

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TANGA DISTRICT REGISTRY

AT TANGA

(DC) CRIMINAL APPEAL NO. 27 OF 2023

HANAFI IDDI.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

(Originating from Economic Case No. 03 of 2023 at the District Court of Korogwe at Korogwe)

JUDGMENT

05/10/2023 – 23/11/2023

NDESAMBURO, J.:

Hanafi Iddi is dissatisfied with the decision of the Korogwe District Court, which convicted and sentenced him to twenty years imprisonment. He has appealed before this court armed with four grounds of appeal filed on the 25th of May 2023.

Initially, the appellant was charged with an offence of unlawful possession of Government trophies, contrary to sections 86(1) and (2)(c) (iii) of the Wildlife Conservation Act No. 5 of 2009 (the WCA) read together with paragraph 14 of the First Schedule to, and sections

57(1) and 60(2) of the Economic and Organized Crime Control Act, Cap 200 R. E. 2002.

Briefly, the particulars of the offence state that, on 23rd February 2023 at Mkomazi Village, within Korogwe District, and Tanga Region, the appellant was found in unlawful possession of a government trophy to wit; lesser kudu meat valued at USD 5200 equivalent to Tshs. 12,157,600/= the property of the Government of the United Republic of Tanzania without a permit from the Director of Wildlife.

The appellant pleaded not guilty to the charge and hence, the prosecution summoned a total of 5 witnesses and tendered three exhibits while the appellant fended himself and tendered no exhibit.

The background of the case is as follows: On 23rd February 2023 at about 10:00 p.m., Cuthberty Mbwambo, a wildlife warden referred to as PW3, received a tip-off from an informant about poachers. He, along with unidentified colleagues, proceeded to the appellant's residence, where they apprehended him under arrest. They then contacted the Village Executive Officer, Elisha Joshua Mtochezi (PW4), to act as an independent witness for the search. Upon PW4's arrival,

they conducted a search of the appellant's residence, discovering game meat both inside and outside. Following this, PW3 prepared a seizure certificate, which was signed by the appellant, PW4, and himself.

On that particular night, at approximately 12:30 a.m., the appellant was taken to Korogwe police station. Sergeant Pili, who testified as PW1, was responsible for receiving both the appellant and the purported game meat, brought in by PW3. PW1 asserted that she kept the game meat, contained in a sulphate bag, atop a vehicle stationed at the police station.

On the 23rd of February 2023 at approximately 9:00 a.m., PW1 handed the game meat to Lina David Nyahande, a wildlife officer, PW2. PW2 assessed the value of the alleged game meat that was found in possession of the appellant and subsequently prepared a trophy valuation certificate which she tendered as Exhibit P1. After evaluating the game meat, PW2 filled out an inventory form, and the meat was disposed of following the necessary order from Manundu Primary Court. The inventory form was tendered as Exhibit P2.

According to D/Cpl Magnus who testified as PW5, the appellant confessed to having committed the alleged offence and he tendered the cautioned statement as Exhibit P4.

In contrast, the appellant refuted any involvement with the charged offence, asserting that the game meat had been planted into his house. He recounted how the wildlife officers entered his house, kept him under arrest and explained that they were searching for poachers including him. They instructed him to exit through a back door, and upon his return, he was surprised to find two bags. He was asked to open it and found meat. Those wildlife officers thereafter called PW4, completed a certificate of seizure and asked the appellant and PW4 to sign.

At the end of the trial, the trial court was satisfied that the prosecution case was proved beyond a reasonable doubt, convicted and sentenced the accused as hinted above.

The appellant was dissatisfied with both the conviction and the sentence meted on him hence this appeal. In the petition of the appeal, he has raised four grounds which are summarised below:

- i. The District Court erred in law and in fact in convicting the appellant on an offence that was not proved beyond a reasonable doubt.*
- ii. The District Court erred in law and in fact for basing its conviction on the caution statement which was recorded beyond the statutory four hours from the time the appellant was placed under restraint.*
- iii. The trial court erred in law and fact by admitting Exhibit P2 which did not meet the test of section 101(1)(a)(i) of the WCA.*
- iv. The trial court erred in both law and fact by convicting the appellant who had denied possessing the trophy, as proper seizure procedures were not followed.*

When the matter came for hearing, the appellant was being represented by Mr. Richard A. Giray, a learned counsel. At the same time, Mr. Kullaya, a learned State Attorney, represented the Respondent/Republic. The hearing was agreed to proceed by way of written submission.

