IN THE COURT OF APPEAL OF TANZANIA
AT DODOMA

(CORAM: JUMA, C.J., NDIKA, J.A. And LEVIRA, J.A.)

CRIMINAL APPEAL NO. 53 OF 2019

SAGANDA SAGANDA KASANZU ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

(Appeal from the Judgment of the High Court of Tanzania at Dodoma)

(Mansoor, J.)

Dated the 14th day of November, 2018
in
(DC) Criminal Appeal No. 128 of 2017

JUDGMENT OF THE COURT

12th & 18th June, 2020

LEVIRA, J.A.

The appellant, SAGANDA SAGANDA KASANZU together with another person who is not a party to this appeal were arraigned before the District Court of Manyoni at Manyoni facing two counts, to wit, Unlawful possession of Government Trophy contrary to section 86(1), (2) (c) (ii), 3(b), 111(1) (a) (d), 113(1) and (2) of the Wildlife Conservation Act, No. 5 of 2009 (the WCA) as amended by section 59(a) and (b) of the Written Laws (Miscellaneous Amendments) Act, (No.2) of 2016 read together with paragraph 14 of the First Schedule to and sections 57(1) and 60(1) both of

the Economic and Organized Crimes Control Act, Cap 200 R.E. 2002 (the EOCCA) as amended by section 13(b) (2), (3), (4) and 16(a) of the Written Laws (Miscellaneous Amendment Act, No. 3 of 2016. The second count was unlawful dealing in Government Trophy contrary to section 80(1), 84(1), 111(1) (a), 113(1) and (2) of the WCA read together with paragraph 14 of the First Scheduled to and section 57(1) and 60(1) both of the EOCCA as amended by section 13(b), (2), (3), (4) and 16(a) of the Written Laws (Miscellaneous Amendment) Act, No. 3 of 2016.

Upon full trial, the other accused was acquitted under section 235 (1) of the Criminal Procedure Act, Cap 20 R.E. 2002 (the CPA). The appellant was convicted of both counts and sentenced on the first count to pay fine of Tshs. 660,000,000/= (Six hundred sixty million) or to serve 20 years in prison in default. On the second count, he was ordered to pay fine of Tshs. 132,000,000/= (one hundred and thirty two thousand million) or to serve a sentence of 5 (five) years imprisonment in default. The four (4) elephant tusks and bicycle he possessed were forfeited to the Director of Wildlife, Ministry of Tourism and Natural Resources.

Brief facts of this appeal is to the effect that: Before the trial Court the prosecution alleged that on 16th day of January, 2017 in the evening hours at Karangasi Village, within Uyui District in Tabora Region the

appellant and his co-accused were found in unlawful possession and dealing in Government Trophy to wit, four (4) pieces of elephant tusks weighing six (6) kilograms valued at USD 30,000 which was equivalent to TShs. 66,000,000/= (Tanzanian Shillings Sixty Six Million only), the property of the Government of the United Republic of Tanzania without dealer's licence. A total number of seven (7) witnesses were called to testify for the prosecution and also exhibits were tendered in evidence. Having considered the nature of this appeal and for the avoidance of making unnecessary repetitions, we shall not furnish the whole background of this appeal. Suffices here to state that, the appellant was tried before the District Court of Manyoni District at Manyoni and upon conviction he was sentenced to serve twenty and five years imprisonment respectively in respect of both counts. Aggrieved, he unsuccessfully appealed to the High Court (Mansoor, J.) in DC Criminal Appeal No.128 of 2017. Undauntedly, he has preferred the current appeal where he filed the Memorandum of Appeal on 1st June, 2020 and the Supplementary Memorandum of Appeal on 10th June, 2020 making a total of fifteen (15) grounds of appeal.

At the hearing of this appeal, the appellant appeared in person, unrepresented via a virtual link to the Isanga Central Prison Dodoma, whereas the respondent, the Republic was represented by Ms. Salome

Magesa, learned Senior State Attorney assisted by Mr. Salim Msemo, learned State Attorney.

