IN THE COURT OF APPEAL OF TANZANIA

AT IRINGA

(CORAM: NDIKA, J.A., WAMBALI, J.A., And SEHEL, J.A.)

CRIMINAL APPEAL NO. 257 OF 2019

EMMANUEL LYABONGA ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

(Appeal from the Decision of the High Court of Tanzania, Corruption and Economic Crimes Division at Iringa)
(Matupa, J.)

dated the 12th day of July, 2019
in
Economic Case No. 1 of 2018

.....

JUDGMENT OF THE COURT

21st & 29th April, 2021

NDIKA, J.A.:

The appellant, Emmanuel Lyabonga, along with another person, Thomas Mhumba, not a party to this appeal, were tried in the High Court of Tanzania, Corruption and Economic Crimes Division at Iringa on two counts of being in unlawful possession of and dealing in government trophies contrary sections 86 (1) and (2) (c) (ii) and 84 (2) of the Wildlife Conservation Act, No. 5 of 2009 ("the WCA") read together with paragraph 14 of the First Schedule to and sections 57 (1) and 60 (2) of the Economic and Organized Crime Control Act, Cap. 200 R.E. 2002 as amended by

sections 13 and 16 of the Written Laws (Miscellaneous Amendments) Act, No. 3 of 2016.

While the said Thomas was acquitted of both offences, the appellant was convicted on the first offence as charged. On the second count, he was acquitted of the substantive offence but was convicted of attempted unlawful dealing in government trophies. At the end of the day, he was sentenced, on the first count, to pay the sum of TZS. 65,667,150.00 being ten times the value of the trophies involved or in default thereof he was to serve twenty years imprisonment. On the second count, he was sentenced to pay a fine of TZS. 13,132,300.00 or in default to serve two years imprisonment. The prison terms were to run concurrently.

Dissatisfied, the appellant now appeals against the convictions and sentences on six grounds of appeal as follows: **one**, that there was a variance between the information and the evidence on the date when the alleged offences were committed; **two**, that the testimonies of the prosecution witnesses were contradictory on the time the alleged offences were committed; **three**, that PW2 was incompetent to assess the value of the trophies the subject of the charges; **four**, that there was no mobile phone data from the mobile phone network companies to prove the alleged

communication between the police officers and the appellant; **five**, that the certificate of seizure was not properly and voluntarily signed by the appellant as there was no independent witness to the alleged search and seizure; and **finally**, that the offences against the appellant were not proven beyond reasonable doubt.

It is important to provide the salient facts of the case at the beginning. The prosecution produced three police officers and one game officer as witnesses along with five exhibits to establish what was alleged in the information on the two counts. First, it was alleged on the first count that on 10th August, 2016 at Kitandililo, Makambako area within the District and Region of Njombe, the appellant and his co-accused were found in possession of government trophies, namely, six elephant tusks valued at USD. 45,000.00 equivalent to TZS. 97,452,000.00 being the property of the Government of the United Republic of Tanzania without requisite permit from the Director of Wildlife. Secondly, the accusation on the second count was that at the same time and place stated above in respect of the first count the appellant and his co-accused willfully and unlawfully dealt in the above particularized elephant tusks being the property of the Government of the United Republic of Tanzania without a trophy dealer's licence.

The prosecution case, on the whole, presents the following narrative: while on patrol in Makambako on 10th August, 2016 along with police officer F.9140 PC David (PW3), police officer E.8260 D/Cpl. Sadiki (PW1) obtained a lead from an informant that a certain person at Mgololo, Mufindi possessed elephant tusks, which he was offering for sale. He swiftly obtained that person's cellphone contact and spoke with him on the phone proposing to buy the ivory. A deal was struck and it was agreed that they should meet shortly thereafter midway between Makambako and Mgololo.

