongotema village within Songea District in Ruvuma Region, the appellant was found in possession of a Government trophy to wit, one (1) piece of buffalo meat valued at TZS 1 4,370,000/=, the property of the Government of the United Republic of Tanzania without a valid permit from the Director of Wildlife. After a full trial, the trial court convicted him and he was sentence to serve imprisonment for twenty (20) years and thus, the present appeal. The facts adduced by the prosecution at the trial court were that: On 2nd July, 2019, PW3 Laurian Joseph Ruhogo, a game reserve officer from Special Task Force - Songea received information from the Zonal Office that there was a person at Mkongotema Village who was with government trophies (wildlife meat). PW3 reported the matter to Songea Police Station. He was with other officers of Kikosi cha Kuzuia Ujangili (KDU). They met PW1 ASP Kulwa Misogolya, an OCCID of Songea. PW1 and other police officers joined the team which arrived at Mkongotema Village on 2nd July, 2019, around 0600 hours. The team arrived at the appellant’s house. Other persons at the scene were PW2 Avelina Robert Mkanula, a village executive officer of Mkongotema and PW5 Deogtrantias Fugamila, a ten cell leader. Following a search conducted in the accused premises, one piece of meat suspected to be of buffalo was found. It was seized and its particulars filed in a certificate of seizure (Exhibit A1). 2 The appellant was taken to Songea Police station. PW1 handed over the meat of buffalo alleged to have been found in possession of the appellant to PW4 H.928 D/CPL Mussa. PW4 interrogated the appellant and recorded his

cautioned statement, whereby he confessed to have been found in possession of one piece of buffalo meat. Two days later, on 4th July, 2019, PW6 Joseph Gagiri Reuben, a senior wildlife officer went to Songea Police Station. He identified and valued the piece of meat alleged to have been found in possession of the appellant and confirmed that it was a Government trophy to wit buffalo meat valued at TZS 4,370,000/=. After the valuation process, PW4 applied to the court for disposal of the said meat of buffalo on the ground that it was not fit for human consumption. An order to such effect was issued by a magistrate in the presence of the appellant. The foregoing evidence was supported by the following four exhibits; chain of custody record (Exhibit A2), cautioned statement of the appellant (Exhibit A3), inventory form (Exhibit P4) and trophy valuation certificate (Exhibit A5). In his defence, the appellant who testified as DW1 denied to have committed the offence. It was his claim that what was found at his 3 premises was beef. He further stated to have been forced to sign the cautioned statement (Exhibit A2). At the end of the trial, the appellant was convicted and sentenced as stated above. In this appeal, he has raised four grounds of appeal which I have rephrased as follows:

1. That the trial court erred in law and fact by convicting and sentencing the appellant basing on the evidence of the prosecution.
2. That the trial court erred in law and fact by failing to comply with section 192 of the Criminal Procedure Act, Cap. 20, R.E. 2002 (sic).
3. That, the prosecution case was not proved beyond reasonable doubts.
4. That the proceedings was not in accordance with the law. At the hearing of the appeal, the appellant appeared in person, while Mr. Gaston Mapunda, learned State Attorney represented the respondent. When the appellant was invited to elaborate on his grounds of appeal, he prayed for the grounds of appeal filed to be considered and decided upon. Mr. Mapunda resisted the appeal. He supported the conviction and sentence meted upon the appellant. 4 Having gone through the record and considered the submission by the learned State Attorney, I am in a position of addressing the merit of this appeal. I am alive to the position of law, that this being a first appellate court it is enjoined to re-evaluate the evidence adduced during the trial and arrived at a decision of confirming the findings of the trial court or come with its own findings. I prefer to start with the fourth ground. In that ground, the appellant complains that the trial was conducted contrary to the law. I agree with Mr. Mapunda that this ground is too general. The appellant did not expound on how the law was not complied. As rightly observed by the learned State Attorney, it is on record that, the charge was read over and explained to the appellant as mandatorily required under section 228 of the CPA; the appellant was accorded a right to cross-examine the prosecution witness and the right to comment on the documents sought to be tendered by the prosecution; the appellant was informed of his right to give evidence and right to call witnesses; and he opted to give his defence on oath without calling any witnesses. In that regard, the proceedings of the trial court cannot be declared a nullity. However, the defect if any, will be considered in the course of determining other grounds of appeal. 5 Returning to the second ground, the trial court is faulted for failure to comply with section 192 of the