The appellant adopted his grounds of appeal as they appear in the memorandum of appeal and the supplementary memorandum of appeal filed in Court on 1st June, 2020 and 10th June, 2020 respectively. Thereafter, he preferred to hear from the respondent's side first as he reserved his right of rejoining.

In reply, Mr. Msemo having indicated that the respondent does not support this appeal, he clustered the appellant's grounds of appeal into eight (8) categories basing on the nature of complaints as follows:

The first category comprised of complaints about the admission of certificate of seizure and valuation certificate; second, the appellant's oral submission; third, his cautioned statement; fourth, broken chain of custody of the seized elephant tusks; fifth, improper preliminary hearing; sixth, trial within trial; seventh, improper change of trial magistrates; and eighth, absence of proof of the case against appellant beyond reasonable doubt. Thereafter, Mr. Msemo submitted on the appellant's complaints seriatim.

Submitting on the **first complaint** regarding the certificates of seizure and valuation, the learned counsel stated that the appellant's complaint is that the contents of those two documents were not read out in

court after being admitted during trial. He was quick to concede to that complaint. He referred us to pages 27 and 32 of the record of appeal where at page 27, the certificate of valuation dated 17/11/2017 was admitted as exhibit P5 and at page 32 the certificate seizure dated 16/1/2017 was admitted and also marked as exhibit P5. However, he said those exhibits were not read out after being admitted; the effect of which, Mr. Msemo submitted, is for the exhibit to be expunged from the record. He accordingly urged us to expunge them from the record.

However, he went on submitting that, there will be no effect after expunging those exhibits because the witnesses who tendered them had an opportunity to give their oral testimonies. The learned counsel referred us to page 30 of the record of appeal where PW4, D. 7670 DC Andrew, a police officer testified on how he was involved in arresting the appellant with four pieces of elephant tusks, conveyed him to the village office together with his bicycle, filled the seizure certificate which was signed by the appellant, one Kalula Samwel (PW5) and the village chairman of Kalangali village who was an independent witness. According to Mr. Msemo, this piece of evidence shows how those exhibits were collected from the scene of crime.

Regarding the certificate of valuation, Mr. Msemo referred us to page 27 of the record of appeal where Barakaeli Ndosi (PW3), the Wildlife Warden working at Manyoni testified. In his testimony, PW3 stated that on 17/1/2017 he evaluated four elephant tusks which were marked with case file number GD/ZAP/MAN/IR/II/2017. After weighing them, he filled the certificate of valuation. According to PW3, one elephant was then valued at USD 15,000. For that matter, the two killed elephants were valued at USD 30,000. On the valuation date, the exchange value of 1 USD was Tshs. 2220/= as per the Bank of Tanzania (BOT) rate and hence, the total value was Tshs. 66,000,000/=. PW3 signed the Certificate of Valuation which he tendered during trial and the same was admitted as exhibit P5.

Mr. Msemo added that, apart from PW3 and PW4's oral account on the seized elephant tusks and the valuation of the same, the appellant's confession before PW5 showed that, he possessed the elephant tusks in question. The learned counsel referred us to pages 35 and 36 of the record of appeal where PW5 testified to the effect that, the appellant admitted before him that he was arrested with elephant tusks. PW5 witnessed the police officer filling the seizure certificate and the appellant signing it. PW5 also signed the seizure certificate as earlier on indicated.

According to Mr. Msemo, the appellant was found in possession of the elephant tusks and thus urged us to find so as it was found by both, the trial and the first appellate courts. He cited the decision of the Court in **Anania Clavery Betela v. Republic**; Criminal Appeal No. 355 of 2017 (unreported) in support of his line of argument.

Regarding the **second complaint** on appellant's oral confession, Mr. Msemo submitted that the appellant's complaint that no written document was tendered during trial to prove that he confessed before PW5 to have been found in possession of elephant tusks is baseless. The learned counsel stated that, confession need not necessarily be in writing, even oral confession is acceptable under the law. However, he added that the most important thing to be considered is the voluntariness of the person who is giving such confession. It was his argument that, there is nothing on record showing that the appellant was forced to confess that he was arrested with elephant tusks. He added that, at page 36 of the record of appeal when the appellant was cross-examining PW5, he did not ask anything concerning torture and at pages 49 - 52 when the appellant testified as DW1 did not say that he was forced to confess.

