

TANZANIA / JUDGMENT

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IN THE HIGH COURT OF TANZANIA AT DODOMA (APPELLATE JURISDICTION) DC CRIMINAL
APPEAL NO. 36 OF 2018 (Original Criminal Case No. 21 of 2018 of the District Court of Kondoa at
Kondoa) YOKI GIDAGARBI.....APPELLANT VERSUS THE
REPUBLIC RESPONDENT

JUDGMENT

3010512018 & 22/08/20 18 A. MOHAMED, J. The appellant was arraigned before the District Court of Kondoa on a charge sheet with three counts relating to offences under the Wildlife Conservation Act No. 5 of 2009 I will refer to as "the Act". First; unlawfully entering in a Game Reserve contrary to section 15 (1) and (2); secondly; Unlawful grazing of livestock in a Game Reserve contrary to section 18 (2) (4) read together with section III (1) (e), and lastly; Causing damage to vegetation contrary to section 18 (1) and (3) of the Act. After being satisfied the appellant's own plea of guilty to the above offences was unequivocal, the trial Court Magistrate accordingly convicted the appellant and sentenced him to pay a shillings 100,000/= fine and to serve a one year sentence for 1 the 1 st count. For the 2nd count he was sentenced to pay a 300,000/= shilling fine or in default serve a one term in jail, and for the 3rd count a 200,0001= shillings fine or in default serve a one year term in jail. Consequently, the appellant was sent to jail. Against that decision he now appeals on three grounds complaining the trial court; Erred in law in convicting him based on a defective charge. Erred in convicting him based on an unequivocal plea of guilty. That the sentence imposed on him was manifestly excessive. According to the charge sheet, at about 14:00 hours on 22/1/2018 (or 27/1/2018) the appellant is alleged to have entered into the Mkungunero Game Reserve in Kondoa District without the Director of Wildlife's permission and was found grazing 14 head of cattle therein by a Game officer named Steven Sabibi. When the charges were read over and explained to him at the Kondoa District Court, he pleaded guilty to the charge whereupon the trial Magistrate convicted and sentenced him. On 30/5/2018, this Court ordered the appeal to be disposed of by way of written submissions. 2 LI In the 1st complaint targeted at the defective charge sheet, Mr. Lambaji, for the appellant, pointed out the appellant was charged on a non existing enactment. He drew this Court's attention to the 1 st count in the charge sheet reading thus; "OFFENCE SECTION AND LAW: Unlawful entering in a Game Reserve Contrary to section 15 (1) and (2) of the Wildlife Conservation Act No... of 2009. His view, this wording offended section 135 (2) (1) of the Criminal Procedure Act [Cap 20 RE 2002] that requires a charge sheet to describe an offence

and refer to the section and law creating the offence. In support of his argument, the counsel cited Fred William Chonde V. the Republic, Criminal Appeal No. 2015, (CAT) (unreported) and Mussa Ramadhani Vs. Republic, Criminal Appeal No. 368 of 2013, CAT, (unreported) which elucidate the principle. His further contended the offence sections were not properly cited in the 2nd and 3rd counts. The counsel observed section 135 (a) (ii) of the Criminal Procedure Act (supra), requires a charge sheet to be preferred under a specific section and enactment. The counsel argued these are serious errors on the face of the record. He urged this court to allow the appeal and quash the conviction and sentence. Responding to the 1 st ground, Ms. Magili, State Attorney for the respondent, pointed out section 360 (1) of the Criminal Procedure Act [Cap 20 RE 2002] bars appeals for persons convicted on their 3 own pleas of guilty to charges save in respect of sentences such as in the instant case. In support of her argument, she cited Khalld Athuman V R