CPA. Mr. Mapunda responded that section 192 of the CPA was duly complied with. He urged this Court to consider that, even if the said provision was not complied with, other parts of the proceedings including the trial were not affected. To reinforce his contention, he cited the case of DPP vs Jaba John, Criminal Appeal No. 2020 (unreported). Section 192 of the CPA which is subject to this ground of appeal provides for the purpose and proper conduct of the preliminary hearing in criminal trials. During that stage, the court records the undisputed facts which are agreed to by the accused person and the public prosecutor. According to section 192(3) of the CPA, a memorandum of the matters agreed upon must be read over and explained to the accused person and signed by the accused person and his counsel, if any, and the public prosecutor. In the present case, the memorandum of agreed facts were personal particulars of the appellant; the fact that the appellant was charged with the offence under the WCA read together with the EOCCA; and the fact the appellant was arraigned before the trial court. However, the said 6 memorandum of agreed facts were not read over to the appellant as mandatorily required by section 192 of the CPA. In the case of Jaba John (supra), the Court of Appeal held that non-compliance with section 192 of the CPA vitiates the preliminary hearing and not the trial. Therefore, the second ground of appeal is found meritorious. Being guided by above stated position of law, I hereby nullify the proceedings for the preliminary hearing held on 2nd March, 2021. However, other parts of the proceedings including the trial proceedings remain intact. Last for consideration is the first and fourth grounds of appeal. The bone of contention of both grounds is whether the prosecution case was proved beyond all reasonable doubt. Mr. Mapunda was of the firm view that the prosecution evidence was duly proved by the evidence of six witnesses called by the prosecution witnesses and five documentary evidence. He pointed out that the appellant was searched and found in possession of one piece of meat of buffalo stated by PW1 PW2, PW3, PW4 and PW3 and supported by Exhibits P1. The learned counsel went on to submit that, the said buffalo meat was valued at TZS 4,370,000 as shown in Exhibit P2. Relying on the case of Medson Mwanga vs R, Criminal Appeal No. 289 of 2019 (unreported), he argued that the prosecution 7 evidence was stronger than that of the accused person. It was also his submission that the defence was duly considered by the trial court. On the basis of the foregoing, the learned State Attorney prayed for this appeal to be dismissed for want of merit. At the outset, I agree with Mr. Mapunda that the learned trial magistrate considered the defence evidence and arrived at a finding that it was weak. This fact is reflected on page 6, 9 and 10 of the judgment. Thus, if the first ground was intended to mean that the trial court considered the prosecution evidence without considering the appellant's defence, such complaint is devoid of merit. On whether the prosecution proved its case on the required standard, the evidence of PW1, PW2, PW3 PW6 and Exhibit A1 that, the appellant was found in possession of one piece of meat alleged to be of buffalo. The appellant did not cross-examine the said witnesses on that fact. Further to this, he signed a certificate of seizure (Exhibit A1) and recorded a cautioned statement (Exhibit A3) which signify that the one piece of meat of buffalo was found and seized from his premises. The crucial issue is whether the piece of meat seized from the appellant's premises was a Government trophy to wit Buffalo and whether 8 it was valued at TZS 4,370,000/=. It is on

record that the alleged meat of buffalo was not tendered in evidence. In lieu thereof, PW4 tendered a certificate of inventory (Exhibit A4) showing that the said meat was destroyed by an order of the magistrate dated 4th July, 2019. Now, as stated earlier on, the appellant in the fourth ground that the proceedings were conducted in contravention. In this case, the Exhibit A4 suffered irregularity. It was not read over after admission. That being the case, the appellant was not informed of its contents in order to cross-examine on the contents of the said document and prepare his defence. In the circumstances, I hereby expunge Exhibit A4 from the record. That notwithstanding, PW4's oral testimony that the trophy subject to this case was disposed of by an order of the magistrate remains intact. As to for the identification and valuation, PW1 testified to have handed the piece of meat seized from the appellant to PW4. Indeed, a chain of custody record (Exhibit A2) displays that, PW4 received one piece of dry buffalo meat from PW1, on 2nd July, 2019. Thereafter, on 2nd July, 2019, PW4 summoned, a senior wildlife officer (PW6) to identify and conduct valuation of the said piece of buffalo meat. 9 From the evidence of PW6, it is clear that the piece of buffalo meat which PW4 received from PW1 was handled to PW6. However, that fact does not feature in the chain of custody record (Exhibit A2). According to Exhibit A2, nothing to suggest that the said meat was handled to PW6. Even if it is taken into account the Government trophy was identified when it was in the possession of PW4, PW6 did not to have conducted evaluation. His evidence was limited to identification of the Government trophy. This fact is also gleaned from the evidence of PW4 when he stated: "On 4/7/2019 I was at Police Station Songea, Game Reserve Officer came to identify and value the wildlife meat, after he did identify the meat because the meat was under my care he said it was buffalo's (nyati) meat he did file the document." (Emphasize is supplied) Since PW6 did not testify to have conducted the valuation of trophy, it is not known as to how the value of trophy stated in Exhibit A5 found its way therein. In that regard, I am of the view that Exhibit A5 cannot be relied to prove the value of the trophy found in the possession of the appellant was TZS 4,370,000/=. Considering further that, the value of trophy is one of the ingredients of unlawful possession of Government trophy, set out under section 86(1) of the WCA, I find that the prosecution 10 did not prove the charge laid against the appellant. Had the learned trial magistrate considered this fact, it would not have arrived at the conclusion the charge was proved. In the final event, I allow the appeal, quash the conviction, and set aside the sentence imposed by the trial court. I order the release of the appellant from prison unless he is held for some other lawful cause. DATED at SONGEA this 7th day of August, 2023. S.E. KISANYA JUDGE 07/08/2023 11

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