In addition, Mr. Msemo submitted that at pages 89 - 91 of the record of appeal the trial court was satisfied that the appellant's confession was

voluntarily made. The learned counsel made a reference to the case of **Patrick Sanga v. Republic**, Criminal Appeal No. 213 of 2008 (unreported) where the Court stated that, under section 3(1) (a), (b), (c) and (d) of the Evidence Act, Cap. 6 (the Evidence Act), a confession to a crime may be oral, written, by conduct, and/or a combination of all of these or some of these. Therefore, Mr. Msemo argued that the appellant's confession was in accordance with the law.

The **third** appellant's complaint was in relation to his cautioned statement, which he said, was recorded after a lapse of four (4) hours in contravention of the provisions of sections 50 and 51 of the CPA. While responding to this complaint Mr. Msemo conceded that the appellant's cautioned statement was recorded after lapse of four hours from when he was arrested. However, he said, the delay has justification. The learned counsel referred us to page 24 of the record of appeal where PW2 testified to the effect that, the appellant was arrested at around 17:00 hours outside the centre of Kalangasi village. Thereafter, he was taken back to the village centre at the village office and from that office to Manyoni Police Station where they arrived around 20:00 hours. In addition, he said, the evidence of PW2 was corroborated with that of PW4 found at pages 30-32 of the record of appeal.

It was Mr. Msemo's argument that, the cautioned statement of the appellant was recorded upon arriving at Manyoni Police Station around 21:00 hours well within four hours from when he arrived there. Therefore, it was his further argument that the appellant's statement was recorded in compliance with the requirements of section 50 (1) (a) and (2) (a) of the CPA after having taken into consideration that, the appellant was conveyed to the police station after other investigation processes connected to the offences he was charged with. He cited the decision of the Court in **Yusuph Masalu @ Jiduvi and 3 Others v. Republic**; Criminal Appeal No. 163 of 2017(unreported) where it was stated that, section 50(2) (a) of the CPA provides for an exception to the four hours period of recording accused's statement prescribed by the law.

The learned counsel also cited the case of **Michael Mgowole and Another v. Republic;** Criminal Appeal No. 205 of 2017 (unreported) to support his arguments and concluded that the appellants statement was recorded in accordance with the law.

Now adverting to the appellant's **fourth complaint** regarding the chain of custody of the seized elephant tusks (Exhibit P1 collectively), Mr. Msemo submitted that, the chain of custody of the said exhibit was not broken. As such, he said, the exhibit seized from the appellant was the

same tendered during trial. He referred the Court to pages 21-25 of the record of appeal where PW1, Mosongo Meigweri, a Wildlife Warden from Central Zone, Manyoni Singida who was a custodian of the said exhibit P1 and the one tendered it during trial, stated that on 16/1/2017, he received four elephant tusks and one bicycle from P/C Andrew and Daud Mahenge who came with one suspect, Saganda Saganda from patrol. He registered the said exhibits and signed the exhibit register; labelled the exhibits with case file number. Thereafter, the Wildlife Officer, Barakael Ndosi (PW3) did valuation of the said elephant tusks, labelled them, and issued a certificate of valuation. Then, PW1 kept them in safe custody after that exercise. A certified copy of the exhibit register was admitted as exhibit P3.

Mr. Msemo submitted further that the evidence of PW1 was corroborated with that of PW2 at pages 24 -25 of the record of appeal. In addition he said, PW2 disclosed the place where the elephant tusks were recovered from the appellant, how they were taken to PW1 for safe custody, the way PW3 evaluated and weighed them; and identified the marks and finally, the said elephant tusks were tendered and admitted as exhibit P1 during trial.

