IN THE COURT OF APPEAL OF TANZANIA

AT KIGOMA

(CORAM: MKUYE, J.A., SEHEL, J.A. And GALEBA, J.A.)

CRIMINAL APPEAL NO. 195 OF 2020

1. JUMANNE MPINI@ KAMBILOMBILO
2. RABANI HAMISI } **.....APPELLANTS**

VERSUS

THE REPUBLIC .....RESPONDENT

(Appeal from the judgment and sentence of the High Court of Tanzania (The Corruption and Economic Crimes Division Kigoma Sub-Registry) at Kigoma)

(Mashaka, J.)

dated the 13th day of March, 2020
in
Economic Criminal Sessions Case No. 1 of 2019

JUDGMENT OF THE COURT

6th & 15th July, 2021

MKUYE, J.A.:

The appellants, Jumanne Mpini @ Kambilombilo and Rabani Hamisi (the 1st and 2nd appellants) together with Jamal Lameck (former 2nd accused) who is not a party to this appeal, were charged with three counts, to wit, 1st count of unlawful possession of government trophy contrary to section 86(1) and (2) (c) (iii) of the Wildlife Conservation Act No. 5 of 2009 read together with paragraph 14 of the 1st Schedule to the Economic and Organised Crime Control Act, Cap 200 R.E. 2002 (the EOCCA) as amended by Clause 16(a) of the Written Laws (Miscellaneous

Amendments) Act, No. 3 of 2016 and sections 57 (1) and 60 (2) of the EOCCA as amended by Act No. 3 of 2016; 2nd count of unlawful dealing in trophies contrary to sections 80(1) and 84(1) of the Wildlife Conservation Act read together with paragraph 14 of the 1st Schedule to the EOCCA as amended by Clause 13(b) of Act No. 3 of 2016; and the 3rd count of leading organised crime contrary to paragraph 4 (1) of the 1st Schedule to and sections 57 (1) and 60 (2) of the EOCCA as amended by Clause 13(b) of Act No. 3 of 2016.

In the 1st count, it was alleged that on 8th day of March, 2019 during night hours at Kagerankanda village within Kasulu District in Kigoma Region, the appellants were found in possession of four (4) pieces of elephant tusks valued at USD 30,000 equivalent to Tshs. 70,347,000/= the properties of the United Republic of Tanzania without any lawful permit from the Director of Wildlife.

In the 2nd count it was alleged that the appellants on 8th day of March, 2019 during night hours at Kagerankanda village within Kasulu District in Kigoma Region did involve themselves in selling four (4) pieces of elephant tusks valued at USD 30,000/= equivalent to Tshs 70,347,000/= the properties of the United Republic of Tanzania without Trophy Dealers Licence from the Director of Wildlife.

In the 3rd count, it was alleged that the appellants in March 2019 at Kagerankanda Village within Kasulu District in Kigoma Region, did intentionally organize a criminal racket for selling Government Trophies to wit, four (4) pieces of elephant tusks valued at USD 30,000/= equivalent to Tshs 70,347,000/=.

After the appellants pleaded not guilty to the information levelled against them, a full trial was conducted where upon ten (10) witnesses testified for the prosecution and the accused defended themselves. The prosecution witnesses were Ass. Insp. Aron (PW1), Edwin Stephen Mwasabwite (PW2), E. 7905 D/Cpl Malaki (PW3), Oscar Simango (PW4), MG 550064 Lazaro Gilbert Ndalaba (PW5), Elikana Abihudi Maige (PW6), Kahema Curthbert Mdee (PW7), D. 9205 Sgt Omary (PW8), Florian Luhobya (PW9) and H358 PC Maka (PW10). For the defence, Jumanne Mpini (DW1), Jamal Lameck (DW2) and Rabani Hamisi (DW3) testified.

The brief facts leading to this appeal as can be gleaned from the record of appeal are that:

Edwin Mwasabwite (PW2) an intelligence officer working with Gombe National Park, on 5/3/2019 received information from an informer that Rabani Hamisi (2nd appellant) was engaged in unlawful dealing with trophies. PW2 relayed the information to the Regional Crime Officer (the RCO) of Kigoma Police Station who assigned Ass. Insp

Aron (PW1) and DC Lugano to take up the matter. Together with the police team they set up a trap to arrest him (2nd appellant) and his accomplices.

They agreed PW2 to pose as a potential buyer of the elephant tusks. On 7/3/2019 PW2 accompanied by the informer and the police officers proceeded to Kagerankanda village for purposes of effecting the "purchase" and the arrest of the culprits.

