

TANZANIA / JUDGMENT

CRIMINAL APPEAL CHACHA PEPE

COURT
TANZLII

DECIDED
21 November 2024

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IN THE HIGH COURT OF TANZANIA MUSOMA DISTRICT REGISTRY AT MUSOMA CRIMINAL
APPEAL NO. 000023984 of 2024 REFERENCE NUMBER 202408222000023984 (Original Economic
Case No. 63 of 2023 of the District Court of Serengeti at Mugumu) CHACHA
PEPE..... 1st APPELLANT NYERERE
MAGUGE..... 2nd APPELLANT VERSUS THE
REPUBLIC..... RESPONDENT

JUDGMENT

18th & 21st November, 2024 M. L, KO MBA, J,: While in trial, both appellants were on bail. In due cause of the hearing, the 1st appellant jumped bail and the matter proceeded in his absentia where he did not enter his defence but he was convicted and sentenced parallel with the second accused. Electronic Case Management System record show both appellants filed petition of appeal while in reality the appeal was filed by the second appellant. Because the judgment read Chacha Pepe and Another, I Page 1 of 10 decided to entertain an appeal in that way as ecms programed. But it must be in record this judgment is for the second appellant only. Briefly, the two accused were arraigned before the District Court of Serengeti at Mugumu (the trial court) charged with two counts which are, 1st count; Unlawful possession of weapons in the National Park contrary to section 24(l)(b) and (2) of the National Parks Act [CAP 282 R.E 2002] and 2nd Count; Unlawful possession of government trophies contrary to section 86(1) and (2)(c)(ii) of The Wildlife Conservation Act [CAP 285 R.E 2022] read together with paragraph 14 of the First schedule to sections 57(1) and 60(2) both of the Economic and Organized Crimes Control Act [CAP 200 R.E 2022]. It was alleged that on the 25th June, 2023 at Hembe area into Serengeti National Park within Serengeti District in Mara region accused persons were found in Unlawful Possession of weapons to wit; one panga, one knife, one bush knife and five animal trapping wires without a permit and failed to satisfy an authorized officer that the same was intended to be used for purposes other than hunting, killing, wounding or capturing of wild animals. In the 2nd Count, it was alleged that on the same date and place the accused person was unlawfully found being in possession of Government Page 2 of 10 Trophies to wit: two attached hindlimbs unskinned of wildebeest valued TZS 1,515,600/= the properties of the United Republic of Tanzania. When the charge was read over and explained to accused persons, they pleaded not guilty to the offences charged. Hence the matter went to full trial. PW1 and PW2 who are conservation rangers testified that on 25th June, 2023 while on patrol Hembe area within Serengeti National Park arrested

appellants and prepared certificate of seizure and recorded the GPS coordinates of the area. The trophy was valued worth TZS 1, 515,800/=. After a full trial, the trial Magistrate was satisfied that prosecution managed to prove their case beyond reasonable doubt hence convicted both accused to all counts and sentenced them serve two (2) years imprisonment for 1st count and twenty (20) years imprisonment the second count. Second appellant was dissatisfied by both conviction and sentence hence this appeal with four (4) grounds:

1. That, the trial magistrate erred in law and facts to conviction and sentences the appellant because the prosecution side did not prove the case reasonable doubt during this case at the trial court, (sic)
2. That, the trial magistrate erred in laws and facts to conviction and sentence the appellant because the evidence testimony by PW3 and PW4. (sic) Page 3 of 10
3. That, the trial magistrate erred in laws and facts to conviction and sentences the appellant because the trial did not give a chance for calling the key witnesses during this case at the trial magistrate, (sic)
4. That, the trial magistrate erred in laws and facts to conviction and sentence the appellant because at the time of disposing of government trophies I was not present, (sic) When the matter was scheduled for hearing, appellant appeared in person without representation while respondent, the Republic was represented by Ms. Beatrice Mgumba, a State Attorney. In support of his appeal, the appellant had a very short submission that he prayed this court to adopt his petition of appeal and release him from prison. Contesting the appeal Ms. Mgumba set the position of the Republic that they object the appeal. She started with the 3rd ground about opportunity to call witness. It was her submission that trial Magistrate addressed the appellant in terms of section 231(1) of the Criminal Procedure Act and appellant replied he shall defend under oath, he shall not have exhibit and has nobody to call as witness. She went on clarifying that on 22/7/2024 when he finalized his defence, appellant prayed to close his case and said he has no intention to call witness. She said the trial court record what Page 4 of 10 transpired in court and records has to be honored. It was her position that appellant had opportunity but he had nobody to call as witness and prayed this court to find the ground lacks merit. About his presence when Government trophy was disposed, Ms. Mgumba submitted that the law direct how Government trophy has to be destroyed and rights of the appellant stipulated. It is under Police General Order (PGO) paragraph 229(25) and section 101 (1) (a) and (2) of Wildlife Conservation Act which are applicable in disposition. She went on submitting that the two section explain how perishable exhibit can be destroyed and the position of the accused is to be taken before Magistrate who shall issue destruction order as was elaborated in *Buruka Leken Ole Ndidai and Another vs Republic*, Criminal Appeal No. 459 of 2020 at page 25 where Justices gave guidelines to be followed when application is filed in court. That, there must be application to destroy exhibit, accused must be present in court, accused must be asked by Magistrate if he has comment, remark or objection over exhibit must be recorded and last if accused was not interested to answer it must be recorded. She went on submitting that during