Besides, he said, PW4 at page 30 and PW5 at page 35 of the record of appeal also stated that the appellant admitted that the seized elephant

tusks were found in his possession and the same tusks were tendered as exhibit during trial. In support of his arguments in regard to the chain of custody, the learned counsel cited the case of **Anania Clavery Betela v. Republic** (supra).

In the **fifth complaint,** Mr. Msemo highlighted that the appellant claimed that the preliminary hearing was improperly conducted, as he said, matters not in dispute were not shown and therefore section 192(3) of the CPA was contravened. However, it was Mr. Msemo's submission that the said provision of the law was complied with. He indicated that at pages 17-18 of the record of appeal, undisputed matters were recorded including the personal particulars of the appellant and that the appellant was arrested on 16th January, 2017. Both the appellant and the prosecutor signed. Therefore, he argued that this ground of appeal is baseless.

In the **sixth complaint** the appellant claimed that both courts below erred in relying on exhibit P1 (four pieces of elephant tusks) because the said exhibit was admitted unprocedurally. It was appellant's argument that, since he objected to admission of the said exhibit the trial court was supposed to conduct trial within trial to clear it first before its admission. Responding to this complaint, Mr. Msemo submitted that there was no legal ground which could lead trial within trial to be conducted. Much as he

admitted that the appellant objected the tusks to be admitted while PW1 was about to tender them saying that he was not present when PW1 received the said exhibit; and that he did not sign the exhibit register, Mr. Msemo submitted that section 27 of the Evidence Act requires inquiry to be conducted when the voluntariness of the cautioned statement of the accused is challenged. As such, he said, the appellant's complaint is as well baseless.

The **seventh complaint** was that there was improper change of Magistrates during trial. Mr. Msemo opposed this ground stating that, at page 20 of the record of appeal, the Coram reads: A.E. Chilongola, RM but the signature at page 21 is of J. M. Minde, SRM who tried the case throughout. According to him, the error was due to slip of a pen. It was his submission that, by practice, the Coram is prepared by the court clerk but the magistrate is the one who is conducting the proceedings. So he argued that, it is possible for the clerk to write the name of another magistrate more so in the circumstances of this case where, the presiding magistrate was a visiting magistrate and the one indicated in the Coram, was a residing magistrate.

In the **eighth and last complaint,** the appellant claimed that the case against him was not proved beyond reasonable doubt. In response,

Mr. Msemo submitted to the contrary. He highlighted that PW2 and PW4 testified on how they met with the appellant red-handed with the four elephant tusks subject matter of this case on the material day (16/1/2017) at pages 24 and 30 of the record of appeal. Apart from that, Mr. Msemo stated that, the appellant's oral confession to PW5 and his cautioned statement showed that he was found in possession of the elephant tusks in question. Mr. Msemo added that, the prosecution witnesses were credible and there was no cogent reason to doubt them. He insisted that every witness is credible while referring to the decision of the Court in **Marceline Koivogui v. Republic,** Criminal Appeal No. 469 of 2017 (unreported).

The learned counsel submitted further that, the prosecution evidence was a direct evidence because the witnesses stated what they saw and heard. Hence, the said evidence was in conformity with section 62 (1) of the Evidence Act.

Finally, he submitted that all the grounds of appeal are baseless and urged us to dismiss the appeal.

Upon being prompted by the Court concerning propriety of section 86 (2) (c) appearing in the Charge Sheet. Mr. Msemo stated that, the said section was improperly cited. According to him, the correct section ought to have been section 86(2) (b) instead of (c). However, he said, the defect

is curable under section 388 of the CPA as the appellant was not prejudiced because his sentence was properly pronounced.

In rejoinder, the appellant opposed PW2's evidence saying that, he was not taken to the village chairman. He also faulted the evidence of PW4 as he said, he did not sign the seizure certificate. He insisted that there was no proof of his confession before PW5 and that, all what PW5 stated in his testimony was not true. The appellant denied his cautioned statement to have been recorded by PW7. He concluded by urging the Court to consider his grounds of appeal and set him free.