On reaching at that village, PW2 met the 2nd appellant who later introduced him to the 1st appellant thereupon they headed to a thicket where upon the 1st appellant dug out two (2) elephant tusks which were concealed in a hole in the ground. The tusks were loaded in a sulphate bag and they went back to the 2nd appellant's residence. According to PW2, the 2nd appellant also brought two more elephant tusks making a total of four pieces of tusks.

As the price negotiations went on, the appellants demanded to be given the money for the intended purchase. PW2 informed them that he had left it in the car and they all agreed to accompany him to retrieve it. Then, PW2, the 2nd appellant and another person boarded a motorcycle and when they reached a certain point where the policemen were waiting, PW2 signalled them and the 2nd appellant was arrested thereat while that other person escaped.

After the arrest, PW2 and 2nd appellant together with police officers including PW1 headed to the 2nd appellant's residence where the 1st appellant was still waiting for the money and was too, arrested. Before search was conducted, PW1 who led the search team invited PW3 and PW4 to witness it. Upon searching in one of the rooms, four (4) pieces of elephant tusks were recovered in a green sulphate bag. A certificate of seizure was filled out and signed by witnesses including the 2nd appellant himself.

The appellants together with the seized elephant tusks were sent at Kagerankanda Police Station, then to Kasulu Police Station and thereafter at Kigoma Central Police Station whereupon the said elephant tusks were handed over to PW8 for safe custody. Then the appellants together with the former 2nd accused were arraigned before the court as hinted earlier on.

In their defence, the appellants denied involvement in the crimes. They each testified to the effect that the alleged search and seizure of the elephant tusks was conducted on 8/3/2019 while they were already arrested on 6/3/2019 and kept in custody on allegation of destroying the land in National Park.

Upon a full trial, the former 2nd accused was acquitted while the appellants herein were convicted on all counts and each sentenced to

twenty years (20) imprisonment for the 1st count, two (2) years imprisonment for the 2nd count; and twenty years (20) imprisonment for the 3rd count which sentences were ordered to run concurrently.

Aggrieved by the conviction and sentences meted against them, both 1st and 2nd appellants have appealed to this Court on a joint five grounds memorandum of appeal to the effect that **one**, the appellants were convicted regardless of the discrepancy in evidence by PW1 and PW3 which contradicted itself. **Two**, the appellants were deprived the fair trial and that the prosecution's case was not proved beyond all reasonable doubts. **Three**, the identification was not adequate so as to remove all chances of mistaken identity taking into account that search was conducted during the night. **Four**, there were procedural irregularities as neither the certificate of seizure was issued to the appellants nor the register book for exchange of exhibits P2 A, B, C, D and E was tendered before the court as required by law. **Five**, the appellants were convicted on basis of the weakness of their evidence and not on the strength of the prosecution's evidence.

When the appeal was called on for hearing, the appellants appeared in person and unrepresented; whereas the respondent Republic was represented by Mr. Adolf Mäganda, learned Senior State Attorney

assisted by Mr. Shabani Juma Masanja and Mrs. Edna Makala both learned State Attorneys.

On being invited to expound their grounds of appeal both appellants opted to let the respondent Republic respond first while reserving their right to rejoin later, if need arises.

For the respondent Republic it was Mrs. Makala who responded to the appellants grounds of appeal and she argued all the grounds starting with ground 1 to 5 as they were brought. On our part, for purposes of convenience, we shall follow that arrangement except for the 2nd limb of ground no. 2 which will be the last to be dealt with.

The complaint in ground no. 1 is that there was a discrepancy on the evidence of PW1 and PW3. Though the appellants did not elaborate it, the learned State Attorney dismissed it arguing that PW1 and PW3 did not contradict themselves so as to vitiate their evidence. She pointed out that, perhaps the appellants consider as a contradiction when PW1 said that the elephant tusks were found in the 2nd appellant's residence and PW3 also during examination in chief said the same but on cross examination, he said the same were found at Mzee Jumanne Hamisi (1st appellant). She argued that, even if there may be such a discrepancy in PW3's testimony, such discrepancy is minor as it does not go to the root of the matter. She referred us to the case of **Chukwudi Denis**

Okechukwu v. Republic, Criminal Appeal No. 507 of 2015 at page 20 (unreported), where the Court, when was confronted with an akin scenario it stated as follows: -

> *"It is apparent from the learned authors above that it is inevitable to find people who have eye witnessed the occurrence of one incident, giving contradicting accounts of its occurrence. And, with lapse of time, the gap of contradiction may even widen. What is pertinent, therefore is to look at serious contradictions which go to the root of the matter as was held in* ***Said Ally v. Republic,*** *Criminal Appeal No. 249 of 2008* (unreported)."

