IN THE HIGH COURT OF TANZANIA

DODOMA SUB-REGISTRY

AT DODOMA

DC CRIMINAL APPEAL NO 134 OF 2023

(Originating from Economic Case No. 7 of 2022 before the District Court of Kondoa)

ADAMU ABUBAKAR DUDU .....APPELLANT

VERSUS

REPUBLIC .....RESPONDENT

JUDGMENT

Date of last order: 04/04/2024

Date of the Judgment: 08/05/2024

LONGOPA, J.:

This is an appeal against conviction and sentence of the District Court for Kondoa. The appellant was convicted and sentence to serve 20 years imprisonment for Unlawful Possession of Government Trophy c/s 86(1) and (2) (b) of the Wildlife Conservation Act, Cap 283 R.E. 2022; One (1) year imprisonment or a fine of TZS 100,000/= for the Unlawful entry in Game Reserve c/s 15(1) and (2) of the Wildlife Conservation Act; and six months imprisonment or fine of TZS 200,000/= for Unlawful Possession of Weapons in a game reserve contrary to section 20(1)(b) and (4) and

11(1)(b) of the Wildlife Conservation Act, Cap 283 R.E. 2022. These sentences were to run concurrently.

Briefly facts of the case are that on 16/08/2022 at Mkungunero Game Reserve area within Kondoa District in Dodoma Region, the appellant was found in unlawful possession of government trophies to wit: four legs and one head of Eland valued at TZS 3,938,900/= without permit from the Director of Wildlife. Also, the accused person was found within the Game Reserve are GPS Coordinate 36M 0177565 and UTM 9489677 without having authority of the Director of Wildlife previously sought and obtained. Moreover, that at the same time and place the appellant was found in possession of weapons to wit one knife and one machete without the authority of the Director of Wildlife previously sought and obtained and used the same for hunting.

The appellant is dissatisfied by the whole decision both conviction and sentence thus preferred this appeal on the following grounds of appeal, namely:

1. *That, the trial District Court erred in law and fact by convicting the Appellant herein, meanwhile the prosecution case was never proved beyond reasonable doubt against the appellant.*
2. *That, the trial District Court erred in law and in fact by convicting the appellant herein, meanwhile the proceedings of the case were tainted by irregularities.*

3. *That, the Trial District Court erred in law and in fact by convicting the appellant herein relying on contradictory and inconsistent prosecution evidence.*
4. *That, the trial District Court erred in law and in fact by convicting and sentencing the appellant contrary to the law.*

To address the appeal, Ms. Maria Ntui, learned advocate and Mr. Francis Mwakifuna appeared before me on 04/04/2024 for viva voce submission in favour or against the appeal respectively. The learned Counsel for appellant, Ms. Maria Ntui attacked the judgment on the following aspects.

On the failure to prove the case beyond reasonable doubt, it was stated that there are circumstances that indicate that failure to meet the standard. First, existence of contradiction of the eland meat whereas only four legs and one head of eland were tendered to court while prosecution witnesses had indicated that there was also blood and intestine and feaces at the scene of crime. Second, the other part of eland meat was said to have been delivered to the village. The failure to make follow ups of the meat already delivered to the village by wildlife officers raise doubts as to existence of the incident. Third, failure to bring all the evidence of the eland meat made the Court not to appreciate the exact value of the eland.

On irregularities, it was argued that: First, there was no proof of the chain of custody. Second, the appellant was not present at the time the exhibit namely eland meat was handed over to Exhibit Keeper and when the same was identified by an expert. Third, the so-called expert never demonstrated his expertise and qualification. Fourth, there was no justification as to how the value was reached to be TZS 3,938,900/=. Fifth, the appellant questioned double role of the PW 1 as an Exhibit Keeper and investigation officer at the same time. Sixth, non-participation of the appellant in preparation and drawing of the sketch map at the scene of crime.

It was reiterated that as there was a failure to state the professional qualification of PW 4 thus admission of Exhibit P. 5 was irregular. This also applies in relation to handing over of the exhibits to the Exhibit Keeper that ought to have been witnessed and signed by the appellant. Failure to accord the appellant right to signed on the Ledger to handover exhibits marred the legality of the proceedings.

Further, it was appellant's submission that testimony of PW 2 did not corroborate that of PW 1 though both were arresting officers. That raises doubts on the prosecution's case. The appellant invited this Court to consider the principle in **Abdul Karim Haji vs Raymond Nchimbi Aloyce and Others** [2006] TLR 416; and **Nathaniel vs REPUBLIC** [2006] TLR 395 on effects of failure to establish the case at the trial court and it reiterates that elementary principle is that he who alleges must prove the case.