Accordingly, PW1 as well as PW3 and other members of the patrol detail drove in a hired taxi up to a bushland at Kitandililo village where they met the appellant riding as a passenger on a motorcycle ridden by his co-accused at the trial, the said Thomas. The appellant alighted from the motorcycle carrying a white-red stripes polythene bag and approached the car in which the police contingent was travelling. He got in the car and had some negotiations with the police officers who then checked the bag and confirmed its contents being six elephant tusks. There and then, the PW1 and PW3 aborted the purchase and proceeded to arrest the appellant and the said Thomas. They seized the parcel whose contents were admitted at the trial as Exhibit P.1 (a) to (f). The motorcycle, with registration number

MC916 AWN, make Fekon, (Exhibit P.3), was seized too. The appellant and his co-accused were then taken to Makambako Police Station where a certificate of seizure (Exhibit P.2) was filled out and signed by PW1, PW3, two other police officers, the appellant and the said Thomas.

Triphone Guntram Mtamwa (PW2), who identified himself as an official of a game reserve holding the designation of "Game III", recalled to have inspected, weighed and assessed the value of the seized ivory, which he confirmed to be six pieces of elephant tusks. According to him, the ivory weighed 13.9 kilogrammes. In his assessment as per the trophy valuation certificate he tendered in evidence (Exhibit P.4), the tusks were supposedly extracted from three elephants, each animal bearing the statutory value of USD. 15,000.00 making the total value of USD. 45,000.00 for the killed animals. He certified the total as TZS. 97,452,000.00 as per the exchange rate of TZS. 2,167.00 as at 12th August, 2016 per USD. 1.

Police officer G.201 D/C James testified that he recorded a cautioned statement (Exhibit P.5) the appellant made from 17:00 to 18:40 hours on 10th August, 2016. To be sure, the statement was admitted after the trial Judge had conducted a trial-within-trial and ruled that the statement was, indeed, made by the appellant voluntarily and that it was recorded within

the prescribed basic period in terms of section 50 (1) (a) of the Criminal Procedure Act, Cap. 20 R.E. 2002 (Now R.E. 2019). The statement portrays the appellant to have confessed to being in possession of the ivory which he offered for sale to PW1 at TZS. 300,000.00.

When put to their defence, the appellant and his co-accused did not dispute the manner of their arrest as narrated by both PW1 and PW3. The appellant, on his part, owned up being found possessing the polythene bag but denied that it contained any ivory. He was emphatic that the bag contained a defective chainsaw, which was destined for repair. His co-accused denied possessing or knowing the contents of the bag, claiming that he had been hired by the appellant to ferry him on his motorcycle to Kitandililo from Mgololo. Actually, the appellant exonerated his co-accused as he owned up sole possession of the bag, saying that the said Thomas was unaware of what he was carrying in the bag.

The trial court rightly took the view that the issue before it narrowed down to whether the contents of the bag found in the appellant's possession were six elephant tusks which the prosecution produced at the trial (Exhibit P.1) and if yes, whether the appellant offered them for sale. Having scrupulously evaluated the evidence on record, the court found it proven

that the appellant did in fact alight from the motorcycle and boarded the car that carried the police officers. That he did so because he had prior communication with the police officers. That his claim that he was carrying a chainsaw in the bag for repair was unbelievable because there was no reason why he broke his journey, alighted from the motorcycle and boarded the car carrying the police officers. That he carried the bag containing the ivory and attempted to sell it to PW1 and PW3. As regards the appellant's co-accused, the trial court absolved him from liability as it found that he was neither possessed of the bag nor was he aware of the contents thereof or that they were being offered for sale to PW1 and PW3.

At the hearing before us, the appellant, who prosecuted his appeal via a remote link from Iringa Prison where he was serving his sentences, adopted his grounds of appeal and reserved his right to rejoin, if need be. For the respondent, Ms. Edna Mwangulumba, learned State Attorney, who was assisted by Ms. Rehema Mpagama, also learned State Attorney, supported the findings of the learned trial Judge as being firmly grounded on proper evaluation of the evidence.

Before we determine the merits of the appeal, we wish to state that in dealing with the substance of the appeal as the first appellate Court, we

are enjoined by Rule 36 (1) (a) of the Tanzania Court of Appeal Rules, 2009 to re-appraise the evidence on the record and draw our own inferences and findings of fact subject, certainly, to the usual deference to the learned trial Judge's advantage that he enjoyed of watching and assessing the witnesses as they gave evidence – see, for instance, **Juma Kilimo v. Republic,** Criminal Appeal No. 70 of 2012 (unreported); and **D.R. Pandya v. R.** [1957] E.A. 336. See also **Jamal A. Tamim v. Felix Francis Mkosamali & The Attorney General**, Civil Appeal No. 110 of 2012 (unreported).