On our part, we have examined the evidence of PW1 and PW3. At page 42 – 43 of record of appeal, it is true that PW1 said that the elephant tusks were retrieved from the room which was used to store tobacco leaves in the 2nd appellant's premises. However, at page 100 of the same record, PW3 said that the search order was filled and the pieces of elephant tusks seized from Rabani Hamisi (2nd appellant) house were listed; and yet at page 103 of the record he (PW3) said that they found four (4) pieces of elephant tusks in Mzee Jumanne's house (1st appellant). As was submitted by Mrs. Makala, this may be considered as a contradiction.

However, having looked at the evidence of PW1 and PW3, we do not agree with the appellants' contention that those witnesses contradicted themselves on the place where the 4 elephant tusks were retrieved because both PW1 and PW3 said it was from the 2nd appellant's residence. Although during cross examination PW3 said it was at Mzee Jumanne's residence, which was PW3's self-contradiction, we think that this might have been caused by a slip of the pen/ inadvertently. In any case, even it if it is taken as a contradiction, it is our considered view that such discrepancy does not go to the root of the matter, (See **Chukwudi Denis Okechukwu's Case** (supra). In this regard, we find this ground to have no merit and we dismiss it.

Ground no. 2 is twofold. **One,** is that the appellants were denied the right of fair trial; and **two,** is that the prosecution case was not proved beyond reasonable doubt.

As regards the first fold that the appellants were denied a fair trial, the learned State Attorney argued that the trial was conducted fairly on both sides. While relying on the case of **Mussa Mwaikunda v. Republic,** [2006] TLR 388, Mrs. Makala argued that, the trial was fair since the charge was read over to all appellants in Swahili language which they understood well, they followed all the proceedings and were

afforded an opportunity to defend themselves. In this regard she contended that, the appellants cannot claim that the trial was not fair.

We are alive that in the case of **Mussa Mwaikunda** (supra), the Court expounded minimum standards to be complied with for an accused to undergo a fair trial. They include, the accused to understand the nature of the charge, to plead to the charge and exercise the right to challenge it, the accused to understand the nature of the proceedings as to whether or not he committed the alleged offence, to follow the course of proceedings, to understand the substantial effect of any evidence that may be given against him and he must make a defence or answer to the charge.

In the matter under consideration, we agree with the learned State Attorney that the appellants' contention is not born out from the record of appeal. Our perusal of the same has revealed that at page 25-27 the information containing three counts was read over and explained to the appellants in Swahili language and they were given an opportunity to plead thereto. Also, all appellants were represented by an advocate, Mr. Eliutha Kivyiro who cross examined all the prosecution witnesses and led them in examination in chief when they were giving their defence evidence. He even consulted them and objected to the

tendering of some exhibits. Apart from that, before they defended themselves, the trial court addressed them in terms of section 293 (1) of the CPA and they indicated the manner they would defend themselves. In the end, their advocate filed final submission before the trial judge gave her decision. All these show that the appellants were on board from the beginning of the trial to its end. We, therefore, find the 1st limb of ground no. 2 unmerited and we, equally, dismiss it.

We now move to ground no. 3 on the complaint that there was no proper identification of the appellants. Mrs. Makala dismissed this ground to have no basis and, rightly so in our considered view, arguing that as both appellants were arrested at the scene of crime the issue of identification did not arise. Of course, we acknowledge that the appellants were arrested during night time. However, we are of the view that the question of mistaken identity could not have arisen due to the fact that they were arrested instantly at the scene of crime. On this we are guided by our decision in **Daffa Mbwana Kedi v. Republic,** Criminal Appeal No. 65 of 2017 (unreported) where we stated that where an accused is arrested at the scene of crime, his assertion that he was not sufficiently identified should be rejected. Therefore, this ground also fails.

Failure to issue the appellants with certificate of seizure and to produce in court the Exhibits Register Book constitutes the 4th ground of appeal. Although the learned State Attorney conceded that the record of appeal does not show that the 2nd appellant was issued with certificate of seizure or that the exhibits register was produced in court, she was of the view that, failure to do so was a minor omission which did not vitiate the evidence that the appellants were found in possession of elephant tusks. She explained that PW1, PW2, PW3 and PW4 who were at the scene of crime, testified on how the elephant tusks were seized from the 2nd appellant's residence and how they were entered in the certificate of seizure (Exh PI) which was signed by the witnesses together with the 2nd appellant. In the circumstances, she contended that the appellants knew what was seized.

