IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

CRIMINAL APPEAL NO. 46 OF 2023

(C/F Resident Magistrates' Court of Arusha at Arusha in Economic Case No. 37 of 2021)

YAHAYA MUSA ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

JUDGMENT

& 27th December, 2023

GWAE, J.

Before the Resident Magistrates' Court of Arusha (the trial court), the appellant herein was charged with three counts two of them being Unlawful Possession of Government Trophies and the third being unlawful possession on certain circumstances contrary to section 86(1) and 2(c)(iii) and 103 of the Wildlife Conservation Act No. 5 of 2009 (WCA) as amended by section 59 (a) and (b) of the Written Laws (Miscellaneous Amendment) (No. 2) Act No. 4 of 2016 read together with paragraph 14 of the 1st Schedule to and section 57 (1) and 60 (2) of the Economic and Organized Crimes Control Act, Cap 200 R.E. 2002(EOCCA) as amended by Section 16 (a) and 13(b) of the

Written Laws (Miscellaneous Amendments) Act No. 3 of 2016 (EOCCA) respectively.

According to the prosecution evidence, it was alleged that, on 26th January, 2020 while the game officer in patrol at Kitwai controlled area within Simanjiro District, PW3 arrested two persons who were on the motorcycle fleeing from hunting animals without permit in the said area. During the appellant's arrest, another person who was in a company of the appellant escaped as they remained with the appellant herein who is alleged to have confessed to have been involved in illegal hunting. A search and seizure was conducted and PW3 together with his fellow officers managed to find two Eland meat cut with skin, one shotgun, one machete, one knife, 80 gololi, one white plastic bag with black gun powder and the said motorcycle with registration No. MC. 720 BJY make T-Better in black colour. He was subsequently taken to Arusha Central Police and charged with the above offences.

In his defence, the appellant denied to have been involved with illegal hunting, he claimed that, on the unfortunate day when he was arrested, he was from the farm heading to Gitu Village in Kilindi District. According to

him, on his way he met the Game Warden who asked him to help them giving their motor vehicle a push as the same sustained mechanical defects. While performing such Samaritan help as requested by the Game warden, he was surprised as those game officers started shouting, "he is the one". The then started beating him and arrested him.

At the end of the trial, the trial court, was satisfied that the case against the appellant was proved at the required standard, convicted and sentenced him to 20 years imprisonment for every offence. They imposed sentences were ordered to run concurrently. Aggrieved with the decision, the appellant filed this appeal comprised of nine (9) grounds of appeal, which I will paraphrase without distorting their meanings as follows;

1. That, the appellant was tried, convicted and sentenced without jurisdiction for want of consent and certificate contrary to section 26 (1) and 12 (3) of EOCCA.
2. That, the charge is defective for failure to cite section 113 (2) of WCA which outset the trial court with jurisdiction to try appellant's case as the offence was allegedly committed in Simanjiro District in Manyara Region.
3. That, the trial court erred in convicting the appellant without noting that the offence was allegedly committed on 25/01/2020 but the appellant was arraigned on 12/10/2021 without explanation.

4. That, the trial court erred in convicting the appellant without examining whether the appellant was properly arrested by PW3 who did not have the requisite jurisdiction to arrest the appellant in Simanjiro District within Manyara Region without proper movement order.
5. That, the charge/case against the appellant was not proved beyond reasonable doubt.
6. That, exhibit P1 (Handing Over Form) improperly found its way in evidence as it was not read out in court after being admitted.
7. That, the integrity of the chain of custody of exhibits was not maintained.
8. That, the prosecution evidence led by PW3 to implicate the appellant in the commission of the offence was weak, insufficient and uncorroborated to prove the charge the case against the appellant.
9. That, thee appellant's conviction is unsafe, thus it should not stand.

During hearing of the appeal, which was done by way of filling written submissions, the appellant appeared himself, unrepresented whereas Ms. Ms. Alice Mtenga, learned state attorney represented the respondent, the Republic

Supporting the appeal, the appellant submitted that, he was tried, convicted and sentenced without the trial court having jurisdiction to do as

it did not have the Director of Public Prosecution's (DPP) consent. He argued that, such requirement is mandatory as provided under section 26 (1) and 12 (3) of the EOCCA. He bolstered his argument by the case of **Dilipkumar Manganbai Patel vs. Republic**, Criminal Appeal No. 270 of 2019 (unreported) where a failure of which vitiates the whole proceedings and decision.

On the 2nd and 4th grounds of appeal, he argued that, the charge sheet was fatally defective as the same shows the alleged offence occurred at Simanjiro District in Manyara Region. However, the same did not cite section 113 (2) of the WCA which give the trial court not located at Arusha Region, jurisdiction to determine it. More so, PW3 the arresting officer, testified that his working station is Arusha and Kilimanjaro but he put him under arrest in Simanjiro Manyara, a place where he does not have jurisdiction to do so. He therefore contended that, both his arrest as well as determination of his case were done without requisite jurisdiction.

On the 3rd ground, appellant submitted that, he was arrested on 25th January, 2020 but was arraigned at the trial court on the 12th day of October 2021 which is more than a year later without explanation on what caused

the delay. He argued that, this is violation to section 29 (1) of EOCCA which gives specific time of 48 hours within which an accused person has to be brought to the court of law after his arrest. He referred the Court to the case of **Mashimba Dotto @ Lukubanija vs. Republic,** Criminal Appeal No. 317 of 2013 (unreported), which underscored the importance of taking the accused person to court as soon as practicable otherwise the whole process becomes unfair.