We have carefully considered the submissions by the parties, the record and grounds of appeal. We observe that this appeal has raised a number of issues which shall be determined as we deal with the appellant's complaints one after the other.

The first issue to be determined is whether or not the seizure and valuation certificates were properly relied upon by the both courts to ground appellant's conviction having been admitted without reading out their contents for the appellant to understand what they contained. We do not intend to dwell much on this issue which is arising from the appellant's first complaint due to two main reasons. First, the counsel for the respondent conceded to the existence of the said defect which he said, and

we agree that it was a fatal irregularity leading to the said exhibits being expunged from the record. We have gone through the record and we are satisfied that the said exhibits were not read out after being admitted as exhibit P5. It is settled position that failure to read out an exhibit after its admission is fatal as it violates the accused's right to fair trial. In the case of **Anania Clavery Betela v. Republic** (supra) cited by the counsel for the respondent, the Court held that failure to read out a document that has been cleared for admission and actually admitted in evidence is wrong and prejudicial.

In the current case, we are settled that since both certificates of seizure and valuation were not read out after being admitted in evidence, they deserve to be expunged from the record as we accordingly do.

Second, we as well agree with the counsel for the respondent that oral testimony of PW4 who was involved in arresting the appellant was sufficient to prove that the appellant was found in possession of elephant tusks seized in the presence of PW5. According to the record, the arrest of the appellant with those tusks was possible because the appellant intended to sell them to PW4 and his fellow. The record unveiled further that, the said elephant tusks were later taken to PW3 who confirmed the value of the same to be TShs. 66,000,000/= in his oral testimony. Therefore, the

evidence of those two prosecution witnesses together with that of PW5 proved the contents of both expunged exhibits. We partly allow the first complaint.

The appellant's second complaint as indicated above is that the prosecution side failed to tender any document to prove that, he voluntarily confessed before PW5 to have committed the charged offences. This complaint was opposed by Mr. Msemo. The issue arising from this complaint is whether or not it is necessary for the confession to be in a written form. We join hands with the counsel for the respondent that, the appellant's complaint in this ground is without legal basis.

Section 3(1) of the Evidence Act, defines confession to mean:-

> *"(a) word or conduct, or a combination of both words and conduct, from which whether taken alone or in conjunction with other facts proved, an inference may reasonably be drawn that the person who said the words or did the act or acts constituting the conduct has admitted an offence;*
>
> *(b) a statement which admits in terms either an offence or substantially that the person making the statement has committed an offence;*
>
> *(c) a statement containing an admission of all the ingredients of the offence which its maker is charged; or*

(d) a statement containing affirmative declarations in which incriminating facts are admitted from which, when taken alone or in conjunction with the other facts proved, an inference may reasonably be drawn that the person making the statement has committed an offence."

The above quoted provision of the law is very clear that confession may be oral, written or by conduct. Apart from general denial that he did not confess before PW5, the appellant failed to shake PW5's credibility on his oral account that he voluntarily confessed before him that he was arrested with elephant tusks subject of this appeal. Therefore, the above raised issue is answered in negative.

Another complaint relating to appellant's confession was associated with his cautioned statement which he contended that, it was recorded out of time. We agree with both parties that the appellant's cautioned statement was recorded out of four hours prescribed by the law after he was put in restraint at the scene of crime. However, we need to consider whether or not the act of recording that statement out of four hours is justified under the law.

According to the record of appeal, PW7 G.9803 PC Musa Chacha Marwa on 16/1/2017 around 21:10 hours started to record the appellant's

statement and he finished it at 23:10 hours. However, it is on record that the appellant was arrested at around 17:00 hours and was taken to the Kalangasi village chairman where they arrived at 20:00 hours. Having seized the elephant tusks which the appellant was found in possession, the arresting officers conveyed the appellant to Manyoni Police Station where they arrived around 21:00 hours. Immediately upon arrival, the appellant's statement was record by PW7 as earlier on indicated. Section 50(2) of the CPA provides for an exception to the four hours requirement of interviewing a person who is under restraint.