preliminary hearing appellant herein confessed that he was taken to court for destruction order, the testimony Page 5 of 10 collaborates what was testified by PW5 who took accused to Magistrate and tendered Exhibit P5, inventory with proceedings of the day in which appellant admitted he was found with that exhibit and he did not object disposition. She said the law does not demand appellant to be present when disposition is done, the disposition is done under supervision of Director of Wildlife. So far as appellant admitted before Magistrate during disposition, State Attorney was of the position that the ground was drafted with intention to look for sympathy. She the combined 1st and 2nd grounds about proving the offence beyond reasonable doubt and the prosecution evidence. She reminded that the appellant was charged with two offences being with weapons in the National Park and being in possession of two hind Wildebeest. She started with the jurisdiction of the trial court that the trial court was vested with jurisdiction as consent and certificate was properly filed. On the 1st count she submitted that prosecution was supposed to prove appellant was in the National Park with 1 machete, 2 knives and 5 trapping wires and that was testified by PW1 that he arrested appellant with another person and GPS coordinates was taken by a special equipment. The coordinates read 36M0676968 UTM 9752152 and PW1 issue certificate of seizure which was Page 6 of 10 Exh P1 and Exh P2 weapons seized and appellant did not object its tendering. Basing on the decision of Maduhu Nandi Limbu vs Republic, Criminal Appeal No 419 of 2017 the counsel submitted that PGS shows appellant was within Serengeti National Park. Further, PW4 who draw map testified that he used coordinates which was received from PW1 and the point indicates that appellant was within the National Park. She went on submitting that the offence was proved by all prosecution witnesses as PW1 and PW2 arrested appellant within the National Park while holding Government trophy. PW3 tendered Exh P3 and explained how he identified the Government trophy and its value. About disposition it was her submission that PW5 who was investigator took appellant to Magistrate before the disposition order was issued. Confidently she said section 100(3) of Wildlife Conservation Act explain offences while section 86 is about burden of proof which is on the accused. She said, apart from the witnesses, appellant was supposed to prove he was not found with Government trophy, or he was supposed to prove it was lawful obtained or else he was supposed to prove it was not Government trophy but he did not. She maintained that Page 7 of 10 prosecution proved the offence beyond reasonable doubts and prayed the appeal to be dismissed. When given time for rejoinder, appellant submitted that, Magistrate who issued disposition order was not called as witness and prayed this court to allow his appeal. I have thoroughly gone through the petition of appeal, the party's submissions and the appellant's complaint in this appeal. It's the duty of this court to determine whether the appeal is meritorious. The cardinal principle in criminal cases is that, it is upon the prosecution to prove the case against an accused person beyond reasonable doubt. See John Makolebela vs Kulwa Makolobela and Eric Juma @ Tanganyika [2002] T.L.R. 296. Starting with the 3rd ground as submitted by the State Attorney, I find the appellant had enough time to defend himself and he informed the trial court when he was addressed in terms of section 231(1) that he will not have witness to call and even when he finalized his defence he prayed to close his case addressing that he has no witness to call.

This court finds the third ground lacks merit. The appellant was convicted in two counts one of them is being found in possession of Government Trophy, which is two hind limbs of wildebeests Page 8 of 10 with skin. The trophy being perishable, under PGO there must be sought for it be disposed before full trial. It is the Magistrate who has power to issue disposition order as per paragraph 25 of PGO No. 229 which reads;

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 possible, such exhibits should be photographed before disposal. [Emphasis added]. The above quoted paragraph 25 envisages any nearest Magistrate, who may issue an order to dispose of perishable exhibit. This paragraph in addition emphasizes the mandatory right of an accused (if he is in custody or out on police bail) is to be present before the Magistrate and be heard. See Mohamed Juma @ Mpakama vs Republic (Criminal Appeal No. 385 of 2017) [2019] TZCA 518 (27 February 2019). I find the ground has no merit as it is not a legal requirement. It is trite that in proving the offence concerning the presence of appellant within certain geographical limitation, prosecution need to provide specific coordinates or GPS. See Dogo Marwa @ Sigana and Mwita vs Republic Criminal Appeal No. 512 of 2019 CAT at Musoma. It was testified by PW1 that when they arrested accused, he recorded GPS by using device known Page 9 of 10 as Garmin Model and the GPS coordinates were 36M 06 0676968 UMT 97 52152 and exhibit PEI was admitted. Further PW4 used the supplied GPS coordinates to make a geographical map Exhibit PE4 and testified that points show the appellant was within the National Park. The Government trophy was examined and valued whereby it was confirmed to be hind limbs of Wildebeest values TZS 1,515,800/ and the disposition order was issued as required by law. Generally, I find the appeal has no merit from the grounds submitted and analysed. As a consequence, the appeal is hereby dismissed. DATED in MUSOMA this 21th Day of November, 2024. M. L. KOMBA Judge Judgement delivered in chamber before Jonas Kivuyo State Attorney for respondent Republic and second appellant who appeared in person. M. L. KOMBA Judge 21st November, 2024 Page 10 of 10

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