We have considered this ground and perused the record of appeal. Admittedly, as was rightly submitted by Mrs. Makala, there was no certificate of seizure or a receipt on the seized item that was issued to the appellants as per section 38 (3) of the Criminal Procedure Act [Cap 20 RE 2019] (the CPA) requiring the officer seizing anything under subsection (1) to issue a receipt acknowledging the seizure of that thing, with the signature of the owner or occupier of the premises who was or his near relative or other person for the time being in possession or

control of the premises and the signature of witnesses to the search. However, we are of the view that failure to issue the appellants with such document did not vitiate the prosecution evidence. This is so because of the evidence of PW1, PW2, PW3 and PW4 who witnessed how the subject matter was seized from the 2nd appellant's residence and how the certificate of seizure was filled up and signed by those witnesses including the 2nd appellant himself. PW1 as the head of the search team explained how the search was conducted in the 2nd appellant's home and how the elephant tusks were retrieved from a room where tobacco leaves were stored. He also explained that the same were covered in a green sulphate bag and this was done in the presence of PW2, PW3 and PW4 who confirmed it.

We wish to emphasize that, as was correctly submitted by the learned State Attorney that, although the 2nd appellant was not given the certificate of seizure, the same being documentary evidence envisaged to show that there is no tampering of the exhibit, since the 2nd appellant signed the certificate of seizure, he knew exactly what was seized during the search that was conducted in his residence. In the premises, we find the first limb of ground no. 4 devoid of merit and we dismiss it.

As regards the 2nd limb of the 4th ground relating to failure to produce in court the Exhibits Register Book which connotes that the chain of custody was not intact, Mrs. Makala contended that despite the failure to produce it in court, there was ample evidence of PW1 that after the seizure of the elephant tusks from the 2nd appellant, he took them to Kigoma Police Station where he handed over to Sgt Omary (PW8), the Exhibit Keeper. That, on 19/3/2019, he took them to PW6 for valuation and returned to PW8 on the same day. She went on submitting that on 20/3/2019, PW1 took the tusks to PW9 for weighing and measuring and he again returned them to PW8. On 21/3/2019 PW8 handed them to PW9 for safe custody; and on 2/3/2020 PW8 handed them over to PW1 for production in court as exhibit. Relying on the case of **Abas Kondo Gede v. Republic**, Criminal Appeal No. 472 of 2017 (unreported), Mrs. Makala contended that the chain of custody was not broken up and failure to produce the document did not affect the evidence. In the case of **Abas Kondo Gede** (supra) the Court stated as follows:

> *"Therefore, oral evidence, if worthy of credit, like in the circumstances obtaining in the present case, is sufficient without documentary evidence to prove a fact or title. Thus, where a fact may be proved by oral evidence it is not necessary that documentary*

evidence must supplement that evidence as this is the other method of proving a fact".

We are mindful that generally speaking, exhibits involved in any case must be handled cautiously. This is what is called the doctrine of chain of custody. This Court has, in numerous decisions including the famous case of **Paulo Maduka and Others v. Republic,** Criminal Appeal No. 110 of 2007 and **Joseph Leonard Manyota v. Republic,** Criminal Appeal No. 485 of 2015 (both unreported), expounded the need to have chronological documentation or paper stream, showing the paper trail custody, control, transfer, analysis, and disposition of evidence. For instance, in **Joseph Leonard Manyota** (supra). The Court stated that: -

> *"The reason why the evidence of this nature must be handled in a scrupulously careful manner is to prevent possibilities of tampering with it, possibilities of contaminating it, or fraudulently planted evidence. This is in the interests of justice."*

Admittedly, in this case, the appellants were neither issued with a certificate of seizure acknowledging seizure of the elephant tusks nor was the Exhibit Book Register tendered in court to authenticate their movement. However, the evidence on record shows the movement of

the four (4) elephant tusks from when they were retrieved to the time when they were tendered in court and admitted as Exh. P2. PW1, PW2, PW3 and PW4 explained how the same were seized from the 2nd appellant's home and how the certificate of seizure was filled and signed by them including the 2nd appellant. On top of that, PW1 explained how he took the tusks from the scene of crime (Kagerankanda Village) while were under his custody to the Police Station at Kigoma and handed them to PW8. In their movement, they first stopped at Kasulu Police Station. From Kasulu, he transported the suspects together with the tusks in green sulphate bag to Kigoma Central Police Station and handed the consignment to PW8, the Exhibit Officer.