At the beginning, we propose to deal with the first ground of appeal together with the second ground. The common thread in the two grounds is the complaint that there was a variance between the information and the evidence on the date when the alleged offences were committed and that the testimonies of prosecution witnesses were contradictory on the time the alleged offences were committed.

Addressing us on the two grounds at hand, Ms. Mwangulumba argued that on the totality of the evidence on record the offences were committed on 10th August, 2016 as had been alleged in the information. She said that PW1 who arrested the appellant at Kitandililo consistently alluded to 10th August, 2016 as the date he and PW3 apprehended the appellant and his

co-accused with the trophies. She added that the same date is revealed in the certificate of seizure (at page 113 of the record of appeal), the appellant's cautioned statement (at page 118) and his defence (at page 88). However, she conceded that PW3 contradicted that account as he is shown at page 63 mentioning 16th August, 2016 as the date. She characterized this contradiction as a minor slip arising from loss of memory, which, on the authority of **Alex Ndendya v. Republic**, Criminal Appeal No. 207 of 2018 (unreported), did not go to the root of the matter.

Rejoining, the appellant bewailed that the variance between the information and the evidence was real and that it was prejudicial to him as it frustrated him in making effective cross-examination on that aspect.

We scanned the record and came to agreement with Ms. Mwangulumba that the complaint in the first and second grounds of appeal is totally unmerited. Apart from the testimony of PW1, the certificate of seizure, and the cautioned statement being consistent that the crimes were committed on 10th August, 2016 as it had been particularized in the information, we find it significant that the appellant and his co-accused confirmed in their respective testimonies that they were arrested on 10th August, 2016 at Kitandililo. Admittedly, PW3, who was one of the arresting

officers, instilled a clear contradiction in the prosecution narrative as he alluded to the crimes being committed on 16th August, 2016.

It is fitting at this point to observe that contradictions by any particular witness or among witnesses cannot be avoided in any particular case: see **Dickson Elia Nsamba Shapwata v. Republic**, Criminal Appeal No. 92 of 2007 (unreported). We find it apt to refer with approval to the observation made by the High Court in **Evarist Kachembeho & Others v. Republic** [1978] LRT n.70 that:

> *"Human recollection is not infallible. A witness is not expected to be right in minute details when retelling his story."*

In **Dickson Elia Nsamba Shapwata** (*supra*), this Court observed that invariably in all trials, normal contradictions and discrepancies occur in the testimonies of the witnesses due to normal errors of observation, or errors in memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence of the incident. Furthermore, the Court stated that a material inconsistency or contradiction is that which is not normal and not expected of a normal person, and that courts have to determine the category to which a discrepancy, contradiction or

inconsistency could be characterized. In the premises, the Court held that minor contradictions, discrepancies or inconsistencies which do not affect the case for the prosecution, cannot be a ground upon which the evidence can be discounted and that they do not affect the credibility of the witnesses.

In the same vein, this Court had observed earlier in **John Gilikola v. Republic**, Criminal Appeal No. 31 of 1999 (unreported) that due to the frailty of human memory and if the contradictions or discrepancies in issue are on details, the Court may overlook such contradictions or discrepancies.

In the instant appeal, the contradiction in the evidence infused by PW3 as to the date the offences were committed is clearly a minor discrepancy. The date is a minute detail which appears to have escaped the memory of the witness due to the lapse of time as he gave evidence on 25th June, 2019, which was three years after the arrests. In any case, it does not detract from the prosecution case that the offences were committed on 10th August, 2016.

We recall that the appellant maintained in his rejoinder that the inconsistency was prejudicial to him as it frustrated his effort to cross-examine effectively on that aspect. This claim is manifestly inapposite given

that the appellant acknowledged in his defence that his arrest occurred on 10th August, 2016. Accordingly, we hold that the first and second grounds of appeal are bereft of merit.

