THE UNITED REPUBLIC OF TANZANIA

(JUDICIARY)

THE HIGH COURT

(MUSOMA SUB REGISTRY)

AT MUSOMA

CRIMINAL APPEAL No. 92 OF 2022

(Arising the District Court of Serengeti at Mugumu in Economic Case No. 12 of 2022)

METETI MWITA @ MNIKO ..... **APPELLANT**

Versus

THE REPUBLIC ..... **RESPONDENT**

JUDGMENT

09.08.2023 & 11.08.2023

Mtulya, J.:

The appellant, **Mr. Meteti Mwita @ Mniko** was prosecuted and convicted in three (3) offences by the **District Court of Serengeti at Mugumu** (the district court) in **Economic Case No. 12 of 2022** (the case). After the conviction, the appellant was finally sentenced to serve concurrently twenty (20) years imprisonment. The offences to which the appellant was prosecuted and convicted with are, namely:

First, unlawful entry into the National Park contrary to section 21 (1) (a), (2) & 29 (1) of the **National Park Act [Cap. 282 R.E. 2002]**, as amended by the **Written Laws (Misc. Amendment) Act, No. 11 of 2003** (the National Park Act);

Second, unlawful possession of weapons in the National Park contrary to section 24 (1) (b) & (2) of the National Park Act; and finally, unlawful possession of Government trophies contrary to

section 86 (1) & (2) (b) of the **Wildlife Conservation Act, No. 5 of 2009** as amended by the **Written Laws (Misc. Amendment) Act, No. 2 of 2016** (the Wildlife Act) read together with sections 57 (1), 60 (2) & paragraph 14 of the First Schedule to the **Economic and Organised Crime Act [Cap. 200 R.E. 2019]** (the Economic Crime Act).

The findings and sentence of the district court in the case had aggrieved the appellant hence approached this court and registered four (4) reasons of appeal to protest the findings of the district court. The reasons in brief, show that: first, the evidence of PW1 and PW2 contradicted the charge sheet; second, it is not certain whether one *panga* and *one bush knife* is one and the same thing; third, the appellant did not participate in delivering an order to dispose of the Government trophy; and finally, the appellant was not given an opportunity to call witnesses.

The appellant was called through teleconference on 7th August 2023 to explain the reasons of appeal, and being a lay person, he had a very brief submission. He submitted that the case was fabricated against him and produced the following reasons: first, he was convicted of unlawful possession of Government trophy, but PW1 and PW2 did not produce the skin of the said trophy in the district court; second, there is distinction between *one panga* which

was testified by PW1 and PW2 and *one bush knife* as displayed in the charge sheet; and finally, the district court did not afford the appellant an opportunity to call his relatives or witnesses to assist him in his defence.

The reasons registered by the appellant were protested by the Republic, which had invited the legal services of three (3) learned State Attorneys, **Mr. Felix Mshama**, **Ms. Magreth Fyumagwa**, and **Mr. Jonas Kivuyo**. According to Ms. Fyumagwa, the charge sheet and facts produced by PW1 and PW2 at the district court are similar and correspond with the provisions of sections 132 and 135 of the **Criminal Procedure Act [Cap. 20 R.E. 2022]** (the Act). In her opinion, there is no distinctions between zebra skin and government trophy in one hand, and *one panga* and *one bush knife* on the other. It is only the question of appellant's level of grasping of wildlife issues.

According to Ms. Fyumagwa, the third reason of appeal does not have any merit as the appellant was present and heard by a magistrate during the order on destruction of the trophy. In order to substantiate her argument, Ms. Fyumagwa cited page 24 of the proceedings of the district court which displays the appellant was consulted and did not protest admission of the inventory form as an exhibit P.4. Ms. Fyumagwa submitted further that the learned

magistrate had noted the same during judgment delivery as depicted at page 5 of the judgment.

Regarding the last ground of appeal on the right of appellant to call witnesses, Ms. Fyumagwa submitted that page 27 and 28 of the proceedings display it all. According to Ms. Fyumagwa, the case was scheduled for defence hearing on 13th July 2022, but the appellant had declined to call witnesses and the case was marked closed. In a brief rejoinder, the appellant had produced general statement that the case was fabricated against him and leaves it all to this court to scrutinize the inventory form and other materials in the case.

The record in the present appeal shows that the appellant was found by the district court to have a case to reply on 6th July 2022, as reflected at page 25 of the proceedings. The appellant was addressed in terms of section 231 (1) of the Act. In his reply, he submitted that he had no witnesses to call or any exhibits to tender. However, after his defence on 11th July 2022, he prayed to be given opportunity to call witnesses in support of his defence as he was arrested at the village not within the national park, as it is displayed at page 27 of the proceedings. The prayer was not replied, but the case was scheduled for defence hearing on 13th July 2022 and the appellant was recorded to have said he had no witnesses to call and prayed his case to be closed. Following his prayer, the case was

marked closed by the district court. From the record, it is obvious that the appellant was granted leave to enjoy the right to be heard through calling witnesses in his defence. This ground of appeal therefore, it has no any merit whatsoever.

The appellant has also complained on participation before a magistrate who had issued a disposal order. The requirement is necessary and has received precedent in **Mohamed Juma @ Mpakama v. Republic**, Criminal Appeal No. 385 of 2017. The Court of Appeal in the precedent had resolved that: *paragraph 25 of the **(Investigation-Exhibits)** of the **Police General Orders** (PGO) emphasizes the mandatory right of an accused person to be present before the magistrate and be heard.*

In the present appeal, the record shows that the appellant was taken before Hon. Resident Magistrate (the magistrate) of **Serengeti Primary Court at Mugumu** (the primary court) and enjoyed the right to be heard before the magistrate had issued the disposal order (exhibit P.4). During hearing of the case at the district court on 6th July 2022, as reflected at page 23 of the proceedings of the district court, PW4 prayed to tender Inventory Form to justify the procedure and directives of the Court of Appeal on issuing disposal order was complied, the appellant did not register any protest. From

the record, it is certain that the appellant had enjoyed the right to be heard before the magistrate issued the disposal order.