Besides that, PW1 and PW8 explained how on different dates PW1 took the tusks for different purposes and returned them to PW8. For instance, on 19/3/2019, PW1 took them to the Wildlife Office for identification and valuation where upon, one, Elikana Abihudi Maige (PW6) identified, weighed and valued the same at USD 30,000/= equivalent to Tshs. 70,347,000/= and brought them back to PW8 who confirmed receiving them. That, on 20/3/2019, PW1 took the 4 pieces of elephant tusks to the Weights and Measures Officer (PW9) who weighed them at 5321.4 grammes and returned them to PW8 on the same day who indeed confirmed receiving them and registered in PF16 No. 1 of

2018; and that on 21/3/2019 Afande Aron (PW1) took the same together with TANAPA Game Officer, one Kahema Mdee for special storage until on 25/2/2020 when the later handed them to PW8 who also entered in Register Book PF 16/2019 for tendering in court which was done on 2/3/2019 when PW8 handed them to PW1 for tendering at the High Court.

In the case of **Charo Said Kimilu and Another v. Republic,** Criminal Appeal No. 111 of 2015 when the Court was confronted with a similar scenario it stated as follows:

> *"... during the trial all officers who handled exhibit P2 from arrest, seizure, storage, transmission to and from the Government Chemist, valuation and production were all paraded as prosecution witnesses whose demeanour was credible as assessed by the trial judge".*

On our part, we subscribe to the above cited authority.

That apart, we have considered the nature of the item, elephant tusks, and we are satisfied that by its nature it cannot easily change hands so as to be tampered with or be in danger of being easily destroyed or polluted - See **Paul Maduka and Others** (supra), **Issa**

Hassan Uki v. Republic, Criminal Appeal No. 129 of 2017 (unreported) and **Joseph Leonard Manyota** (supra).

In this regard, we are satisfied that the chain of custody was not broken thus, this ground also fails.

The complaint in ground no. 5 of the appeal is that the learned trial judge convicted the appellants without considering the cardinal principle that they cannot be convicted on the weakness of their defence but on the strength of the prosecution evidence. Mrs. Makala dismissed that contention arguing that the trial judge convicted them based on the strong prosecution evidence and not the weakness of their defence evidence. She pointed out that, the trial court found that the prosecution proved the case beyond reasonable doubt while the appellant's defence failed to raise any doubt.

We have revisited the defence evidence. The 1st appellant in his defence, gave a narration of events leading to his arrest and distancing himself from the charge levied against him. Likewise, the 2nd appellant gave a general denial that he was not at the scene of crime and went on testifying that there was bad blood between him and PW4 on account that he once found PW4 with his wife suggesting that there was a love

affair between them. However, we note that PW4 was not cross examined by the appellant's advocate on the alleged love affair.

All in all, looking at the nature of the prosecution evidence *vis a vis* the defence evidence, we are satisfied that the trial judge correctly found that the 1st and 2nd appellant's defence failed to raise a reasonable doubt against the prosecution evidence. In any case, in relation to the 2nd appellant's defence, even if the evidence of PW4 is disregarded, it is our considered view that, there was still ample evidence from PW1 and PW2 to sustain conviction against him. We, thus, find this ground devoid of merit and dismiss it.

As regards the 2nd limb of ground no. 2 that the prosecution did not prove the case beyond reasonable doubt, it was Mrs. Makala's argument that the case was proved beyond reasonable doubt. In elaboration, she revisited the evidence of PW1, PW2, PW3, PW4 and PW6 on how the 1st and 2nd appellants were found in possession of elephant tusks and how were seized from the 2nd appellant's residence. She added that PW2 explained how they went with 1st appellant to the forest where two (2) tusks were recovered and how PW6 proved that the tusks were elephant tusks.

Mrs. Makala also submitted that the offence of dealing in trophies was proved by PW2 who told the court on how he communicated with 2nd appellant through a mobile phone and talked with him on the elephant tusks business and when he met him at the village the 2nd appellant asked for money for buying it. As regards the offence of leading organized crime the learned State Attorney was of the view that the two appellants organized to commit the offence.

