

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

CRIMINAL APPEAL NO 155 OF 2020

KUNCHA s/o MBWITA @ KIMASE _____ **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 148 of 2018 dated 24.08.2020)

JUDGEMENT

26th January & 5th February 2021

GALEBA, J.

In this appeal, the appellant was charged on a single count of being found in unlawful possession of eight (8) pieces of fresh zebra meat, which are government trophies. According to the prosecution the offence was committed on 15.12.2018 at Bwitegi village within Serengeti district in Mara region. The accused denied the charge but upon trial he was convicted and was sentenced to twenty (20) years imprisonment.

As the appellant was aggrieved by both conviction and sentence he filed the present appeal raising four (4) grounds of appeal complaining; **first** that he was wrongly tried by a subordinate court because there was not tendered a certificate of seizure from the Director of Public Prosecution (the DPP) and **secondly** that when the trophies were being destroyed he was not present and he did not sign the

inventory. The *third* ground was that the conviction and sentence were unlawful because the appellant was not afforded an opportunity to call his key witnesses especially the Burunga village sub chairman and *lastly*, that the appellant was unlawfully convicted because the trial court based its decision on wrong **EXHIBITS** tendered by the prosecution.

When this appeal came up for hearing on 26.01.2021, Mr. Frank Nchanila, the learned state attorney was appearing for the respondent while the appellant was appearing over video link unrepresented. The latter adopted his grounds as submissions to support the appeal and this court required Mr. Nchanila to react to the grounds.

In respect of the 1st ground of appeal, Mr. Nchanila submitted that first the DPP does not issue any certificate of seizure because he does not participate in investigation. He added that the certificate of seizure was tendered as **EXHIBIT PE1**. Having considered the complaint of the appellant and the submissions of Mr. Nchanila, this court is in agreement with the respondent's position. I have reviewed the record of the trial court and it is evident that on 30.04.2020 a certificate of seizure was tendered by **PW1 PF17648 Inspector Abdallah Mbwana Iddy** and the exhibit was tendered as **EXHIBIT**

PE1. That exhibit was tendered without objection from the appellant. In the circumstances, this court holds that, the appellant's complaint that the certificate of seizure was not tendered has no merit and the 1st ground of appeal is hereby dismissed.

As for the 2nd ground of appeal, Mr. Nchanila referred this court to page 45 of the typed proceedings where **PW4 Warsha**, a police officer testified that when he was preparing the inventory the appellant was present. *First*, the requirement of law is for the appellant to be present when the order to destroy the trophies is being made, but not when the trophies are actually being destroyed. So it was unnecessary for the appellant to be present when the trophies were being destroyed as per his complaint. However, I have perused the record of the trial court and I have noted that on 18.12.2018, the inventory of claimed property was prepared but it does not show that the appellant was present at that time because, he indeed did not sign it. That document cannot be permitted to remain on record. I therefore expunge **EXHIBIT PE3** from the record.

The question is, having expunged it, whether the evidence of possession of the trophies loses credibility. My answer to that is; not in this case. In this case for instance, although I have expunged the **EXHIBIT** because, it does not show that the appellant signed it, but

there are several other pieces of evidence which show that the appellant was arrested with the trophy. *First*, at page 31 of the proceedings **PW1 PF17648 Inspector Abdallah Mbwana Iddy** testified that together with fellow police men they arrested the appellant with government trophies subject of the charge and he prepared a seizure certificate showing that the appellant was found in possession of eight (8) fresh pieces of zebra meat. The seizure certificate was tendered as **EXHIBIT PE1**, and the same was admitted without objection. He goes on to testify that they took the appellant together with the trophies to Mugumu police station and they opened police file no MUG/IR/4300/2018. **PW2 F3785 D/C Proches** repeats the same story as the **PW1**. *Secondly*, **PW3 Wilbrod Vicent**, was called by **DC Washa** and when he went to Mugumu police station he was accessed with police file no MUG/IR/4300/2018 in respect of which he identified eight (8) pieces of fresh zebra meat. Then he prepared the trophy valuation certificate as **EXHIBIT PE2** with the same information which he tendered without any objection from the appellant. It is the holding of this court that, even in the absence of the inventory of claimed property, the evidence available still established the charge. For the above reasons the 2nd ground of appeal has no merit.

In response to the 3rd ground, Mr. Nchanila submitted that it was the appellant himself on 18.08.2020 who addressed the court that he will not call any witnesses and that on 21.08.2020 he told the court that he would wish to close his case because he did not have any witnesses. I have reviewed the complaint of the appellant and the submissions on behalf of the respondent and this court is inclined to agree with Mr. Nchanila, because that is precisely what happened. On 18.08.2020 he told the court that he would defend the case on oath and would call no witnesses and when he had testified three days later on 21.08.2020, he informed the court that he wished to close his case because he had no witnesses. It is the position of this court that in such circumstances the trial court cannot be blamed. The court did all that was within its powers but it was the appellant who did not have witnesses to call. In the circumstances, the complaint in the 3rd ground of appeal has no merit.

As for ground 4, I asked the appellant as to what he meant when he complained that the exhibits tendered were "**wrong**". He told the court that what he meant was that the trophies that he was alleged to be arrested with were not tendered. After that clarification Mr. Nchanila submitted that, if that is the case, he prayed to adopt his submissions in response to the 1st ground of appeal. I have considered the complaint of

the appellant and would wish to state clearly that the point is not the physical pieces of meat in court; the point is production of evidence that the appellant was in possession of them. In this judgment especially while discussing the 2nd ground of appeal, this court explained that the evidence of **PW1 PF17648 Inspector Abdallah Mbwana Iddy, PW2 F3785 D/C Proches,** and **PW3 Wilbrod Vicent** together with the seizure certificate, **EXHIBIT PE1** and the trophy valuation certificate, **EXHIBIT PE2** the prosecution successfully managed to prove the case beyond reasonable doubt against the appellant. In the circumstances, I disagree with the appellant in complaining that the case was decided based on wrong exhibits. Based on the above understanding the 4th ground of appeal lacks merit and the same is dismissed.

Since all the 5 grounds raised have been dismissed for want of merit, this court makes the following orders;

1. The findings and the judgment of the district court of Serengeti in economic case no 148 of 2018 is hereby confirmed and the sentence of twenty (20) years imprisonment imposed upon **Mr. Kuncha s/o Mbwita @ Kimase** shall be served by him as passed by that court.

2. This appeal is dismissed and the appellant has a right of appeal to the Court of Appeal of Tanzania.

DATED at MUSOMA this 5th February 2021




Z. N. Galeba
JUDGE
05.02.2021