Thus, it was the appellant's prayer that this Court be pleased to revisit the decision of the District Court, quash the conviction, and set aside the sentence as the whole conviction and sentence was marred with illegalities.

Conversely, Mr. Francis Mwakifuna had a different view altogether. He submitted that there was proof of the case beyond all reasonable doubt. He argued that appellant was found in possession of the four legs and one head of eland, he was caught within coordinates of the game reserve and that he was also in possession of one knife and a machete. This is validated by Exhibit PE.1. Also, during the Preliminary Hearing (PH) the appellant did not dispute to have been found in the game reserve.

It was respondent's submission that evidence of PW 1, PW 2 and PW 3 demonstrated chain of events from the arrest and seizure to the destruction of the eland meat in presence of the appellant. Thus, the evidence was sufficient to warrant conviction and sentence.

On contradiction, it was argued that nothing contradictory exists in circumstances of this case. It was argued oral account and Exhibits PE 1 which is a Seizure Certificate and PE 4 which is an inventory demonstrate that the things found necessary to the ingredients of the offence are the four legs and one head of eland, as well a knife and machete. The blood, intestine and feaces were not vital in establishing the offence.

On valuation, it was argued that testimony of prosecution witness was categorically clear that value of an eland is USD 1700 thus total of TZS 3,938,900/=was upon conversion of the value in Tanzanian Shillings. Evidence of PW 4 reiterated on the value and identification of the meat to be of an eland. Similarly, the chain of custody was lucidly enumerated that evidence of PW 5 revealed a clear chain of custody as well as Exhibit PE 6.

In totality, respondent argued that testimonies of PW 1, PW 2, PW 3, PW 4 and PW 5 together Exhibits PE 1, PE 2, PE 3, PE 4, PE 5 and PE 6 are illustrative that the prosecution case was proved to the required standard.

I have dispassionately considered the submissions made by the parties, record of the trial court and the grounds of appeal to determine existence or otherwise of merits in this appeal. I shall address the issues as following:-

I shall commence to address on irregularities. The chain of custody is one of the aspects that are challenged by the appellant. PW 1 testified that at the Police Station he handed over to D/CPL Joseph all the items that were seized from the appellant. These were eland meat and weapons namely knife and machete. Further, testimony of PW 3 on 19/08/2022, received from D/CPL Joseph and Wildlife Officer named Sabato Ruji accompanied by appellant one Adamu Abubakar Dudu visited the Court for a prayer for destruction of exhibit namely four legs and head of eland. It was PW 3's evidence that an inventory was prepared and signed by the

Magistrate, thumb print of the appellant and signature of the wildlife officer. At this juncture, Exhibit PE. 4 was tendered and admitted.

PW 5 CPL Joseph testified to have received four legs and one head of errand, one knife and machete from wildlife officer. On 19/08/2022, PW 5 stated to have taken the appellant, four legs and one head of Eland to the Magistrate for inspection and order destruction in presence of the accused/appellant. It was PW 5 evidence that he handed the knife and machete to Lawrence Thomas (PW 1) who tendered them in Court.

This oral account of the chain of events reflects the chain of custody of the exhibits from seizure at the scene of crime to the time the same were tendered in Court. It is lucid that for Eland's meat and head, an inventory tendered by PW 3 as an Exhibit PE 4 is culmination of the whole process. Similarly, Exhibits PE 2 and PE 3 which are knife and machete chain of events is well documented.

In the case of **Metwii Pusindawa Lasilasi vs Republic** (Criminal Appeal No. 431 of 2020) [2024] TZCA 139 (23 February 2024), at pages 25-26, the Court of Appeal reiterated that:

> *In the end, we are satisfied that the appellants were arrested red handed in possession of exhibit P3 and there was clear chronological documentation and/or paper trail showing the seizure, custody, control, transfer, analysis,*

and disposition of the tusks. The testimonial accounts of PW1, PW2, PW3, and PW4 sufficiently explained the handling of the tusks from their seizure to exhibition at the trial. As the Court held in Issa Hassan Uki v. Republic, Criminal Appeal No. 129 of 2019, elephant tusks constitute an item that cannot change hands easily and thus it cannot be easily altered, swapped or tampered with, there was possibility of being interfered.