Next we deal with the fourth ground of appeal. It is a complaint that the prosecution case was dented by the absence of mobile phone data from the mobile phone network companies to prove the alleged communication between the police officers and the appellant. On this ground, Ms. Mwangulumba was categorical that mobile phone network data was uncalled-for because the testimonies by PW1 and PW3, which were supported by the evidence of the said Thomas, sufficiently established the alleged communications. She also referred us to the appellant's cautioned statement at page 120 of the record of appeal in which he acknowledged the communications he had with a person who was presumably PW1.

Rejoining, the appellant countered that such mobile phone data was necessary, its absence being fatal to the prosecution case.

At first, we think we should put the matter into proper context that in the instant case proof of the the alleged communications was only critical to the second count of unlawful dealing in government trophies but not to the first count of unlawful possession of government trophies. That said, we

do not hesitate to endorse Ms. Mwangulumba's submission that the mobile phone data was unnecessary. For the uncontroverted testimonies of PW1 and PW3 sufficiently proved the communications between the appellant and PW1 that they occurred prior to the police contingent leaving Makambako for Kitandililo. The contingent left for Kitandililo after a deal had been struck. Actually, this piece of evidence was supported by the appellant's co-accused who, in cross-examination, said that the appellant had phone communications with a person he did not know. That apart, it is also momentous that the appellant acknowledged the communications in his cautioned statement (at page 120 of the record of appeal). He admitted having spoken on the phone presumably with PW1 and that they agreed to meet that afternoon midway between Makambako and Mgololo to conclude the sale of the trophies at the agreed price of TZS. 300,000.00. To crown it all, the learned trial Judge found, rightly so in our view, that the appellant's conduct, alighting from the motorcycle and approaching the car carrying the police contingent soon after they came across at Kitandililo, proved the prior communications he had with the police officers. Inevitably, the fourth ground of appeal fails.

On whether the seizure of the trophies was properly done and certified in the absence of an independent witness, which is the thrust of the fifth ground of appeal, Ms. Mwangulumba conceded that the seizure was done in the wilderness in circumstances of absolute secrecy that negated the possibility of finding an independent witness. She submitted that the search and seizure complied with section 106 (1) (i) of the WCA, which stipulates the requirement of an independent witness only where a search is done at a dwelling house of the suspect. In support thereof, she cited the unreported decision in **Tongora Wambura v. Republic**, Criminal Appeal No. 212 of 2006 where the Court held that the absence of independent persons must be considered in view of the particular circumstances of the case. In that case, the Court took the view that the absence of such people, per se, did not render the operation illegal or the prosecution case fatal.

Responding, the appellant was unwavering that the fact that the certificate of seizure was not signed at the scene combined with the absence of an independent witness to the search and seizure rendered the entire operation illegal.

Ms. Mwangulumba is right that PW1 and PW3 had powers pursuant to section 106 (1) of the WCA to conduct the operation that culminated in

the arrest of the appellant and the alleged seizure of the trophies. For clarity, we extract these provisions thus:

> *"106.-(1) Without prejudice to any other law, where any* ***authorized officer*** *has reasonable grounds to believe that any person has committed or is about to commit an offence under this Act he may –*
>
> *(a)* ***require any such person to produce for his inspection any animal, game meat, trophy or weapon in his possession*** *or any licence, permit either issued to him or required to be kept by him under the provisions of this Act or the Arms and Ammunitions Act;*
>
> *(b) enter and search without any warrant any land, building, tent, vehicle, aircraft or vessel in the occupation or use of such person,* ***open and search any baggage or other thing in his possession****:*
>
> *Provided that no dwelling house shall be entered into without a warrant except in the presence of at least one independent witness; and*
>
> *(c)* ***seize any*** *animal, livestock, game meat,* ***trophy****, weapon, licence, permit or other written authority, vehicle, vessel or aircraft in*

the possession or control of any person and, unless he is satisfied that such person will appear and answer any charge which may be preferred against him, arrest and detain."
[Emphasis added]

As police officers, PW1 and PW3 fall within the category of "authorized officers", as defined by section 3 of the WCA, vested with powers of inspection, search, seizure and arrest under section 106 (1) above. Moreover, since the appellant's polythene bag was searched and seized in a remote bushland at Kitandililo, not at his dwelling house, in circumstances that no independent witness could be found, we are in agreement with the learned State Attorney that the operation was properly conducted.

