

**IN THE HIGH COURT OF TANZANIA
MUSOMA DISTRICT REGISTRY
AT MUSOMA**

CRIMINAL APPEAL NO 110 OF 2020

CHACHA s/o MNANGA @ CHACHA_____ APPELLANT

VERSUS

THE REPUBLIC _____ RESPONDENT

(Arising from the decision and orders of the district court of Serengeti at Mugumu Hon. Mzalifu RM in economic case no 120 of 2018 dated 01.06.2020)

JUDGEMENT

15th December 2020 & 15th January 2021

GALEBA, J.

Before the district court of Serengeti, the appellant was charged on three (3) counts of unlawful entry into a national park and unlawful possession of one (1) knife and one (1) spear in the national park without any permission from the Director of Wildlife. The 3rd count was unlawful possession of two (2) fresh hind limbs of a Zebra, which are government trophies.

According to the prosecution, the offences were committed on 05.11.2018 at Mara River in the Serengeti national park within Serengeti district in Mara region, thereby violating various laws established to conserve wildlife and regulate entry into national parks.

The accused person denied the charge but after the full trial the district court convicted him on all three (3) counts and sentenced him to six (6) months and one (1) year imprisonment in respect of the 1st and 2nd counts respectively and twenty (20) years imprisonment for the 3rd count.

The appellant was aggrieved by the orders of the trial court hence this appeal in which he raised four (4) grounds of appeal. The appellant's complaints in his grounds of appeal, are ***first*** that he was not given an opportunity to call his independent witnesses to defend himself and ***secondly*** that the trial magistrate erred because the trial court tried the case without a certificate from the Director of Public Prosecutions (the DDP) which certificate would vest the court with jurisdiction. ***Thirdly*** that he was convicted based on wrong **EXHIBITS** tendered by **PW1, PW2** and **PW3** who testified during his trial and ***lastly***, that the appellant was unlawfully convicted because the court did not weigh his evidence against that of the prosecution because he testified that he had been invited by one **Mr. Juma Mwita** to the wedding on the day of his arrest.

When this appeal came up for hearing on 15.12.2020, the latter adopted his grounds as his submissions to support the appeal so this

court required Mr. Isihaka Ibrahim, the learned state attorney for the respondent to respond to the grounds.

In respect of the 1st ground of appeal Mr. Ibrahim submitted that the appellant was given an ample opportunity to call witnesses as reflected at page 41 of the typed proceedings. He submitted further that it was the appellant who did not want to call witnesses and closed his defense as recorded at page 43 of the same proceedings. This court has gone through the court record and it is indeed true that on 25.03.2020, after the appellant was found with a case to answer, he is recorded as stating;

'I will defend under oath. I will call three witnesses to defend my case'.

Then on that same page, the appellant told the court that his witnesses would be **Juma Mwita, Christian Chacha** and **Nchangwa Ryoba**. However at page 43 the appellant informed the court;

'I pray to close my case because my witnesses are nowhere to be seen'.

In such circumstances, can this court really hold that the appellant was denied a chance to call his witnesses? This court cannot do that. It was the appellant who opted not to call witnesses of his choice, which means his complaint in the 1st ground of appeal has no substance.

In respect of the 2nd ground of appeal, Mr. Ibrahim submitted that, the certificate to vest jurisdiction in the trial court was presented to court on 07.10.2019 and that the fact is reflected at page 17 of the typed proceedings of the trial court. This ground is more or less a matter of fact. It is either there was a certificate issued by the DPP or the State Attorney in charge for Mara region, or it was not there. In this case, this court has reviewed the proceedings and it is true that indeed, the certificate to cloth jurisdiction with the district court to try the charged economic offence was filed in court on 07.10.2019 and the original of the document is also available on the record of the trial court. This ground therefore does not have merit.

In respect of the 3rd ground, because of the confusing character of that ground, this court sought clarification from the appellant as to what he meant when he complained that the exhibits tendered were '*wrong*'. His response was that by wrong exhibits he meant that the trophies referred to in the charge sheet were not physically tendered in court.

In response to that ground Mr. Ibrahim submitted that the certificate of seizure and the weapons, **EXHIBITS PE1** and **PE2** respectively were tendered without objection from the appellant and

that the inventory **EXHIBIT PE4** stood in the place of the physical trophies.

This ground is misconceived because the weapons which were the knife and the spear with which the appellant was arrested and subsequently charged with were duly tendered as **EXHIBIT PE2** at page 28 of the proceedings. As submitted by Mr. Ibrahim an inventory which in this case was tendered as **EXHIBIT PE4** stood in the place of the destroyed trophies because of the perishability of animal flesh. That is lawful where the order to destroy the trophies is procured from a magistrate as required by paragraph **25 of Police General Order 229** which provides that;

'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.'