The evidence of PW 1, PW 3 and PW 5 on the chain of custody leaves no flicker of doubts that a sufficient oral account has been demonstrated on the chain of custody. The same is coupled with documentary evidence namely Exhibit PE.1, PE.2, PE. 3 and PE 4. Chain of custody was established sufficiently.

Further, professional qualification PW 4 was also questioned by the appellant. This aspect should not detain this Court for two reasons. First, it is on record that PW 4 is a Wildlife officer who has worked at Mkungunero Game Reserve from July 2019 to February 2023 was called on 17/08/2022 to identify parts of the animal. She identified the same as the four legs and one head belonged to an animal called Eland. According to PW 4, she ably identified the animal to be Eland due to training obtained in the college as wild animals have different skin texture compared to tamed animals. Also, the shape of the head, horn and hooves are different from those of domestic animal like cow.

PW 4 did testify as to the professional qualifications and experience to be able to identify that the four legs and head belonged to an animal called Eland. Second, it is on record that appellant was availed opportunity to cross -examine PW 4 but failed to do so. The appellant would have challenged the testimony of PW 4 through cross examination but opted not to do so thus agreeing with truthfulness and correctness of PW 4's testimony.

In the case of **Emmanuel s/o Samson vs The Director of Public Prosecutions** (Criminal Appeal 264 of 2018) [2021] TZCA 507 (21 September 2021), at page 16, the Court of Appeal stated that:

> *On the issue of failure of the appellant to cross examine on relevant facts, this Court in* ***Hatari Masharubu @ Babu Ayubu v. R,*** *Criminal Appeal No. 590 of 2017 (unreported) this Court observed that: "It must be made dear that failure to cross examine a witness on a very crucial matter entitles the court to draw an inference that the opposite party agrees to what is said by that witness in relation to the relevant fact in issue." That is why, we indicated above that the relevant evidence in the prosecution case was not contracted by cross examination.*

Another set of irregularities is on failure to involve the appellant in handing over the seized items and drawing and preparation of a Sketch

Map. This part of the argument seems to lack legal support. There is no law that mandatorily requires that accused person must be present and availed opportunity in handing over the seized items nor during drawing a sketch map of the scene of crime. What is important in respect of active participation of the accused is signing of the Seizure Certificate and being availed opportunity to witness the destruction of exhibit if the same is perishable or need to be destroyed and inventory thereof being prepared.

In **Buluka Leken Ole Ndidai & Another vs Republic** (Criminal Appeal No. 459 of 2020) [2024] TZCA 116 (21 February 2024), at pages 11-12, the Court of Appeal of Tanzania underscore circumstances where accused person must be present and afforded opportunity to object or otherwise. It stated that:

> *...the position had been held and maintained in the case of* ***Emmanuel Saguda @ Suluka*** *(supra) in 2014, where it was observed that at the time of seeking to obtain the order, the suspect or suspects are entitled to see the alleged exhibits and raise an objection if any. Subsequently, in* ***Nyakwama Ondare @ Okware v. R,*** *Criminal Appeal No. 507 of 2019 (unreported), the Inventory, exhibit PE1 was expunged from the record for reasons, among others being that, there was no evidence that the disposal order of the exhibit was procured in the presence of the suspect. Similarly, in Mosi Chacha @*

Iranga v. R, Criminal Appeal No. 508 of 2019 (unreported), faced with the same problem of absence of the suspect at the session at which a disposal order was sought, this Court observed that the mandatory requirement is not only the presence of the suspect but also affording him a right to be heard before the disposal order is to be given.

That is to say, the powers to issue disposal orders of a perishable exhibit under section 101 (1) (a) (i) and (2) of the WCA, must be exercised in observance of the requirements to have the presence of the suspect in respect of whom the exhibit relates under paragraph 25 of PGO No. 229 providing for several aspects of Investigation and Exhibits (Emphasis added).

It is lucid from evidence of PW 3 that prior to destruction of the four legs and one head of Eland, the accused(appellant) was present, and he was afforded the opportunity to object the destruction and preparation of an inventory (Exhibit PE. 4) and the appellant had no objection. Thus, he cannot complain to have not been involved in the process.

The appellant seriously challenged the aspects relating to failure to tender to Court all the evidence obtained at the scene of crime. Also, challenged vehemently on the failure by prosecution to make follow-ups on the rest of the meet already delivered to the village. He also challenged the

valuation of the Eland that only portion of the meat could not have made the trial court arrive at fair conclusion regarding the value of the trophy.

