

**IN THE COURT OF APPEAL OF TANZANIA  
AT IRINGA**

**(CORAM: MUNUO, J.A, LUANDA, J.A And MJASIRI, J.A)**

**CRIMINAL APPEAL NO. 200 OF 2010**

**POPART EMANUEL ..... APPELLANT**

**VERSUS**

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

**( Appeal from the decision of the High Court of Tanzania  
at Songea)**

**( Manento, J )**

**Dated the 18<sup>th</sup> day of March, 2003**

**in**

**Criminal Appeal No. 32 of 2002**

**JUDGEMENT OF THE COURT**

**23 & 27 June, 2011**

**LUANDA, J.A:**

Following information supplied by an informer that the appellant was about to transport elephant tusks from Matemanga village in Tunduru District to Songea Town, DC Ernest (PW1) took his two colleagues, police officers namely PC Charles (PW2) and Gwakisa and went to a spot near the area where the elephant tusks would be transported. The three took cover.

Indeed they saw the appellant when he stopped a motor vehicle make Landrover with registration number TZC 7842 whereby the appellant with a certain man were hurriedly loading three (3) bags in the motor vehicle. Before the motor vehicle drove off, the three policemen emerged and ordered the driver to drive the motor vehicle to Matemanga Police Station. The driver complied. On arrival those three (3) bags were checked; they saw 14 pieces of elephant tusks.

The appellant had no licence to possess the same when he was asked. The appellant gave a cautioned statement which was taken by D/Sgt Ahasca (PW4) where he confessed to have possessed the tusks unlawfully. Later a Game Warden Officer, one Elias Manjeche (PW3) from Selous Game Reserve found the tusks weighing 54.6 Kg, valued at Ths.2,120,000/=.

The appellant was then charged with an economic offence, at Tunduru District Court namely unauthorized possession of Government trophy contrary to paragraph 14 (d) of the First Schedule to sections 56

(1) and 59 (2) of the Economic and Organized Crime Control Act, 1984 read together with section 66 (1) and (2 ) ( b) of the Wildlife Conservation Act, 1974 as amended, after the State Attorney Incharge had consented the appellant be charged and prosecuted there.

In his defence, the appellant denied to have been found with the 14 pieces of elephant tusks. He, however admitted to have been arrested by PW1 and Gwakisa after they had stopped the motor vehicle he had boarded.

The trial court convicted the appellant after it was satisfied that the charge was proved to the hilt and sentenced him to 20 years imprisonment.

Aggrieved, the appellant appealed to the High Court (Songea Registry) where Manento, J, after going through the record, summarily rejected the appeal. Dissatisfied, the appellant has come to this Court on appeal.

The appellant has raised four grounds of appeal in his memorandum of appeal. The four grounds can be condensed into two grounds. **One**, the police officers searched the motor vehicle without search warrant and no receipt was issued and signed as mandated by section 38 (1) and (3) of the Criminal Procedure Act, Cap 20 R.E. 2002, (henceforth the CPA). **Two**, the evidence of PW1, PW2 and PW4, who were police officers, should have not been relied upon as they came from one office.

Mr. Josephat Mkizungo, learned State Attorney for the respondent Republic, resisted the appeal. As regards to the 1<sup>st</sup> ground of appeal he said there is no need of search warrant, in the circumstances of this case, as the police did not enter into any premises, he charged. Referring to the question of reliance of the evidence of the police officers, who came from one office, Mr. Josephat said there is no law which imposes that restriction.

Turning to the evidence as a whole, he said the evidence is strong to ground a conviction: the evidence of eye witnesses - PW1 and PW2 and cautioned statement. He urged us to dismiss the appeal.

The Court solicited his views as to whether the course taken by Manento, J. in summarily rejecting the appeal was proper. Mr. Josephat said the learned Judge ought to say something about the case.

We start with non compliance with section 38 (1) and (3) of the CPA which is about search and issuance of a receipt. We don't think the circumstances of this case falls within the ambit of that section. In this case the police officers, acting on information received, were pursuing to arrest the appellant and not to search. In our view the section does not apply.

As regards to reliance of evidence of witnesses from one office, we know of no law which imposes such restriction. The law of evidence is clear that every person is competent to testify unless he is precluded to do so by the operation of the law. The three police officers were competent to testify. The question as to whether what they had said was true or not, was the domain of the trial Court. This ground too has no merit. So we agree with Mr. Josephat that the three police officers were competent witnesses and the trial court found them credible witnesses.

We now turn to the evidence. The evidence in the record is clear that the appellant was caught red-handed loading the elephant tusks in the motor vehicle. Further, the appellant confessed in his cautioned statement which statement was not objected to, when tendered in Court. The statement is so detailed that it leaves no doubt that the appellant was caught with the elephant tusks. And to crown it all, he said how he was arrested, which evidence tallied with the prosecution. No wonder on the basis of the evidence in the record, Manento, J summarily rejected the appeal. We are satisfied that the learned judge properly exercised those powers. The appeal has not merits. And as the value of the trophy exceeds Tsh 5000/= the sentence imposed is the minimum scheduled by the law.

Before we make concluding remarks, we wish to comment about the summary rejection of appeals. In law, the High Court is empowered to summarily reject appeals without giving reasons. But it is advisable and encouraged to do so as was emphasized by the Court in **Iddi Kondo V.R** [ 2004 ] TRL 362.

In **Iddi Kondo Case** the Court formulated the following principles:-

- (1) *Summary dismissal is an exception to the general principle of Criminal law and Criminal Jurisprudence and, therefore, the powers have to be exercised sparingly and with great circumspection.*
- (2) *The section does not require reasons to be given when dismissing an appeal summarily. However, it is highly advisable to do so.*
- (3) *It is imperative that before invoking the powers of summary dismissal a Judge or Magistrate should read thoroughly the record of appeal and the memorandum of appeal and should indicate he/she has done so in the order summarily dismissing the appeal.*
- (4) *An appeal may only be summarily dismissed if the grounds are that the conviction is against the weight of the evidence or that the sentence is excessive.*
- (5) *Where important or complicated question of fact and/or law are involved or where the sentence is severe the Court should not summarily dismiss an appeal but should hear it.*

(6) *Where there is a ground of appeal, which does not challenge the weight or evidence or allege that the sentence is excessive, the Court should not summarily dismiss the appeal but should hear it even if that ground appears to have little merit. ( see also **Issa Said Kumbukeni** V.R [2006] TRL 227)*

In sum, we dismiss the appeal in its entirety.

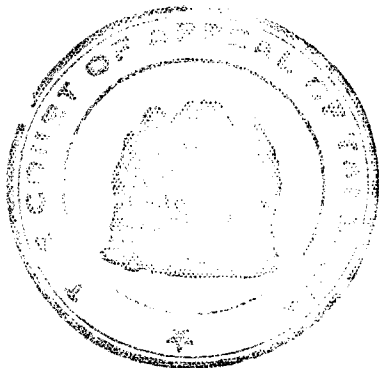
**Dated at Iringa**, this 27<sup>th</sup> day of June, 2011

E. N. MUNUO  
**JUSTICE OF APPEAL**

B. M. LUANDA  
**JUSTICE OF APPEAL**

S. MJASIRI  
**JUSTICE OF APPEAL**

I certify that this is a true copy of the original.



A handwritten signature in black ink, appearing to read 'J.S. MGETTA', is written over a horizontal line.

**J.S. MGETTA**  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**