That is the position also where the perishable exhibit is destroyed by the order of the court under **section 101 of the Wildlife Conservation Act no 5 of 2009**. Section **101(2)** provides as follows;

'101-(2) The order of disposal under this section shall be sufficient proof of the matter in dispute before any court during trial.'

That is to say, the complaint of the appellant in the 3rd ground of appeal has no merit and the same is dismissed.

As for the 4th ground, Mr. Ibrahim was in agreement with the appellant that, the trial court did not consider the defence of the appellant but he was quick to point out that, this court being the immediate appellate court after the trial court, it has mandate to analyze the defence evidence and come up with its own conclusion. That is actually the position of the law although that law should not be taken as a loophole or leeway by trial courts to not analyze defenses so that they be analyzed on appeal.

First this court is in agreement with both parties that although the trial court recorded the full substance of the appellant's defence at the bottom of page 5 of the typed judgment and briefly at the middle of page 8, but the court did not analyze the defence evidence. By failure to analyze, I mean failure to state the reasons why the appellant's defense was not plausible enough to be believed or why was it not strong enough to create doubt in the prosecution evidence. This is what I will endeavor to examine and make a decision on whether the defense was strong enough to shake the prosecution case or it was not.

The evidence of the appellant was brief a testimony. Its substance is that on 05.11.2018, he went to the farm with his wife **Nchangwa Ryoba** and then **Juma Mwita** came and invited him to

attend a wedding. After the invitation, he went to Mara River to bath, hopefully in preparation to go to the wedding at **Juma Mwita's** house. It appears there were cattle in the vicinity grazing, park rangers came and asked him who was the owner of the cattle then he replied that they were not his. What followed was that he was immediately apprehended put into the vehicle and transported up to Mugumu Police station and a case was initiated against him. That was the only appellant's defence evidence during the trial.

There are two glaring issues with the above defense. ***First***, in the defense, the appellant does not clearly deny or admit any of the offences charged, ***secondly***, the appellant seems to be relying on the offence of ***alibi***, but the rules of relying on that defense are statutory and they need to be observed. With ***alibi***, there are still two more problems, one is the one just mentioned above the requirement of notice and the second is that in the circumstances of this case, it was incumbent upon the appellant to call witnesses especially his wife **Nchangwa Ryoba** who was with him at the farm and **Juma Mwita** who invited him to the wedding for them to prove reliability of the appellant's defence of ***alibi***. As to proving the ***alibi*** by the one who rises it, see **Sijali Juma Kocho v Republic [1994] TLR 206**.

It is the holding of this court that innocence of the accused is not conclusively confirmed by the accused person denying the charge at plea taking. The function of denying a charge is to inform the court that the prosecution has a duty to call witnesses to prove the charge and if a criminal suspect is found with a case to answer he must, in his defense, demonstrate that the prosecution evidence is either wrong or it is reasonably doubtful.

In this case, admitting all exhibits without objection coupled with the fact that, the appellant does not say anything on the site of Mara River where he went to bath, failure to say anything on the spears and the trophies, all amounts to evasiveness and lack of a credible defense. I will now move to the *alibi*.

Under **section 194(4) of the Criminal Procedure Act, [Cap 20 RE 2019]** (the CPA) where a person intends to rely on an *alibi* that person has to serve a notice on the other party before the hearing. In this case, the notice was not served. Where a notice is not served, then the party intending to rely on the *alibi* is supposed to serve the particulars of the *alibi* to the other party in terms of **section 194(5)** of the CPA. In the trial court there is no evidence that the particulars of the *alibi* were served on the other party. Where both the notice and the particulars of the alibi are not given, the court is entitled to accord no

weight to the *alibi* raised under **section 194(6)** of the CPA. Because in this case there was neither the notice nor the particulars supplied this court accords no weight to the *alibi* raised. That said, this court finds that the defense of the appellant, did not have any evidential weight to tilt the position of the prosecution case or create any doubt in the prosecution case, thereby rendering the defense worthless.

Lastly, it now clear that all the 4 grounds of appeal have failed for want of merit, in view of which this court makes the following orders;

1. The judgment of the district court of Serengeti and the imposed sentences in economic case no 120 of 2018 is hereby confirmed.
2. This appeal is dismissed and the appellant has a right of appealing against this judgment to the Court of Appeal of Tanzania.

DATED at MUSOMA this 15th January 2021



Z. N. Galeba
JUDGE
15.01.2021