



**IN THE HIGH COURT OF TANZANIA**  
**AT MWANZA**  
**APPELLATE JURISDICTION**  
**CRIMINAL APPEAL NO. 100 OF 2014**

*(Original Criminal case no, 48 of 2013 of the District court of Tarime at Tarime,)*

DAUDI S/O CHACHA@

**MARWA.....APPELLANT**

VERSUS

THE REPUBLIC.....

.....RESPONDENT

JUDGMENT

**21/9/2015 & 12.9.2015**

Appellant in this criminal appeal was charged with and convicted of an offence termed as being in possession of Government trophies notably, wildebeest meat valued at Tshs.1, 019, 200/= c/s. 86 (1) and (2) (c) (11) of the Wildlife Conservation Act, No. 5 of 2009 read together with paragraph 14 (d) of the first schedule to and section 57 (1) and 60 (2) of the Economic and Organised Crime Control Act (cap 200 RE. 2002), he was eventually sentenced to 15J years imprisonment.



Dissatisfied with the trial court decision and the imposed sentence thereof, the appellant preferred this appeal by presenting according to him 'a memorandum of appeal comprised of 8 grounds of appeal, namely:

1. That the learned trial Magistrate erred in law and fact to rely of the cooked evidence adduced by the PW1 and PW2.
- 2. That the learned trial Magistrate had he carefully examined the evidence before him, he could have discovered that there was a very higher possibility for the appellant to be implicated by the case.
3. That the learned trial Magistrate erred in law and misdirected himself in finding that the appellant was found in possession of Government trophy
4. That apart from PW1 and PW2 who was the police officer and park warden, there no other independent witness who came before the court to testify the evidence in support of prosecution case.
5. That the appellant is the innocent person who at the material date and time carried a luggage of maize for<sup>1</sup>his family but surprisingly he was planted with a case.if, In this criminal case, the appellant is alleged to have been seen by patrol police officers carrying a luggage, when the police ordered him to stop he started running however he



was chased and eventually arrested and searched. The appellant is also alleged to have been found in possession of four dried pieces of meat.

Prosecution evidence was to the effect that the appellant was arrested, searched and found in the possession the said Government trophy, there was a group police officers manned by Sgt Deusdedith, the PC. **Zephania** (PW1) was a driver of the police motor vehicle that the said dried meet was then identified and valued by one Edwin Mwonyo, a park warden who appeared before the Trial court as PW2. The PW2 testified that the four pieces of dried meat were of wildebeest worth, Tshs. **1,040,000/=**, the prosecution side then produced inventory and the certificate of valuation which were admitted as exhibit PI and P2 respectively.

The accused simply denied the possession by saying that he had a luggage of maize on the material date and time and when the inventory (court order allowing destruction of

the alleged dried meat) was about to be tendered he raised an objection.

With that brief background of the case before the trial court, I turn to determination of this appeal, particularly, 'whether the prosecution proved its case beyond reasonable doubt'. To my considered view, the trial court when the appellant objected the inventory to be tendered as exhibit, his objection ought to be objectively considered and a ruling thereof ought to be made accordingly. It is evident from the record that the appellant, during trial when PW2 wanted to produce the inventory (Exh. PI), objected by stating and I quote (see page 4 of the proceedings)

**"Accused person,** It is not wildebeest, is cow meet  
**Court,** admit as PI"

Since the appellant objected the tendering, the trial court was supposed to make a ruling but that was not the case, suffice to say that was wrong on the part of the trial court as the Government trophy allegedly found in possession of the appellant was required to be tendered during trial as exhibit but it was nowhere to be seen instead inventory and certificate of valuation were received |j-



as exhibits, this position was rightly stressed in **Emmanuel Saguda @ Sulukuka and another v.R** Criminal Appeal No. 422 'B<sup>1</sup> of 2013 (CA) at Tabora held that:

"It is well established practice in cases where witnesses are required to testify on a document or object which would subsequently be tendered as Exhibit that procedure is not simply to refer to it theoretically as was the case here but to have it physically produced and referred to by the witness before the court either by display or describing it and then have it admitted as exhibit"

I have also discovered as correctly submitted by the learned state attorney that the prosecution act of not tendering certificate of seizure left a serious doubt to be apprehended as I do. This is so for obvious reason that the police officers were merely in patrol duty, it was important for them to have recorded what the seized from the appellant in that emergency search instead of mere allegation.



Why SGT Deusdith and others did not turn up in court?, I am not saying so as if I am not mindful of section 143 of Tanzania Evidence Act, cap 16 (R.E. 2002) which provides:

143. Subject to the provisions of any other written law, no particular number of witnesses shall in any case be required for the proof of any fact.

The PWI, to view was not in better position than his colleagues as he was a mere driver, looking at the nature of the case, no investigator nor those who actually apprehended and searched the appellant who appeared before the trial court and testified except the PWI, the driver, I thus join hand with Mr. Mamti that this case is evidently to have been poorly investigated as well as poorly prosecuted.

I have also looked at the Exh.P1 and Exh. P2 but I have not seen that four pieces of dried meat have been weighed instead it is indicated that the same are equivalent to one killed animal, this can be so in certain cases for instance one found in possession of elephant tusks but not always as noted by the trial court that dried piece of meat fp

**are easily changed from one hand to another, it follows therefore not always necessary one who is found in possession of Government Trophy to be^killer of a certain animal, weighing of the same is highly recommendable.**

**I consequently agree with the appellant and Mr. Mamti that, there is substance in this appeal. The appeal is therefore allowed. The conviction is quashed and the imposed sentence is set aside. The appellant is to be released from prison forthwith unless he is lawfully held therein for some other lawful cause.**

**It is so ordered**

M. R. CrWae, J

**12/10/2015**

**Right of appeal for any aggrieved party is explained**

M. R. Gwi

12/10/2015