During his submission, Mr. Giray chose to abandon ground number three. In addressing the first ground of the appeal, the appellant's learned counsel argued that the prosecution failed to prove that the game meat was properly identified as a government

trophy. He further, questioned the choice made by the prosecution to invoke the provision of section 101(1) of WCA in disposing of the meat when no court proceeding was pending. Additionally, he complained that no photograph was taken before the disposal of the alleged game meat as required by Police General Order 25. Further, the appellant was not given the right to be heard before the disposal order was issued. As a result, he urged this court to expunge Exhibit P2 from the record. He further pointed out that there were contradictions in the testimonies of PW2 and PW5 on where the game meat was disposed of.

Regarding the second ground, Mr. Giray argued that the trial court erred by relying on a cautioned statement of the appellant which was taken outside the prescribed four-hour period contrary to section 50(1)(a) of the Criminal Procedure Act, Cap 20 R.E 2019. Consequently, he urged the court to discard it from the record, citing the case of **Mohamed Juma @ Mpakama v Republic**, Criminal Appeal No. 385 of 2017 (unreported).

On the last ground, the learned counsel raised concerns about the procedures adopted in seizing the game meat. He asserted that

there was no independent witness during the search and seizure noting that PW4 arrived at the appellant's house at 10:00 p.m. after the search and arrest had already taken place. Additionally, he pointed out that no receipt was issued after the seizure, which is a requirement under Section 38(3) of Cap 20. In conclusion, the learned counsel beseeched this court to allow the appeal, quash the conviction, set aside the sentence, and release the appellant from prison.

In addressing the first ground, Mr. Kullaya contended that the game meat was adequately identified by PW2. He also argued that the learned counsel misinterpreted the provision of section 101(1)(a)(ii) of WCA, as it does not prohibit the disposal of trophies before the commencement of proceedings, rendering the argument baseless. Consequently, he urged the dismissal of this ground.

He challenged the assertion for a photograph during exhibit disposal, stating that it is not mandatory in the Police General Order. Moreover, the appellant's signature on the inventory form is more reliable than a photograph. The game meat was also disposed of in the appellant's presence. On the issue of the appellant being given

the right to be heard before the disposal of the game meat, the learned State Attorney asserted that the provision of section 101 of the WCA does not mandate such a requirement.

Mr. Kullaya acknowledged a contradiction between PW2 and PW5 regarding the location of game meat disposal. Nevertheless, he noted that these contradictions were minor and did not go to the root of the case.

Regarding the second ground, Mr. Kullaya argued that the trial court's conviction of the appellant was not based on the caution statement but on the compelling testimonies of the prosecution witnesses. He also agreed with the request to have the cautioned statement expunged as it was obtained beyond the stipulated time limit.

On the final ground, Mr. Kullaya argued that PW4, an independent witness, was present when the search and seizure certificate was filled out. He further emphasized that the failure to issue a receipt after the seizure is not a fatal omission and cited the Court of Appeal case of **Gitabeka Giyaya v Republic**, Criminal

Appeal No. 44 of 2020 (unreported) to support his stance. Finally, he urged the court to dismiss the appeal.

In rejoinder, the learned counsel reiterated his submission in chief.

After a thorough review of the record of appeal, submissions, and the authorities presented by both parties, while drafting the judgment, it became apparent that both parties have to provide further insights to the court regarding the chain of custody of the game meat allegedly found in the appellant's possession. This is because in cases involving the transfer of exhibits from one location to another, the evidence regarding the chain of custody of these exhibits holds significant importance. Thus, in the case at hand, the handling of the purported game meat from its initial seizure to the valuation and analysis conducted by the game warden, subsequent disposal as per the primary court's order, and the presentation of relevant documentation in court as evidence holds paramount significance. Recognizing this, both parties were summoned and allowed to address the court on the 13th of November, 2023, to provide further clarification on this crucial matter. On the fixed date,

the appellant was still being represented by Mr. Giray, a learned counsel while the Republic/Respondent had the service of Mr. Eric Mosha, a learned State Attorney.

Mr. Giray argued that the chain of custody for the alleged game meat was not properly maintained due to a lack of documentation or a paper trail detailing the seizure, custody, control, transfer, analysis, and disposition of the meat. He emphasized that proper documentation at each stage was crucial to establish the connection between the alleged game meat and the purported crime. In the present case, no such documentation was available. He placed his reliance on the decision of the Court of Appeal of **Paul Maduka and four others v The Republic**, Criminal Appeal No. 110 of 2007.