This ground is not difficult to dispose of. The evidence PW 4 is clear that once a person is caught with any part of a government trophy then the value of the whole animal is the one that should be adduced. That is a statutory requirement.

I entirely subscribe that is the correct position of the law. Evidence of PW 4 is correct on that aspect of valuation. Indeed, valuation of the Government trophy is statutorily governed. The Wildlife Conservation (Valuation of Trophies) Regulations, Government Notice No. 207 published on 15/06/2012 is illustrative. It provides for the value of every wildlife and a person who can certify the value of the same.

Regulation 3 is specifically addressing some of the lamentation by the appellant. It provides that:

> *3.-(1) The value of any trophy for the purpose of proceedings for an offence under the Act shall be the value of US Dollars or its equivalent as specified in the second column of the First Schedule to these Regulations.*
> *(2) Except where it is otherwise provided,* ***the value of any part of the animal shall be calculated to be the value of the entire animal unlawfully hunted.***

According to the Item 17 of the First Schedule to the Regulation categorically indicates that eland is worth USD ($) 1700. That is the prevailing value of that type of wildlife as the Regulation stated above are the applicable guidance in terms of value for purposes of enforcement of the Wildlife Conservation Act.

Further, Regulation 4 and Second Schedule to the Regulations are explicitly on the Certificate of Valuation. It empowers the Director of Wildlife or another person of the rank of Wildlife officer. This regulation cements the contents of Section 86 of the Wildlife Conservation Act.

It is clear from Exhibit PE. 5 which is Trophy Valuation Certificate is reflecting that a proper person made the valuation. It is indicated that Designation of the person who made the valuation and tendered the Trophy Valuation Certificate is a Wildlife Officer. Such person is competent in accordance with tenets of the Wildlife Conservation Act and its regulations. Further, oral testimony of PW 4 that she is a Wildlife Officer currently stationed at Manyoni and she was called on 17/08/2022 to identify part of the animal suspected to be wild animal. PW 4 identified the same to be an Eland. All this cements that PW 4 was competent.

The evidence of PW 4 falls within the ambits of the principle enunciated in **Shabani Ally Athuman vs The Republic** (Criminal Appeal No. 151 of 2021) [2024] TZCA 192 (19 March 2024), at pages 19-20:

Sections 86 (4) and 114 (3) of the WCA provide in clear terms that a trophy valuation certificate signed by the Director or wildlife officer from the rank of wildlife officer is prima facie evidence of the matters stated therein. A wildlife officer is defined under section 3 of the WCA as follows: "a wildlife officer, wildlife warden and wildlife ranger engaged for the purposes of enforcing the Act."

In the case of ***Jamali Msombe & Another v. The Republic (supra),*** *the Court considered the import of section 3 of the WCA and held that: "It is our considered view, from the above discussion and the definition of who is game ranger, that a game warden, wildlife officer, wildlife ranger and a game ranger are same persons whose main task is to protect wildlife."*

In the present appeal, the designation of the person who assessed, valued, weighed and issued the trophy valuation certificate was a principal game officer. It is common ground that the main task of any game officer is to protect the wildlife and ensure proper implementation of the WCA. We are, therefore, satisfied that PW6 was a competent person to assess, value, weigh and issue the trophy valuation certificate.

That being the case, all complaints on the failure to prove the case to the required standard seem to be afterthought. They are not backed up by

any tangible evidence to support their merits. I shall proceed to dismiss the first and second grounds of appeal for being destitute of merits.

The contradictory evidence allegation was leveled by the appellant and respondent is of a different view. I have perused and critically evaluated the available evidence on record. The evidence of PW 1 the arresting officer is tallying with that of PW 2 who was also present at the scene of crime. These two witnesses are direct witnesses under the law. The Evidence Act, Cap 6 R.E. 2019 provides that:

> *62.-(1) Oral evidence must, in all cases whatever, be direct; that is to say-(a) if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it.*

It is also on record that PW 3 who is a Magistrate testified to the effect that she witnessed the destruction of the four legs and one head of the Eland and Inventory was signed by both the Wildlife Officer and the appellant. This was after the appellant never objected to the destruction of the same due to rapid decay thus an Inventory (Exhibit PE. 4) was tendered and admitted. PW 3's evidence was never challenged by the appellant.PW 3's evidence corroborates that appellant was found in possession of four legs and one head of the Eland.