Circumstances of the present case fall squarely in the above provision because the appellant was first taken to the village office for finalisation of the seizure of elephant tusks he was found with and later, to the police where his statement was recorded. We are satisfied that the delay which we consider not to be inordinate was justified, more so, after considering the investigation processes and the nature of subject matter involved. In this regard, we agree with Mr. Msemo that the appellant's cautioned statement was recorded in accordance with the law. The appellant's complaint is thus unfounded.

The issue arising from the appellant's complaint about the chain of custody of the four seized elephant tusks is, whether or not the said chain

was actually broken. It is evident from the testimony of PW1, a Wildlife Warden, Central Zone, Manyoni Singida who was the exhibit keeper that, on the fateful day, that is, on 16th January, 2017 he received four elephant tusks from PW2 who was accompanied with the appellant. He registered and labelled the said exhibit. Thereafter, he gave the tusks to PW3 who concluded valuation and also labelled the said exhibits. Thereafter, the said tusks were returned to PW1 for safe custody and later were tendered at the trial and admitted as exhibit P1.

During trial, PW1, PW2, PW3, PW4 and PW5 identified the said exhibit by stating the appearance, the label and the case number. We do not agree with the appellant that the chain of custody of those exhibits was broken because we find sufficient evidence on record connecting the dots from when the appellant was arrested with the said elephant tusks, their storage until when they were tendered and admitted in evidence. The issue we raised is thus answered in negative as we agree with the counsel for the respondent that, the chain of custody of the seized elephant tusks was not broken.

The **sixth** appellant's complaint need not detain us much. We have gone through the record and we agree with Mr. Msemo that the trial court recorded undisputed matters and the appellant had an opportunity to

endorse them by signing. This complaint is without merit as it is evident from the record that preliminary hearing was properly conducted.

The issue arising from the appellant's **seventh complaint** is whether or not the first appellate court erred by upholding the decision of the trial court which among other things relied on exhibit P1 (four pieces of elephant tusks); which the appellant claimed that were unprocedually admitted. It has to be noted at the outset that, the appellant's main complaint in this ground is that he objected to the admission of the said exhibit but the trial court did not conduct an inquiry to clear it before its admission. With respect, we wish to state that this complaint is misconceived. There is no single point in time the courts conduct trial within trial or inquire except when the voluntariness of the accused's confession is examined. In the current matter nothing of that nature was put forth. The appellant's objection to the admission of the four pieces of elephant tusks could not at any stretch of imagination attract an inquiry. Therefore, we agree with Mr. Msemo that the appellant's complaint is baseless.

Regarding the appellant's grievance that during trial there was improper change of magistrates, just as correctly submitted by Mr. Msemo in our considered view, this complaint is unfounded and if anything of the

sort in the record falls under what was referred as a minor error which is curable under section 388 of the CPA. Having gone through the record, particularly at page 20 where the Coram of 20/7/2017 indicates Hon. A. E. Chilongola, RM as a presiding magistrate, at page 21 the record shows that it was Hon. J.M. Minde – SRM who presided over throughout the trial. We agree with the counsel for the respondent that the practice of the court is that, the court clerk is the one who normally prepares the Coram, and in the circumstances of this case where the presiding magistrate was from another station, the probability of committing such human error was high. All in all, it is our finding that, it is not true that this case was presided over by two different magistrates as suggested by the appellant. Having so stated the appellant's complaint in this regard, fails.

The last appellant's complaint in this appeal was that the case against the appellant was not proved beyond reasonable doubt. This complaint was vehemently opposed by Mr. Msemo who argued that, the prosecution proved both counts against the appellant and therefore, the High Court rightly upheld the appellant's conviction and sentence.