We are alive that PW1 and PW3 adduced in common that after they had called off the proposed purchase of the ivory, they took the two suspects along with the trophies and the motorcycle to Makambako Police Station where the certificate of seizure was processed and issued. It was signed by PW1, as the officer who conducted the search. Three police officers, including PW3, who witnessed the operation at the station, signed as witnesses. On the other hand, the appellant and the said Thomas appended their signatures. On the whole, this evidence leaves us with no doubt that the search and seizure constituted a legitimate exercise of

powers prescribed under the law. The fifth ground of appeal falls by the wayside.

The sixth ground of appeal enjoins us to interrogate whether the prosecution case was proven beyond peradventure.

In her submission on the issue at hand, Ms. Mwangulumba contended that the evidence of PW1, PW3 and PW4, supported by the certificate of seizure, sufficiently established that the appellant was found in possession of the trophies and that he had offered them for sale to the two police officers. On his part, the appellant contended that the offences were not proven beyond a speck of reasonable doubt.

As we indicated earlier, the appellant did not dispute the manner of their arrest on the fateful day as narrated by both PW1 and PW3 nor did he deny being found possessing the polythene bag. Consequently, the issue for determination narrowed down to whether the contents of the bag he was found with contained the six elephant tusks which the prosecution produced at the trial (Exhibit P.1) and if yes, whether he offered them to the police officers for sale.

Having reviewed the testimonies of the four prosecution witnesses as well as the five exhibits on record, we found the convictions firmly grounded. It is in evidence that PW1 had communications on the phone with the appellant and arranged to meet up with him so as to buy the trophies. That as soon as they met in the wilderness at Kitandililo the appellant alighted from the motorcycle and walked to the car in which PW1 and PW3 were travelling. He got into the car and had negotiations with the police officers. From this conduct at the scene it is inferable that he had prior communications with PW1 over the proposed dealing. Furthermore, the cautioned statement confirms that the communications occurred and that the appellant was, indeed, nabbed with the trophies (Exhibit P.1) as was testified by PW1 and PW3. The certificate of seizure (Exhibit P.2), which he signed, is additional proof that the trophies were seized from him. It is also undisputed that PW2 (the Game Officer) verified Exhibit P.1 and vouched that it was ivory.

It is also significant that the learned trial Judge duly considered but rejected the appellant's claim that the bag seized from him had nothing else but a chainsaw destined for repair. He did so in his judgment, at page 140 of the record of appeal, as he reasoned, rightly in our view, thus:

"The claim that the contents were a chainsaw, under the circumstances, defeats logic. Common sense would reject the suggestion that a person who was destined for a repair technician would break the journey the way the first accused person did. On this, I believe the prosecution that they saw the first accused with the tusks. His conduct as stated, abundantly, confirms the case for the prosecution that he was indeed carrying the tusks."

In view of his finding that the appellant possessed the trophies, the learned trial Judge correctly directed his mind to section 100 (1), (2) and (3) (a) of the WCA shifting the burden of proof on the appellant to rebut either that the trophies are not government trophies or that his possession of them is not unlawful. Obviously, the appellant made no attempt to rebut the attendant presumptions under the above cited provisions.

Based on the foregoing analysis, we find no justification to interfere with the findings of the trial court as they are firmly grounded on the evidence as a whole. Consequently, we uphold the said findings as well as the convictions entered against the appellant. The sixth ground of appeal is, therefore, without merit.

The above finding takes us back to the third ground of appeal, contending that PW2 was incompetent to assess the value of the trophies the subject of the charges.

We wish to preface our determination of the above issue by making two observations. First, that when a person is convicted of unlawful dealing in government trophy or unlawful possession of government trophy contrary to sections 84 (1) and 86 (1) of the WCA respectively, the value of the trophy involved is a statutory factor determining the punishment to be imposed as prescribed by sections 84 (1) and 86 (2) (a), (b) and (c) of the WCA correspondingly. Secondly, while section 86 (3) and (4) of the same Act regulates the assessment and computation of value of trophies for unlawful possession of government trophy contrary to section 86 (1) of the WCA, section 114 of the WCA is the general provision governing the assessment of value of the trophies for purposes of offences under the Act. For the purpose of this appeal, it will suffice to extract the provisions of section 86 (3) and (4) of WCA as those of section 114 of the WCA mirror the letter and spirit of the former:

