

CASE-LAW ANALYSIS
POACHING AND ILLEGAL WILDLIFE TRADE IN TANZANIA

GENERAL INFORMATION ABOUT THE CASE	
Case number	CRIMINAL APPEAL NO. 157B OF 2013
Court	COURT OF APPEAL
Year (date)	23 RD April, 2015
Name of the judge	LUANDA, J.A., ORIYO, J.A., And KAIJAGE, J.A.
Name of the parties	KAUNGUZA S/O MACHEMBA..... APPELLANT <p style="text-align: center;">VERSUS</p> THE REPUBLIC..... RESPONDENT
Prosecuting authority (DGOs, state attorney, police...)	State attorney
Representation of accused person (lawyer?)	Not represented
Transnational elements (Citizen/non-citizen, cross-border offence...)	-
DESCRIPTION	
Defendants (age, gender...)	-
History of the case	<p>The appellant was sentenced by the Resident Magistrate of Shinyanga as follows:</p> <p>1st Count: Entering into a game reserve. He was sentenced to custodial sentence of one year in jail.</p> <p>2nd Count: Unlawful hunting in a game reserve. He was sentenced to pay a fine of Tshs. 200,000/= or one year in jail in default.</p> <p>3rd Count: Being found in unlawful possession of weapon in a game reserve. He was sentenced to pay a fine of Tsh. 150,000/= or one year jail in default.</p> <p>4th Count: Unlawful possession of Government trophies. He was sentenced to 20 years imprisonment without an option of a fine.</p>

	He appealed against the decision to the high court which upheld the decision of the Resident magistrate but changed the sentencing of the fourth count to a fine of TZH 54,600,000/= failure to pay will serve jail sentence for a period of 20 years.
Facts	The appellant is appealing against the decision of the High Court to pay a fine in the tune of TZS 54,600,000 failure of which has resulted in serving alternative jail sentence of 20 years for being guilty of possessing government trophy. On appeal the state attorney for the respondent raised a jurisdiction issue and prayed that the case goes for a retrial.
Charges	1 ST COUNT: unlawful entry into a game reserve contrary to sections 15(1) and (2) of the Wildlife Conservation Act, No. 5 of 2009 which is not an economic offence; 2 ND COUNT: unlawful hunting in the game reserve 3 RD COUNT: being found in unlawful possession of weapon in a game reserve 4 TH COUNT: unlawful possession of Government trophy 2 nd to 4 th counts are all contrary to the Wildlife Conservation Act, No. 5 of 2009 and Paragraph 14 of the First Schedule to the Economic and Organized Crime Control Act, Cap. 2002 R.E 2002 which were economic offences.
SPECIES	
Name	Not indicated
Value	Tshs. 5,460,000
Processed/Not processed	Not indicated
LEGAL REFERENCES	
Legislation (principal and ancillary legislation)	Wildlife Conservation Act, No. 5 of 2009 Economic and Organized Crime Control Act, Cap. 2002 R.E 2002 Appellate Jurisdiction Act, Cap. 141 2002 R.E
Cases cited	Emmanuel Rutta V. R, Criminal Appeal No. 357 of 2014 (CAT-Unreported) Fatehali Manji V.R, [1966] EA 343 the Court of Appeal of East Africa
International instruments	None
DECISION/OPINION	
Decision	Quashed all the decisions of the subordinate courts, set aside the sentences and ordered the appellant to be released from jail.
Basis of the decision (reasons)	The appellate court considered the grounds raised by the state attorney on jurisdictional issues and came to the conclusion that the improper citation of the required provision of the law rendered the proceedings of the subordinate courts a nullity. The court refused to

	grant a retrial on the basis that the evaluation of the government trophy certificate that was admitted as evidence was made under the repealed law the Wildlife Conservation Act No. 12 of 1972 while the new law was already in force. Therefore, to salvage the situation, new evidence will have to be adduced and hence fill in the gaps. As it stood the prosecution case was not strong enough to warrant a retrial.
Legal issues raised in judgment	Whether the certificate that gave jurisdiction to the subordinate court to try economic offences was improperly cited by the non-inclusion of the section giving jurisdiction on both economic and non-economic something that made the trial proceedings a nullity. That is citing of section 12 (3) of the Economic and Organized Crimes Act, Cap. 2002 R.E (the Economic Act) instead of section 12(4) of the same Act.
Penalty	-
OTHER CONTEXTUAL INFORMATION	
Context	-
Appealed/Not appealed	-
Bail	-
Opinion on the case	-