[2006] hR 791 which held where a person is convicted on his own plea of guilty to the charge, the Court may entertain an appeal against conviction in circumstances where the appellant did not appreciate the nature of the charge or did not intend to admit he was guilty. It was her view; the appellant had no right of appeal against the conviction but only on the sentence. Responding to the 2nd ground, Ms Magili asserted the prosecution property cited the law and provisions the appellant was charged with. However, in the 3rd ground Ms. Magili conceded the sentence was indeed excessive. She averred, under section 15 (2) of the Act, the punishment for the 1st count is a fine of not less than 100,000/= and not more than 500,000/= shillings. For the 2nd count, it should not be not less than 300,000/= and not exceed 500,0001= shillings. She was of the view the punishment in the 2nd and 3rd counts was not excessive as well as for the forfeiture order of the 14 head of cattle under section 111(1) of the same Act. Having heard the parties' contentions and upon examination of the lower Court's record, I will consider the merits of the appeal and the law. 4 In the 1st ground of the appeal, the appellant complains the charge sheet was fatally defective. Mr. Lambaji asserted, since a charge sheet lays the foundation of a just trial, this Court should allow the appeal as all three counts in the charge sheet were defective for the faults he had pointed out. I will look at the noted faults briefly. In the first count, as Mr. Lambaji correctly observed, I find an omission in the year of the enactment. It was cited as 'Wildlife Conservation Act No of 2009'. I agree with Mr. Lambaji's argument this is a non existing enactment as the proper law is "Wildlife Conservation Act No. 5 of 2009". In the second count, it was claimed; the offence section was not properly cited. It reads:

- "OFFENCE SECTION AND LAW: - Unlawful Grazing in a Game Reserve contrary to section 18 (2) (4) read together with section 111 of the Wildlife Conservation Act No. 5 of 2009" Again I find myself in agreement with Mr. Lambaji's argument that the drafter cited section 18 (2) (4) without stating the specific law whose subsection and section was cited. If presumes the cited provision is part of the Act. I think the drafter has to be specific as a Court should not assume the provisions referred were comprised in the Act cited after the phrase "read together". And I therefore find Mr. Magili's contention the provisions were cited properly

untenable. 5 Another fault the counsel drew this Court's attention to was the difference of dates in the counts of when the alleged offence occurred. Whereas in the particulars of the 1st count, the appellant is alleged to have committed the offence at about 14:00 hours on 22/1/2016, in the 2nd and 3rd counts the date shown is 27/1/2016 at about 14:00 hours. The fact is all offences were committed at the same time on the same day. From the foregoing, it is unclear, when was the offence committed. Section 132 of the Criminal Procedure Act (Cap 20 R.E 2002) requires a charge to contain such information as to give reasonable information to an accused as to the nature of the offence charged. The section provides: "132. Every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged". Interpreting the above provision, the Court of Appeal in *Isidori Patrice V Republic*, Criminal Appeal No. 224 of 2017 (unreported) observed:- 11 "... It is now trite law that the particulars of the charge shall disclose the essential elements or ingredients of the Offence. This requirement hinges on the basic rules of criminal law and evidence to the effect that the prosecution has to prove that the accused committed the actus reus of the offence with the necessary mens rea. Accordingly, the particulars, in order to give the accused a fair trial in enabling him to prepare his defence, must allege the essential facts of the offence and any intent specifically required by law. Bearing in mind the above position of the law and the faults I have pointed out hereinabove, I am satisfied that the charge sheet was not properly drafted and was fatally defective. It did not allege the essential facts of the offence and any intent specifically required by law to have had afforded the appellant with a fair trial. In concluding, I am satisfied the appellant pleaded guilty to a fatally defective charge sheet. And the proceedings were therefore null ab initio. But before I part with this appeal, let me emphasize that in terms of section 360 of the Criminal procedure Act cited by Ms. Magili, no appeal against conviction is allowed except in the following four circumstances spelt out by Samatta J. in *Lawrence Mpinga V Republic* (1983) TLR 166:- 7 19 That even taking into consideration the admitted facts, his plea was imperfect, ambiguous or unfinished and, for that reason, the lower court erred in law in treating it as a plea of guilty; That he pleaded guilty as a result of mistake or misapprehension; That the charge sheet laid at his door disclosed no offence known to law; That upon the admitted facts he could not in law have been convicted of the offence charged." In view of the above exceptions, I am satisfied the appellant's situation falls within the third ground indicated hereinabove. As intimated earlier, I think the 1st ground of the appeal suffices to dispose of the appeal as it would be a futile exercise to determine the rest. For the aforesaid reasons, I allow the appeal; quash the trial court's conviction, sentence and forfeiture order. The 14 head of cattle are to be returned to their owner and fine, if any. The appellant is to be set at liberty forthwith unless held for some other lawful cause. It is so ordered. T 4/ LjAOHAMED JUDGE 2/08/2018 The right of appeal duly explained. HAMED 7 UJGE 22/08/2018

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