"86.-(3) For the purpose of subsection (2) –

(a) in assessing the punishment to be awarded the court shall, where the accused person is charged in relation to two or more trophies, take into account the aggregate value of all the trophies in respect of which he is convicted, and in any such case the provisions of paragraph (a) or (b) of subsection (2) shall apply in relation to all such trophies if any one of them is part of an animal specified in Part I of the First Schedule to this Act;

(b) in assessing the punishment to be awarded under this section, ***the court shall calculate the value of any trophy or animal in accordance with the certificate of value of trophies as prescribed by Minister in the regulations****; and*

(c) [omitted]

(4) In any proceedings for an offence under this section, ***a certificate signed by the Director or wildlife officer from the rank of wildlife officer, stating the value of any 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." [Emphasis added]

In terms of paragraph (b) of subsection (3) above, the court of trial that has convicted an accused of the offence under section 86 (1) of the WCA is required in assessing the sentence to be imposed under section 86 (2) to calculate the value of the trophy or animal involved in accordance with the certificate of value of trophy as prescribed by the Minister in the regulations. The regulations now in force are the Wildlife Conservation (Valuation of Trophies) Regulations, 2012, Government Notice No. 207 of 2012 published on 15th June, 2012 ("the Regulations"). Furthermore, in terms of subsection (4) above, a certificate signed by the Director or wildlife officer, stating the value of any trophy involved, constitutes prima facie evidence of the matters stated therein. We should hasten to say that the law enjoins the trial court to consider the certificate as prima facie evidence but it is certainly not bound by it. Corollary to that, the absence of an acceptable certificate of value does not absolve the court of the duty to assess the value of the trophy involved where there is other evidence on that aspect.

Adverting to the issue at hand, it is the appellant's contention that PW2 was incompetent to assess the value of the trophies the subject of the charges against him. On the other hand, although initially Ms. Mwangulumba claimed that PW3's valuation was proper she subsequently relented and conceded that PW3, as "Game III", was not authorized to issue a trophy valuation certificate under sections 86 (4) and 114 (3) of the WCA and, therefore, Exhibit P.4 was of no evidential value.

We wish to express at once that certainly PW3, as Game III, was not an officer authorized to issue the certification in terms of sections 86 (4) and 114 (3) of the WCA as these provisions require such a certification to be issued by either the Director of Wildlife or any wildlife officer. The designation "Wildlife Officer" is defined under section 3 of the WCA to mean:

> *"a wildlife officer, wildlife warden and wildlife ranger engaged for the purposes of enforcing the Act."*

There is no indication in the evidence that PW3, as Game III, fell within the scope and purview of "Wildlife Officer." We recently confronted an analogous situation in **Petro Kilo Kinangai v. Republic**, Criminal Appeal No. 565 of 2017 (unreported) and decided to discount the certificate

involved. Without demur, we hold the trophy valuation certificate (Exhibit P.4) to have no evidential value.

It is manifest on the record that although the learned trial Judge did not approach PW3's evidence along with Exhibit P.4 in the manner we have done herein above, he rightly ignored the said exhibit on the ground that PW3's valuation was made in contravention of Regulation 3 (2) of the Regulations by pegging the value of the trophies involved as being the value of the entire animals (elephants) supposedly killed instead of the value of the trophies according to their weight and state. The said regulation provides that:

> *"3.-(1) The value of any trophy for the purpose of proceedings for an offence under the Act shall be the* ***value of US Dollars or its equivalent as specified in the second column of the First Schedule to these Regulations.***
>
> *(2)* ***Except where it is otherwise provided,*** *the value of any part of the animal shall* ***be calculated to be the value of the entire animal***

unlawfully hunted." [Emphasis added]

It is quite plain that sub-regulation (2) of Regulation 3 above requires, as a general rule, for an assessment of any trophy for the purposes of proceedings to be based on "the value of the entire animal killed" as specified in the second column of the First Schedule to the Regulations. However, "where it is otherwise provided" the valuation shall not be based on the value of the entire animal killed. Based on this scheme, the First Schedule to the Regulations prescribes distinct values for certain animals such as elephant and rhino. So far as it relates to this appeal, Item 18 of the Schedule prescribes the value of an elephant as an entire animal at USD. 15,000.00 while Item 87 specifies the value of an elephant tusk as a trophy at USD. 550.00 per kilogramme of unpolished ivory and USD. 600.00 for a kilogramme of polished ivory.