He further averred that the certificate of seizure was not filled in the absence of the independent witness and that a point supported by the appellant in their defence went uncontested.

Mr. Mosha maintained that the chain of custody remained intact. He argued that while documentation is one of the methods for establishing the chain of custody, however, an exhibit will not fail the test merely because there was no documentation citing the case of

the Court of Appeal of **Chacha Jeremiah Murimi and three others v The Republic**, Criminal Appeal No. 551 of 2015. The learned State Attorney contended that the chain of custody was effectively established through the testimony of PW1, PW2, PW3 and PW4. According to him, on the relevant date, the appellant's house was searched in the presence of an independent witness (PW4), and the alleged game meat was recovered. The certificate of seizure was filled out, with the appellant, PW4, and PW3 all signing it.

Furthermore, Mr. Mosha asserted that the alleged game meat, stored in a sulphate bag along with the appellant, was transferred on the same night to Korogwe police station and handed over to PW1 at around 12:30 midnight. After opening the bag and confirming the presence of meat, PW1 placed it on top of a police vehicle which was at the police. Subsequently, the meat was handed over to PW2 at around 9:00 a.m., who analyzed and valued it, identifying it as lesser kudu (tandala) based on its skin colour. PW2 completed an inventory form, and along with the appellant, took the meat to the primary court, where the magistrate ordered its destruction. The appellant signed the inventory form, and the game meat was ultimately

disposed of in the forest. The learned State Attorney reiterated that there was no possibility of tampering with the game meat at any point in the process.

In rejoinder, Mr. Giray asserted that the chain of custody was indeed broken. He highlighted the action of PW1 in storing the game meat on top of the police vehicle, introducing doubts about the possible tampering with the alleged game meat.

Having heard both sides, the court is now ready to decide. The central issue at hand is whether the prosecution has successfully proven its case beyond a reasonable doubt.

I will begin by addressing the second ground of appeal, which questions the trial court's reliance on the cautioned statement, Exhibit P4 that was recorded beyond the prescribed period of four hours as mandated by section 50(1)(a) of Cap 20. The law as per the cited provision is explicit in specifying that the fundamental period for interviewing a person under restraint is four hours, starting from the time of their arrest in connection with the suspected offence.

The testimony provided by PW1 distinctly establishes that on the 24th of February 2023, at 12:30 midnight, the appellant was

brought to the Korogwe police station by PW3. Subsequently, his cautioned statement was procured on the same day, between 7:20 a.m. and 8:40 a.m., by PW5. Upon closer examination of the timeline from the appellant's arrest to the time of his cautioned statement, it becomes evident that the mandated four-hour period had lapsed. The court should have not admitted this exhibit in evidence.

Contrary to Mr. Kullaya's submission, the trial court indeed relied on the cautioned statement in convicting the appellant. This reliance is evident on page 19 of the judgment, where the learned trial magistrate explicitly placed weight on the confession, asserting that the appellant confessed to being found in possession of the alleged game meat. Consequently, I find substantial merit in the second ground. As a result of the cautioned statement being recorded beyond the stipulated legal time limit, it is hereby expunged from the record.

The next in discussion is whether the prosecution has successfully proven its case beyond a reasonable doubt. Here, I would like to begin with the issue of the chain of custody raised by this court. At this point, I would like to cite the holding of the Court of

Appeal in **Chacha Jeremiah Murimi** (supra) when the court was dealing with the chain of custody. It held as follows:

*"In order to have a solid chain of custody it is important to follow carefully the handling of what is seized from the suspect up to the time of laboratory analysis until finally the exhibit seized is received in court as evidence. There should be assurance that the exhibit seized from the suspect is the same which has been analyzed by the Chief Government Chemist. The movement of the exhibit from one person to another should be handled with great care to eliminate any possibility that there may have been tampering with that exhibit. The chances of tampering in the Government Laboratory analysis should also be eliminated. Generally, there should be no vital missing link in handling the exhibit from the time it was seized in the hands of the suspect to the time of chemical analysis until finally received as evidence in court after being satisfied that there was no meddling or tampering done in the whole process. In establishing the chain of custody, we are convinced that the most accurate method is on documentation as stated in **Paulo Maduka and Others vs. R.**, Criminal Appeal No. 110 of 2007 and followed in **Makoye Samwel @ Kashinje and Kashindye Bundala**, Criminal Appeal No. 32 OF 2014 cases (both unreported). However, documentation*