Regarding the first and second reasons of appeal, this court cannot be detained. The particulars of offence in the charge sheet for the second and third counts on unlawful possession of weapons in National Park and unlawful possession of Government trophies displayed *one bush knife* and *fresh hindlimb of zebra with skin*, respectively. However, at page 14 and 17 of the proceedings of the district court conducted on 6th June 2022 shows that PW1 and PW2 to have testified on *one panga* type of weapon. This is a complaint of the appellant. In my opinion, *one bush knife* is similar and the same thing as *one panga*. In short, there is no any discrepancies of the weapons which were cited at the district court in the case during hearing of PW1 and PW2 and those indicated in the charge sheet.

Similarly, in the present case, as I indicated in this judgment, the appellant was taken before the magistrate of primary court and enjoyed the right to be heard before the magistrate issued the disposal order. The proceedings of the same are displayed in exhibit P.4, which the appellant did not protest its admission at the district court in the case. In brief, the evidence in P.4 is a substitute of the listed Government trophies displayed in third count of the charge sheet.

However, in the present case, the materials produced by PW1 and PW2 do not prove that the appellant was found within the statutory boundaries of the National Park. The evidence of PW1 as depicted at page 13 of the proceedings of the district court conducted on 6th June 2022, shows that the witness had arrested the appellant at *Korongo la Binamu area within Serengeti National Park*. PW2 also had testified on the same statement as is reflected at page 16 of the proceedings of the district court conducted on the same day.

When the parties in the present case were invited in this court to cherish the right to be heard on the subject, the appellant stated that the record is silent on geographical location where he was arrested, whereas Mr. Mshama submitted that although there is decline in citing geographical location where the appellant was arrested, the decline does not remove the fact that the appellant was arrested with Government trophies. In his opinion, the offence of unlawful possession of Government trophies does not depend on location where the accused persons are arrested.

In the present case, the record shows that the appellant testified that he was arrested at his residence in the village and game officials had planted zebra meat against him. This is displayed at page 26 and 27 of the proceedings conducted at the district court

on 11th July 2022. In that situation, the Republic was required to prove that the appellant was arrested within the National Park. That is the position of this court and Court of Appeal since 2021 (see: **Maduhu Nhandi @ Limbu v. Republic**, Criminal Appeal No. 419 of 2017 and **Marwa Chacha @ Mwita v. Republic**, Criminal Appeal No. 93 of 2022).

The practice is still maintained to date at the apex court of this State. On 28th June 2023, the Court of Appeal in the precedent of **Masunga Limbu @ Ghabu v. The Republic,** Criminal Appeal No. 304 of 2019 supported the move and at page 13 of the judgment, after citing the decision in **Maduhu Nhandi @ Limbu v. Republic** (supra). had resolved that: *the prosecution must prove that the appellants were found within the statutory boundaries of the National Park.* This court is bound by the decisions of the Court of Appeal hence it has to follow the course preferred by the Court without any hesitation.

I am aware that Mr. Mshama has raised a very interesting point on the subject. In his opinion, the offence of unlawful possession of Government trophies does not depend on geographical location, where the offence was committed. He may be correct. However, I am wondering in a situation where a commission of an offence has occurred, but the charge sheet is silent on specific location where

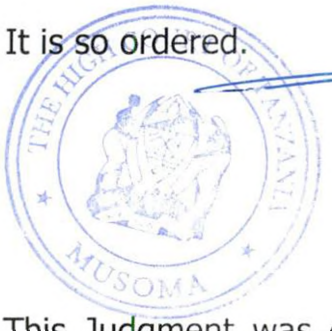
the crime was committed. In my considered opinion, the charge sheet should specifically state the location for better preparation of defence case. The idea is to avoid surprises to the parties during hearing of criminal cases. If this court buys the idea of Mr. Mshama, it will be part of goal posts shifters, hence it will create doubts to the justice stakeholders on the constitutional mandate of this court.

This court is also bound by its previous decisions on the same subject matter. On 7th September 2022, this court had resolved similar submission raised by learned State Attorney, **Ms. Agma Haule**, in the precedent of **Michael Molenda & Another v. Republic**, Criminal Appeal No. 107 of 2021. In the indicated precedent, this court had resolved that: *when the location is mentioned in the charge sheet, the Republic has to move and prove its case. It cannot shift its responsibility by inviting other interpolations at the appellate level.*

I am increasingly of the view that because the appellant's defence shows that he was arrested at his residence within the village, and PW1 and PW2 declined to mention the geographical location of the National Park, this brings doubt to the case. The available practice shows that doubt must operate in favor of the appellants (see: **Masunga Limbu @ Ghabu v. The Republic** (supra).

In the end, this appeal is allowed. I think the appeal was brought in this court with good reasons to dispute the judgment of the district court in the case. The appellant's conviction is hereby quashed and sentences imposed on him are set aside. I order immediate release of the appellant from prison custody forthwith, unless he is lawfully held.

It is so ordered.



F. H. Mtulya
Judge
11.08.2023

This Judgment was delivered in Chambers under the Seal of this court in the presence of the appellant, **Mr. Meteti Mwita @ Mniko** and in the presence of dual learned State Attorneys, **Mr. Felix Mshama** and **Mr. Jonas Kivuyo**, for the Republic.

F. H. Mtulya
Judge
11.08.2023