The learned trial Judge was alive to the above position of the law and, therefore, had no difficult to ignore Exhibit P.4, which, as already stated, was pegged on the value of three elephants supposedly killed. We wish to let the record at page 143 speak for itself:

> *"I find the approach rather difficult. This is because the presumption of the [Regulation 3(2)] as bolded, is predicated on the offence of unlawful hunting. That presumption does not fit in the offence of possession because after all, for example, a person can be liable for illegal possession of a trophy, even if it is lawfully hunted, as long as the possessor is not authorized to possess the trophy by the Director of Wildlife.* ***Again, valuation of elephant tusks is prescribed independent of that of the whole animal. This is in terms of Item No. 87 of the First Schedule. With the prescribed value of the elephant tusks, these have to be aggregated by the weight of the tusks and not the value of the whole animal.*** *"* [Emphasis added]

In the premises, the learned trial Judge proceeded to calculate the value of the trophies involved on the basis of the uncontroverted evidence of PW2 that they weighed 13.9 kilogrammes. Even though there was no proof whether the ivory was polished or not, he rightly assumed that they were not. Accordingly, he calculated the value as being USD. 550 per kilogramme times 13.9 kilogrammes times the exchange rate of TZS. 2,167.00 per USD. 1. It should be assumed that the above exchange rate

was inferred or presumed by the learned trial Judge in terms of section 122 of the Evidence Act, Cap. 6 R.E. 2002 (now R.E. 2019). He ultimately arrived at TZS. 6,566,715.00 as the value of the trophies.

In her submission, Ms. Mwangulumba supported the approach taken by the learned trial Judge on the basis of the evidence unveiled by PW3 that the seized trophies were elephant tusks weighing 13.9 kilogrammes. She contended that PW3 might have not been authorized to issue a trophy valuation certificate under the law but he was trained and knowledgeable in wildlife management and conservation. We agree that his knowledge and experience was sufficient for him to verify if the substances were trophies as well as to measure their weight. Actually, there was no dispute that Exhibit P.1 constituted elephant tusks weighing 13.9 kilogrammes. In line with his mandate under section 86 (3) (b) of the WCA, the learned trial Judge duly calculated the value of the trophies in accordance with the Regulations, having discounted Exhibit P.4.

As to the propriety of the sentences imposed on the appellant based on the value of the trophies at TZS. 6,566,715.00, we are satisfied that they were duly levied in terms of sections 84 (1) and 86 (2) (b) of the WCA read together with section 75 of the Interpretation of Laws Act, Cap. 1, R.E. 2002

(now R.E. 2019). In the end, although we find merit in the complaint that PW3 was incompetent to issue the trophy valuation certificate the third ground of appeal ultimately fails as we have explained above.

The upshot of the matter is that we uphold the appellant's convictions and corresponding sentences. The appeal stands dismissed.

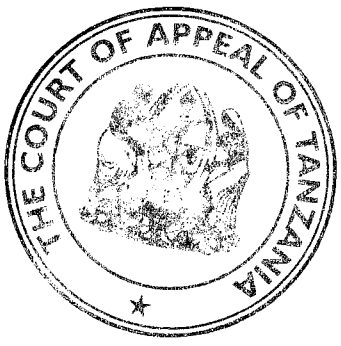
DATED at **IRINGA** this 29th day of April, 2021

G. A. M. NDIKA
JUSTICE OF APPEAL

F. L. K. WAMBALI
JUSTICE OF APPEAL

B. M. A. SEHEL
JUSTICE OF APPEAL

The judgment delivered this 29th day of April, 2021 in the presence of the appellant in person linked via video conference at Iringa Prison, and Ms. Edna Mwangulumba, State Attorney for the respondent/Republic is hereby certified as a true copy of the original.



B. A. Mpepo
DEPUTY REGISTRAR
COURT OF APPEAL