

**IN THE HIGH COURT OF TANZANIA  
MUSOMA DISTRICT REGISTRY  
AT MUSOMA  
CRIMINAL APPEAL NO 156 OF 2020**

**MWAMBARA s/o MAKONGORO @ JOSEPHATI\_\_\_\_\_ APPELLANT**

**VERSUS**

**THE REPUBLIC \_\_\_\_\_ RESPONDENT**

*(Arising from the decision and orders of the district court of Serengeti at Mugumu Hon. Semkiwa RM  
in economic case no 84 of 2019 dated 17.08.2020)*

**JUDGEMENT**

*26<sup>th</sup> January & 5<sup>th</sup> February 2021*

**GALEBA, J.**

In this appeal, the appellant was charged on five (5) counts of unlawful entry into the national park and unlawful possession of one (1) machete, one (1) knife and two (2) animal trapping wires in the national park without any permission from the Director of Wildlife. In respect of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> counts he was alleged to have been found in unlawful possession of two (2) dried pieces of wildebeest meat, one (1) tail of zebra and one (1) skin of Thomson Gazelle respectively, all being government trophies. According to the prosecution, the offences were committed on 15.08.2019 at Grumeti River in the Serengeti national park within Serengeti district in Mara region, thereby violating wildlife conservation laws.

The accused denied the charge but following his trial the district court convicted him on all counts and sentenced him to 1 (one) year imprisonment in respect of each of the 1<sup>st</sup> and 2<sup>nd</sup> counts and twenty (20) years imprisonment in respect of each of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> counts.

He was aggrieved by the orders of the district court hence the present appeal in which he raised five (5) grounds of appeal complaining; **first** that he was wrongly tried by a subordinate court without a certificate from the Director of Public Prosecution vesting jurisdiction unto it, so it tried him without jurisdiction and **secondly** that when the trophies were being destroyed he was not there. The **third** ground was that the conviction and sentence were unlawful because the appellant was not afforded an opportunity to call his young brother because at the time he was being arrested he was with him. **Fourthly**, that the trial court erred in convicting the appellant while there were no exhibits which were tendered and **lastly**, that the appellant was unlawfully convicted because he did not sign the inventory.

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 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 1<sup>st</sup> ground of appeal, Mr. Nchanila submitted that before the district court of Serengeti was to try the case, the prosecution procured a certificate and filed it in court. This court has gone through the court record and noted that it is true that indeed on 22.11.2019, the prosecution submitted the certificate to court. It therefore means that the 1<sup>st</sup> ground of appeal has no merit.

As for the 2<sup>nd</sup> and 5<sup>th</sup> grounds of appeal Mr. Nchanila referred this court to pages 32 and 33 of the typed proceedings where **PW4 D/CPL Pius** testified he prepared the inventory which the appellant also signed at the 6<sup>th</sup> column. 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 in terms of his complaint. However, I have perused the record of the trial court and I have noted that on 15.08.2019, the inventory of claimed property was prepared and the appellant is shown as having signed it at the 6<sup>th</sup> column and affixed his thumb print. When that inventory was tendered the same was not objected and the court admitted it as **EXHIBIT PE4**. During cross examination there is no

question that would show that there was any grievance with the inventory. In the circumstances, the 2<sup>nd</sup> and 5<sup>th</sup> grounds of appeal are hereby dismissed.

In response to the 3<sup>rd</sup> ground, Mr. Nchanila submitted that although during the hearing the appellant stated that he would call witnesses but at the end he did not call them. I have reviewed the record and it is clear that on 05.08.2020, when the appellant was found with a case to answer, he stated that he would testify on oath and that he would call **Jackson Mabula** and **Julius John Magesa** as his witnesses. On 10.08.2020, the appellant prayed to close his defence without calling the above witnesses. This court is not in agreement with the appellant that it was the court which prevented him to call such witnesses.

In reply to the 4<sup>th</sup> ground of appeal, Mr. Nchanila submitted that it is not true that the prosecution did not tender any **EXHIBIT**. Indeed it is not true. The prosecution in the trial court tendered **EXHIBIT PE1**, the certificate of seizure, **EXHIBIT PE2**, the weapons, **EXHIBIT PE3** the trophy valuation certificate and **EXHIBIT PE4** the inventory of claimed property. That is to say, the complaint of the appellant in the 4<sup>th</sup> ground of appeal has no basis and the same is dismissed.

Since all the grounds of appeal 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 84 of 2019 is hereby confirmed and the sentences passed including that of twenty (20) years imprisonment imposed upon **Mr. Mwambara S/O Makongoro @ Josephati** 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 5<sup>th</sup> February 2021.



Z. N. Galeba  
**JUDGE**  
**05.02.2021**