*will not be the only requirement in dealing with exhibits. An exhibit will not fail the test merely because there was no documentation. Other factors have to be looked at depending on the prevailing circumstances in every particular case. For instance, in cases relating to items which cannot change hands easily and therefore not easy to tamper with, the principle laid down in **Paulo Maduka** (supra) would be relaxed.*

As established by the aforementioned authority, it is clear the maintenance of a clear and unbroken chain of custody is essential to ensure that the evidence is admissible in court. The maintenance of chain of custody of the exhibit needs not only to be maintained through documentation but also various other factors, especially on exhibits that cannot easily change hands easily and therefore cannot easily be tampered with.

In the present appeal, Mr. Giray contends that the absence of paper documentation for the alleged game meat implies a broken chain of custody. In contrast, Mr. Mosha asserts that despite the lack of chronological documentation, the chain of custody remains intact, relying on the testimonies of PW1, PW2, PW3, and PW4. Based on the

precedent set by Chacha **Jeremiah Murimi** (supra), I align with Mr. Mosha, emphasizing that a paper trail is not the sole method for establishing the chain of custody.

The exhibit concerned in this appeal is the game meat, an exhibit less prone to easy transfer. To ascertain the integrity of the chain of custody, I will scrutinize the testimonies of the prosecution witnesses. This examination aims to determine whether the chain of custody remained unbroken, thereby minimizing the risk of tampering with the exhibit from its initial seizure from the appellant to its subsequent weighing and evaluation by PW2.

The evidence on record, as recounted by PW3, reveals that on the purported date, the appellant's residence underwent a search in the presence of PW4 and the appellant's brother, leading to the recovery of the alleged game meat. The appellant acknowledged that the meat was from two lesser kudu he had hunted. Subsequently, a certificate of seizure was completed and signed by the appellant, PW4, and PW3. Following the discovery of the alleged game meat, the appellant was subsequently transported to Korogwe police station,

where he, along with the suspected game meat, was handed over to PW1.

At the Korogwe police station, according to PW1, around 12:30 midnight, she received the purported game meat, enclosed in a sulphate bag. After confirming its nature as meat, she placed it atop a police vehicle which was at the police. At 9:00 a.m., PW1 handed the alleged game meat to PW3 for valuation. PW3, acknowledging receipt from PW1, initiated the valuation process and affirmed the meat to be that of a lesser kudu.

The crux of the matter revolves around whether, based on the aforementioned testimonies, the chain of custody remained unbroken. According to PW1's account, after receiving the alleged meat, with the assistance of the appellant, she placed it on top of a motor vehicle which was at the police vehicle. The record is silent whether or not, the exhibit was moved from there and if not, then it stayed from 12:30 midnight until 9:00 a.m. when she handed it to PW3.

In this instance, a critical gap exists in the evidence presented by PW1 and other prosecution witnesses concerning the security measures implemented to prevent tampering with the exhibit. The

alleged game meat remained on top of a vehicle at the police station for approximately eight and a half hours before being handed to PW3 for valuation. This period is crucial as it encompasses the time before the exhibit was examined, evaluated, and confirmed by PW3 to be lesser kudu meat, a government trophy. I disagree with the argument put forth by the learned State Attorney, asserting that there were no chances for tampering with the exhibit while on top of the vehicle at the police, as this assertion lacks support from the testimonies provided by the prosecution. In essence, within the span of eight and a half hours when the meat was placed on top of the vehicle, various things could have transpired, casting doubt on the integrity of the exhibit during that crucial timeframe.

Upon careful consideration of the provided analysis, it becomes evident that the chain of custody was not adequately maintained. Consequently, it cannot be asserted with certainty that the alleged game meat found in the appellant's possession was indeed the same meat weighed, evaluated, and confirmed by PW3 as lesser kudu meat, a government trophy. Given this uncertainty, the prosecution falls short of proving its case beyond a reasonable doubt.

Consequently, the appeal is hereby allowed, the conviction is quashed, and the sentence is set aside. The appellant shall be released from prison if not held therein for another justifiable cause.

It is so ordered.

DATED at **TANGA** this 23rd day of November 2023



A handwritten signature in blue ink, appearing to be "H. P. Ndesamburo".

H. P. NDESAMBURO

JUDGE