Similarly, evidence of PW 4 reiterates the value of the Eland which is a Government Trophy which was found in possession of the appellant. It was PW 4's testimony that the four legs and head belonged to an animal known as Eland. It cements the evidence of PW1 and PW 2 who stated to have arrested the appellant within Mkungunero Game Reserve.

Further, the evidence of PW 5 concludes the chain of events by categorically showing that upon arrest of the appellant, PW 5 received the seized properties from the appellant. These were four legs and one head of Eland, a knife and machete. He narrated the chain of custody until the same were either disposed and inventory prepared and tendered on one hand. Moreover, PW 5 is the one who drew the Sketch Map which was tendered and admitted as Exhibit PE. 6.

In fact, the oral evidence of the prosecution of PW 1, PW 2, PW 3, PW 4 and PW 5 coupled with Exhibit PE 1, PE 2, PE.3, PE 4, PE.5 and PE 6 were not rebutted in any serious way. There are no holes poked in the prosecution evidence. The ground of appeal based on failure to prove the case beyond all reasonable doubt does not have any merits. It is hereby dismissed for being devoid of merits.

There is lamentation that failure to bring the blood, intestine and feaces of the Eland made the trial Court unable to exactly know the value of the Eland and a torch that was left at the scene of crime brings reasonable doubts which should interpreted in favour of the appellant. I am

not convinced that there is any tangible merits on the argument. It is a settled principle on Government trophies that any part of the animal found in possession of the person without licence to so hold or permit, or written authority under the Act that person shall be held accountable for the value of the whole animal.

That being position of the law, I am certain that there was no need to tender the intestine, blood or feaces of the Eland or torch as the tendered exhibits namely the four legs and one head of the Eland, a knife and machete were sufficient to establish all elements of the offence for which the appellant stood charged. I shall proceed to dismiss the ground of appeal based on contradictory evidence for lack of merits.

The last aspect is on sentencing which is contrary to the law. Having demonstrated in the foregoing part of the analysis that conviction of the appellant was proper and in accordance with the law, it is pertinent to examine whether the sentence imposed was appropriate. Section 86(1) and (2) (b) of the Wildlife Conservation Act, Cap 283 R.E. 2022 provides for either fine which is ten times the value of the Government trophy or a custodial sentence of not less than twenty years imprisonment. The offence being part of the Economic Offences, section 60(2) of the Economic and Organised Crime Control Act, Cap 200 R.E. 2022 requires imposition of the custodial sentence or both the custodial sentence and that other penalty unless that other penalty is heavier than that covered under this section.

It is a settled view that the trial Court acted properly within the boundaries of the law to sentence the appellant to serve twenty years imprisonment for unlawfully possession of the Government Trophy C/S 86(1) and (2)(b) of the Wildlife Conservation Act, Cap 283 R.E. 2022.

At this juncture, the fourth ground of appeal on sentence against the law is found unmerited this dismissed for being destitute of merits. I, therefore, dismiss the same.

In conclusion, it is my observation that prosecution managed to prove their case ably and sufficiently against the appellant to the required standard. In the case **Chausiku Nchama Magoiga vs Republic** (Criminal Appeal No. 297 of 2020) [2023] TZCA 17810 (9 November 2023), at page 11, the Court of Appeal stated that:

> *The duty of the prosecution to prove a criminal case beyond reasonable doubt is universal and, in our case, it is statutorily provided for under section 3 (2) (a) of the Evidence Act, Chapter 6 of the Revised Laws. Further, in the case of Woodmington v. DPP [1935] AC 462, it was held inter alia that, it is a duty of the prosecution to prove the case and the standard of proof is beyond reasonable doubt. The term beyond reasonable doubt is not statutorily defined but case laws have defined it. In the case of Magendo Paul & Another v. Republic [1993] T.L.R. 219, the*

Court held that: "For a case to be taken to have been proved beyond reasonable doubt its evidence must be strong against the accused person as to leave a remote possibility in his favour which can easily be dismissed."

The trial Court was proper in entering conviction and sentence of the appellant for all the three offences charged as the evidence against him was so watertight that no loopholes that could bring any reasonable doubts are present in this appeal. The prosecution managed to prove its case to a required standard of beyond all reasonable doubts.

I shall therefore proceed to dismiss the appeal in its entirety for lack of merits.

It is so ordered.

DATED and **DELIVERED** at Dodoma this 8th day of May 2024.

THE HIGH COURT TANZANIA

E.E. LONGOPA
JUDGE
08/05/2024.