The issue as whether or not the case was proved beyond reasonable doubt depends on the totality of the evidence adduced before the trial court. We went through the record thoroughly and we do not find any

justifiable reason of interfering with the concurrent findings of the courts below in this aspect. The appellant was charged with two counts, to wit, unlawful possession and dealing in government trophies. It is on record that, having received the information from the whistleblower that there were people selling elephant tusks, PW2 and PW4 managed to set a trap on 16/1/2017. They went to Kalangasi village after having communicated with the appellant (who was a seller) through the phone. The appellant carried the polythene bag containing four elephant tusks with an intention to sell them to PW2 and PW4.

The appellant and his fellow untied the said bag and started to negotiate the price. PW2 told them to measure the said tusks. While in the course of doing so, the appellant was arrested. The said elephant tusks were conveyed to Manyoni Central Zone where they were kept under the custodianship of PW1. PW3 was involved in examining them and assessing their value as earlier on indicated. It was proved that the same elephant tusks which were recovered from the scene of crime and witnessed by PW5 during seizure, were the same tendered by PW1 during trial and identified by other prosecution witnesses who had direct contact.

The credibility of prosecution witnesses was not challenged by the appellant during trial and thus, their evidence remained to be a believed

fact. In the circumstances, we endorse the submission by the counsel for the respondent and the decision of the Court he cited in **Marceline Koivogui v. Republic** (supra). We are settled that the case against the appellant was proved beyond reasonable doubt. Therefore, we confirm the decision of the High Court.

We now revert to consider the issue raised by the Court *suo motu* regarding the cited provision of the law in the charge sheet for the purposes of making the record clear. We note that the animal involved in the current matter falls under Part I of the First Scheduled to the WCA and the value of the trophy exceeded one hundred thousand shilling (Tshs. 100,000/=).

The issue was whether the appellant was being prejudiced by being charged under section 86(2) (c) (ii) among others. Mr. Msemo was quick to state that the appellant ought to have been charged under subsection (2) (b) of section 86, instead of subsection (c) (ii). However, the learned counsel argued and we agree that the appellant was not prejudiced as he understood the charges which faced him and he defended his case accordingly.

In addition, Mr. Msemo stated that, even the trial court properly sentenced the appellant and the sentence was eventually upheld by the

High Court. We agree with the learned counsel and take further note that the appellant was charged under section 86(1) of the WCA read together with other provisions of the same Act and the other law. Upon his conviction, the trial court sentenced him to pay fine of Tanzanian Shillings Six Hundred Sixty Million Only (Tshs. 660,000,000/=) or to serve a custodial sentence of twenty (20) years in default for the first count. Also for the second count, the appellant was sentenced to pay a fine of Tanzanian Shillings One Hundred and Thirty Two Thousand Million only (Tshs. 132,000,000/=) or to serve a custodial sentence of five years in prison in default.

The law requires a convict to pay fine of ten times the value of the trophy if it falls under Part I of the First Schedule to the Act or imprisonment for a term not exceeding thirty (30) years or to both. The appellant was sentenced to serve twenty (20) years imprisonment well within limit. We are of the settled opinion that, the anomaly did not occasion miscarriage of justice as there was no prejudice on the part of the appellant and we agree with the learned counsel that, the identified anomaly is curable under section 388 of the CPA.

All said and done, this appeal is meritless and therefore we uphold the decision of the High Court to the extent stated above. Consequently, the appeal stands dismissed in its entirety.

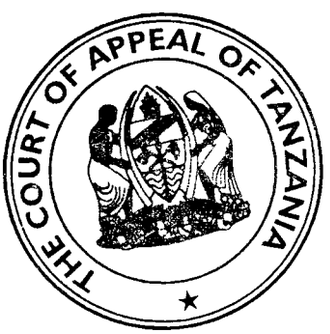
DATED at **DODOMA** this 17th day of June, 2020.

I. H. JUMA
CHIEF JUSTICE

G. A. M. NDIKA
JUSTICE OF APPEAL

M. C. LEVIRA
JUSTICE OF APPEAL

This Judgment delivered on 18th day of June, 2020 in the presence of the Appellant via a virtual link to the Isanga Central Prison Dodoma and Mr. Harry Mbogoro, learned State Attorney for the Respondent/Republic, is hereby certified as a true copy of the original.



G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL