

IN THE HIGH COURT OF TANZANIA

AT MTWARA

ECONOMIC CRIME APPEAL NO. 1 OF 2002
ORIGINAL ECONOMIC CRIME CASE NO. 6/2000
OF THE DISTRICT COURT OF LINDI AT LINDI
BEFORE: S.M. RUMANYIKA, ESQ., RESIDENT MAG.

AUSI HASSANI NAMPALI.....APPELLANT

versus:

THE REPUBLIC.....RESPONDENT

JUDGEMENT

LUKELELWA, J.

The appellant Ausi Hassani @ Nampali was on 24th October 2001 Convicted by the Lindi District Court on two counts of Unlawful possession of Government Trophy Contrary to section 67(1) and (d) (c) (iii) and (2A) of the Wildlife Conservation Act No. 12 of 1974 as amended by Act No. 10 of 1989 read together with section 56(1) of the Economic and Organised Crimes Control Act, No. 13 of 1984 and paragraph 16(d) of the First Schedule thereof as amended by Act No. 10 of 1989.

The appellant was sentenced to an omnibus sentence of ten years imprisonment on the two counts. In sentencing the appellant the learned Resident Magistrate observed that, "The accused Committed economic crime it goes without saying that by having in possession such government trophies at least a buffalo and wildbeest were at one time killed unlawfully. Not only the wild animals killed had right to life but also as put clearly by the Public Prosecutor by so doing the accused and Company defeats in a way our tourist industry."

Evidence was led at the trial court that a cholera outbreak occurred within Lindi township. The appellant Ausi Hassani @ Nampali is a resident of Mtanda area within Lindi township. Following that cholera outbreak a quarantine was imposed in the town by healthy authorities, Prohibiting sell of food and local brew. The appellant was a ten-cell leader of the area, and was suspected of Contravening the ban by selling local brew known as tembo or mbaru.

On 28/3/2000 at about 20.00 hours PW1 Assistant Inspector Mika, accompanied by about six policemen patrolled the area of Mtanda. The patrolmen reached the homestead of the appellant

where they began to search after calling the appellant's neighbour PW3 Zuberi Ally. In the search one a half plastic bucket of tembo were found. Some bhang were also found in a wooden box. At the backyard of the house, two horns, one of a buffalo and another of a wildbeest were recovered. The appellant had told the search party that he obtained the horns from "Idara ya Maji," water department.

During his defence, the appellant while admitting that the horns were recovered at his backyard, he suspected that someone might have planted them there.

In his petition of appeal, the appellant appears to challenge the genuineness of the horns.

The appellant goes to reiterate in his grounds of appeal that there was a possibility of someone throwing them at his backyard.

I have considered the evidence as adduced at the trial court, as a Court of first appeal. I admit that the appellant was found in possession of the two horns. It is provided under section 70 (2) (a) of the Wildlife Conservation Act 1974 that; Where in any Proceedings for an offence under section 67 it is proved to the satisfaction of the Court-

- (a) that the Government trophy which is the subject matter of the charge was found in any building, premises or ship, or any part of any building, premises or ship, occupied by the accused or his dependant, whether or not the accused was physically present when the trophy was found, the court shall presume that such trophy was in the possession of the accused unless the accused satisfies the Court to the contrary."

The appellant failed to satisfy the court to the contrary by adducing evidence which could prove on the balance of preponderance that the horns were not in his possession.

There is no dispute that the appellant had no licence permitting him to possess the two horns. It follows therefore the appellant's possession of the two horns were unlawful, hence he was properly convicted.

Turning to the sentence, I have expressed my reservations

and serious doubts on the value of the horns as given by the Lindi District Wildlife Officer. The Officer a Mr. Amos B. Nambuta, wrote that he based his valuation on Government Notice No. 191 of 30/6/1986.

However when I consulted the above cited Government Notice I realised that it referred to something else. Infact it referred to The Ukerewe District Council (Produce cess) By-Laws, 1985.

It is true that both the buffalo and wildbeest horns are government trophies. A Buffalo is a specified animal found in the second schedule to the Wildlife Conservation Act 1974 while a Wildbeest is a Scheduled animal specified in the Third Schedule of the Act.

Under section 67(3)(b) of the Wildlife Conservation Act 1974, it is provided that, "the value of any trophy shall be taken to be the normal price of the trophy on a sale in the open market between a buyer and a seller independent of each other.

It is stated under section 67 (4) of the above Act, that, "In any proceedings for an offence under this section a certificate signed by the Director and stating the value of a trophy involved in the proceedings shall be admissible in evidence and shall be prima facie evidence of the matters stated therein including the fact that the signature thereon is that of the person holding the office specified therein."

It is very difficult to believe that a buffalo horn weighing about 1,650 grams, and a wildebeest horn weighing about 800 grams would together fetch a price of US Dollars 696.6 or T.shs 592,110/- in an open market. I doubt whether even the live animals could fetch as much.

This was a situation which could have necessitated the summoning of the game expert for clarification.


I don't think that the two trophies found in the unlawful possession of the appellant could fetch a price of more than five thousand shillings in the open market.

As such, there is a justification of interfering with the sentence of ten years imprisonment imposed on the appellant. That sentence is hereby set aside.

It is substituted a sentence of a fine of twenty five thousand shillings or two years imprisonment in default.

I have taken into account the aggregate value of all the trophies in which the appellant is convicted, in assessing the punishment to be awarded in terms of section 67(3) (a) of the Wildlife Conservation Act. The charging of the appellant with two counts concerning the two trophies was if anything superfluous. The two trophies could have been included into a single count.

To that extent, the appellant's appeal is Partly allowed Order accordingly.


S.B. LUKELELWA

JUDGE

19/2/2003.

Date: 19/2/2003

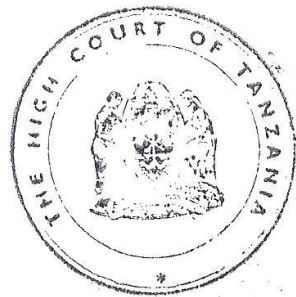
Coram: Hon. S.B. Lukelelwa, J.

For the Republic: Mr. Masaju, S.A.

For the Accused: Absent doesn't want to be present

B/C: Tenzi

Order: Judgement delivered in Court this 19th February,
2003.



S.B. Lukelelwa
S.B. LUKELELWA
JUDGE
19/2/2003.