As to the 5th 8th and 9th grounds, the appellant submitted that, the respondent did not discharge her duty to make sure that, the case against the appellant was proved beyond reasonable doubt. He argued that, there is a lot of doubts, which have to be resolved in his favour. He then invited the court to the case of **Zakaria Japhet @ Jumanne & 2 Others vs. The Republic**, Criminal Appeal No. 37 of 2003 (unreported). He mentioned some of the doubts if the learned Trial Resident Magistrate who signed the inventory and disposal order really witnessed the exhibits being destroyed as required by the law.

Similarly, the appellant argued that, no pictures that were taken at the alleged scene of crime contrary to the law as emphasized in the case of

Mohamed Juma Mpakama vs. The Republic, Criminal Appeal No. 385 of 2017. In view of such shortfalls, he argued, the chain of custody was not properly maintained.

On the 6th ground, appellant argued that, exhibit P1, improperly found its way into evidence as the same was not read after being admitted into evidence. He prayed that, the same be expunged from the record; as it prejudiced him right to cross-examine as he did not know the contents of the said exhibit.

On the 7th ground, appellant argued that, the integrity of the chain of custody is wanting as the same was broken as a result the prosecution failed to prove her case at a required standard. He embraced his submission by the case of **Paul Maduka and 4 Others vs. Republic,** Criminal Appeal No. 110 of 2007. He prayed that, this appeal be allowed, conviction and sentence be quashed and set aside so that he can be at liberty.

After such submission, the respondent supported the appeal on the 3rd ground only regarding the time it took from when the appellant was arrested on 27th January 2020 to when he was arraigned before the trial court on 12th October, 2021. Learned state attorney submitted that, without proof as to

whether the appellant was out on bail as well as to what transpired for more than one year and a half is not practicable as provided in section 29 (1) of EOCCA which require a maximum of 48 days from arrest to being arraigned to court. To cement this argument, she referred the Court to the case of **Laurent Rajabu vs. Republic**, Criminal Appeal No. 270 of 2012 (unreported-CAT) at Tabora, which discouraged such unnecessary delay in charging an accused person as the same creates doubt on the credence of prosecution case. She prayed that the appeal be allowed and the conviction and sentence against the appellant be quashed.

Having gone through the subordinate courts' records as well as appellant's grounds of appeal as well as both parties' submission, I as well support the appeal basing on the 3rd ground as conceded by the respondent. Section 29(1) of EOCCA provides that;

> *"after a person is arrested, or* ***upon the completion of investigations and the arrest of any person or persons in respect of the commission of an economic offence****, the person arrested shall as soon as practicable, and in any case within not more than forty-eight hours after his arrest, be taken before the District Court and the resident magistrate within whose local limits the arrest was made, together with the charge upon which it*

is proposed to prosecute him, for him to be dealt with according to law subject to this Act" (Emphasis added).

In the case of Mohamed **Idd Mchafu vs. The Republic**, Criminal Appeal No, 328 of 2019, the Court of Appeal interpreted this section to mean;

"From its wording, the section puts it as legal requirement in very clear and imperative terms that an accused person must be produced in court within forty- eight hours of either his arrest or upon completion of investigation. Forty-eight hours are therefore gauged from the beginning of either of those occurrences. It is therefore a matter to be determined based on the evidence availed to the court as to either the time when the arrest was effected or when the investigation was completed..."

Court of Appeal also referred to its earlier decision in the case of **Laurent Rajabu vs. Republic,** (supra) where there appellant was delayed three months, it held that;

"Such a delay in charging the appellant not within reasonable time is a serious and fatal omission on the part of the prosecution's case leading to watering-down the credence of their case. For that reason, we agree with Mr. Hashim Ngole that such a delay in charging the accused (appellant) creates doubt on the credence of prosecution's case."

I fully subscribe to wisdom from the Apex Court of the land that, it took the prosecution 21 months from when the appellant was arrested to when he was arraigned before the trial court. Considering the fact that, there are no explanation to what transpired in between and the fact that it is not known whether the appellant was out on bail or under policy custody, I do not find that, he had a fair hearing. It would be sound and prudent if the appellant was charged within reasonable time as prescribed by the applicable law otherwise reason for such long delay would have been given by the prosecution side, the appellant ought to have benefited the doubts as I hereby give him such benefit.

Worse still, immediately after the appellant was arrested on the 26th day of January 2020 and on the following day the seized properties were handled over to exhibit keeper for storage. Also on that day valuation and inventory was filled and signed by a magistrate in court (See testimony of PW3). This implies that, the investigation was almost done and concluded only on the second day after his arrest, thus, there was no justification for the delay of 21.

In the light of the above, I will not discuss other grounds of appeal as doing so I shall be unreasonably detained since the 3rd ground of appeal is

found to have merit and suffices to dispose of the appeal at hand in its entirety.

In the upshot, this appeal is allowed. The trial court's decision and its sentence are thus quashed and set aside. Consequently, I order immediate release of the appellant from the prison forthwith unless held therein for another lawful cause.

It is so ordered.

Dated and delivered at **Arusha** this 28th day of December, 2023.

M. R. GWAE
JUDGE