

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF MUSOMA**

**AT MUSOMA**

**CRIMINAL APPEAL NO. 9 OF 2022**

*(Arising from the decision of the District Court of Serengeti at  
Mugumu in Economic Case No. 144 of 2019)*

**MNANKA SARI MATIKO @ BISARE ..... 1<sup>ST</sup> APPELLANT**

**SARYA SARYA @ MATIKO ..... 2<sup>ND</sup> APPELLANT**

**VERSUS**

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

**JUDGMENT**

**A. A. MBAGWA, J.:**

This is an appeal against both conviction and sentence meted against the appellants by the District Court of Serengeti. The appellants were charged and convicted of three offences namely, **One**, Unlawful entry into the Game Reserve contrary to Section 15 (1) and (2) of the Wildlife Conservation Act No. 5 of 2009, **Two**, Unlawful Possession of Weapons in the Game Reserve contrary to Section 17 (1) and (2) of the Wildlife Conservation Act. No. 5 of 2009 read together with paragraph 14 of the first schedule to, and Section 51 (1) and 60 (2) of the Economic and Organized Crime Control Act [Cap. 200 R.E 2002] as amended by Written Laws (Miscellaneous Amendments) Act No. 3 of 2016 and **Three**, Unlawful possession of the Government trophies contrary to section 86

(1) and (2) (c) (iii) of the Wildlife Conservation Act No. 5 of 2009 read together with paragraph 14 of the first schedule to, and Section 51 (1) and 60 (2) of the Economic and Organized Crime Control Act [Cap. 200 R.E 2002] as amended by Written Laws (Miscellaneous Amendments) Act No. 3 of 2016. Consequently, they were sentenced to imprisonment for two (2) years in respect of the 1<sup>st</sup> and 2<sup>nd</sup> counts and twenty (20) years in respect of the 3<sup>rd</sup> count.

The particulars of offence in respect of all three counts were as follows;

In **1<sup>st</sup> Count**, it was alleged that on 31<sup>st</sup> day of October, 2019 at Risiliba area into Ikorongo Grumeti Game Reserve within Serengeti District in Mara Region, the appellants entered into the said Game Reserve without permission of the Director thereof previously sought and obtained; In respect of the **2<sup>nd</sup> Count**, it was alleged that on 31<sup>st</sup> day of October, 2019 at Risiliba area into Ikorongo Grumeti Game Reserve within Serengeti District in Mara Region, the appellants were found in unlawful possession of weapon to wit; one panga and one knife without permit and failed to satisfy to the authorized officer that the said weapons were intended to be used for purposes other than hunting, killing, wounding or capturing of wild animals. And in the **3<sup>rd</sup> Count**, it was alleged that on 31<sup>st</sup> day of October, 2019 at Risiliba area into Ikorongo Grumeti Game Reserve within

Serengeti District in Mara Region, the appellants were found in unlawful possession of Government Trophies to wit; two fresh fore limbs, two fresh hind limbs, a fresh head and two fresh libs, all of the Hartebeest valued at Tshs. 1,430,000/= the properties of the United Republic of Tanzania.

The prosecution evidence was to the effect that on 31<sup>st</sup> day of October, 2019 at about 06:30hrs the game scouts namely, Kabichi Suma (PW1), Hamis Lilanga Ncheye (PW2), Emmanuel Ngowe, Kulwa Gamboyema and Boniface Karukwaza, while on patrol, arrested the appellants at Mto Risiliba area within Ikorongo Grumeti Game Reserve. The appellants were found in possession of weapons to wit; one panga and one knife. They were also found in possession of government trophies to wit; two fresh fore limbs, two fresh hind limbs, a fresh head and two fresh libs, all of the hartebeest. When asked, the appellants failed to produce the permit authorising them to enter and possess weapons and government trophies into the Game Reserve. As such, the weapons and trophies were seized and the certificate of seizure was duly filled in and signed. Thereafter the appellants were taken to Mugumu Police Station where case file No. MUG/IR/3275/2019 was registered. PW3, Wilbroad Vicent who is a wildlife warden was called and he identified the government trophies to be the hartebeest valued at Tshs. 1,430,000/=. PW4, G. 8118 DC Warsha who

is the police officer, prepared the inventory form and took it together with the appellants to the Magistrate who granted the disposal order as the trophies could not be stored for a long time (perishable goods).

In their defence, the appellants testified that on the material date they were arrested at Bunchugu village near Ikorongo Grumeti boundary while farming on their land.

After a full trial, the trial court was satisfied that the prosecution proved its case beyond reasonable doubt and went on to convict and sentence the appellants as stated early above.

Dissatisfied with both conviction and sentence meted against them, the appellants lodged an appeal before this court to challenge the same. Their petition of appeal consists of five grounds which can be condensed into one ground namely; that the prosecution did not prove its case beyond reasonable doubt.

During the hearing of this appeal, the appellants appeared in person connected via teleconference from Mugumu remand prison while the respondent was represented by Mr. Nimrod Byamungu, the learned State Attorney connected from National Prosecution Office - Mara.

In his submission, the 1<sup>st</sup> appellant prayed the court to consider his grounds of appeal and finally find him not guilty whilst the 2<sup>nd</sup> appellant argued that they were not involved in the process of disposing the government trophies. The 2<sup>nd</sup> appellant submitted further that the investigator of the case was not called to testify in court. He added that PW1 and PW2 failed to show the boundaries at which they allegedly arrested them.

When Mr. Byamungu took the floor to respond, he supported the appeal. Referring to the case of **Maduhu Nihanji @ Limbu vs The Republic**, Criminal Appeal No. 419 of 2017, CAT at Mwanza, Mr. Byamungu was at one with the 2<sup>nd</sup> appellant's submission that PW1 and PW2 did not demonstrate the boundaries at which they arrested the appellants.

Regarding to the 3<sup>rd</sup> count, Mr. Byamungu, again, was at per with the 2<sup>nd</sup> appellant's submission that the appellants were not involved in disposing of the government trophies. Citing the case of **Mohamed Juma Mpakama vs the Republic**, Criminal Appeal No. 385 of 2017, CAT at Mwanza, Mr. Byamungu argued that the appellants were not given right to be heard before issuing the disposal order. Mr. Byamungu concluded by praying the court to quash the conviction and set aside the sentence.

Having carefully considered the trial court record, the petition of appeal and parties' submissions, the issue which calls for determination is whether the prosecution case was proved beyond reasonable doubt.

As to the 1<sup>st</sup> count of unlawful entry into the Game Reserve, I concur with the submissions of both parties that, the prosecution did not demonstrate the boundaries at which the appellants were arrested. In the case of **Maduhu Nihandi @ Limbu vs the Republic** (supra), the Court of Appeal stated that the prosecution is supposed to prove that the appellants were arrested in particular area within the National Park as specified in the first schedule to the National Parks Act which provides the outline of the boundaries of the Serengeti National Park.

Similarly, in this case, the prosecution failed to adduce evidence as to the exact place where the appellants were arrested within the boundaries of the Ikorongo Grumeti Game Reserve. The prosecution ought to demonstrate the boundaries as per law. Furthermore, in the charge, the particulars of offence allege that the appellants were arrested at Risiliba area into Ikorongo Grumeti Game Reserve whereas in their evidence PW1 and PW2 testified that they arrested the appellants at Mto Risiriba area within Ikorongo/Grumeti Game Reserve. Thus, it is not certain whether the appellants were arrested at Risiliba area or Mto Risiriba area. For this

reason, I find that the appellants' defence that they were arrested at their farm situated at Bonchugu village near the boundaries of Ikorongo Grumeti Game Reserve raised reasonable doubt. I find that the 1<sup>st</sup> and 2<sup>nd</sup> counts were not sufficiently proved.

As regard to the 3<sup>rd</sup> count of unlawful possession of government trophies, I am at one with parties' submissions that the procedures for disposing of the government trophies were not complied with. Pursuant to PW4's testimony, it is obvious that the disposal of government trophies was made under the Police General Order (PGO).

The procedure for disposing of the exhibit is provided for under paragraph 25 of the Police General Orders (PGO) which is reproduced hereunder for ease of reference:

***"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 before disposal."***


PW4 in his testimony testified that, he prepared the inventory form (Exhibit PE4) and then presented the appellants together with the

government trophies before the magistrate who ordered the disposal of the trophies. Presenting the appellants and the exhibits when seeking for the disposal order was not sufficient for the law requires more than that. It is now settled that when seeking disposal order, the appellant should be accorded the right to be heard before issuing the disposal order. See the case of of **Mohamed Juma @ Mpakama vs R**, Criminal Appeal no. 385 of 2017, CAT (unreported) and **Ngasa Tambu vs the Republic**, Criminal Appeal No. 168 of 2019, CAT at Shinyanga. Omitting to do the said procedure, necessarily prejudiced appellants.


In the end, I agree with both parties to quash the conviction and set aside the sentence meted against the appellants. I allow the appeal.

The appellants should be immediately set free unless they are held for other lawful purposes.



  
**A. A. Mbagwa**  
**JUDGE**  
**21/09/2022**

**Court:** The judgment has been delivered via teleconference in the presence of Isihaka Ibrahimu (SA) for the Republic and the appellants this 21<sup>st</sup> September, 2022.

  
**A. A. Mbagwa**  
**JUDGE**  
**21/09/2022**