On our part, having examined the evidence in the record of appeal, we are in agreement with the learned State Attorney to the extent that the 1st and 2nd counts were proved beyond reasonable doubt. This is in view of what we have explained when dealing with the other grounds of appeal. There is no gainsaying that both appellants were found in possession of the 4 elephant tusks while at the 2nd appellant's house after the 1st appellant had retrieved his two pieces from the forest before. There is also ample evidence that the two dealt with the government trophy as shown in the evidence of PW2 who communicated with the 2nd appellant on the deal of purchasing the same. When PW2 arrived at Kagerankanda village, the 2nd appellant introduced to him the 1st appellant who also had his tusks for sale. Not only that but also, they set to negotiate for the price only that they were arrested before receiving their purchasing price.

As to the 3rd count of leading organised crime, it is our considered view that the same was not proved. Unfortunately, even the learned State Attorney did not assist us much for failure to show in the record of appeal where the prosecution led evidence to prove the said offence.

Paragraph 4 (a) of the First Schedule to the EOCCA which was among the provisions to which the offence of leading organised crime was premised provides as follows:

> *"4(1) A person commits the offence of leading organized crime whom-*
> *(a)* ***intentionally or wilfully organizes, manages, directs supervises or finances a criminal racket.,***
> *(b) .....*
> *(c) .....*
> *(d) ....."*[Emphasis added]

Our reading of the above provision is that, it covers persons who with intention or wilfully organise, manage, supervise, direct or finance criminal racket.

Having gone through the record of appeal, we were unable to see where the prosecution led evidence in any of the circumstances stipulated in the said provision of the law so as to warrant conviction of the appellants in the 3rd count. That apart, even going through the

judgment of the trial court there is nowhere that the trial judge discussed, considered or dealt with the issue of leading organise crime and deliberate on it. What can be observed is that the 3rd count emerged during the conviction and sentencing of the appellants. In this regard, it is our finding that the 3rd count was not proved beyond reasonable doubt and we quash the conviction and set aside the sentence meted against the appellants in respect of the offence of leading organized crime.

Before penning off, we wish to say a word on the sentence of two years imprisonment meted out against the appellants in respect to the 2nd count on the offence of dealing with government trophies. After having invited Mrs. Makala to address us on it, she readily conceded that the sentence was not proper in view of the amendments effected through the Written Laws (Miscellaneous Amendments) Act, 2016 (No 3 of 2016) which enhanced the sentence to not less than twenty years imprisonment. On that basis, she prayed to the Court to invoke its revisional powers vested in it under section 4(2) of the Appellate Jurisdiction Act, Cap 141 R.E. 2019 and revise it.

Both appellants resisted the prayer by learned State Attorney for enhancement of the sentence.

Admittedly, before the amendment effected through Act No. 3 of 2016 the penalty for the offence of unlawful dealing in government trophy was two years imprisonment. This was provided for under section 84 (1) of the Wildlife Conservation Act as follows:

> *"A person who sells, buys, transfers, transports, accepts, exports or import any trophy in contravention of any of the provision of this part or CITES requirements, commits an offence and shall be liable on conviction to a fine of not less than twice the value of the trophy* ***or to imprisonment for a term of not less than two years but not exceeding five years or to both."*** [Emphasis added]

However, following the amendment of the Economic and Organised Crimes Control Act through Act No. 3 of 2016, the sentence was enhanced. The amendments were introduced through Clause 13 thereof in which section 60 of the EOCCA was amended as follows:

> *"Amendment of 13: The principal Act is amended: -*
>
> *Section 60*
>
> *(a) .....*
>
> *(b) By deleting subsection (2), (3) and*
>
> *(4) and substituting for it the following:*

> *"(2) Notwithstanding the provisions of a different penalty under any other law and subject to subsection (3), a person convicted of corruption or* ***economic*** *offence shall be liable to imprisonment for a term of* ***not less than twenty years*** *but not exceeding thirty years, or to both that imprisonment and any other penal measure provided for under this Act:*
>
> *Provided that, where the law imposes penal measures greater than those provided by this Act, the court shall impose such sentence.*
>
> *(3) .....*
>
> *(4) ....."* [Emphasis added]

Looking at this provision of the law as amended it is obvious that the sentence that was imposed against the appellants is illegal, more so, taking into account that the offence was committed in 8/3/2019 long after the amendment came into force on 8/7/2016. In this regard, we invoke revisional powers bestowed on us under section 4(2) of the AJA and revise and enhance the sentence of two years imprisonment for the offence of dealing with government trophies to twenty years imprisonment which is to run concurrently with the sentence in relation to the first count to be counted from the date of their conviction.

In the event, except for the 3rd count which has been found to have not been proved beyond reasonable doubt, we find that the appeal is devoid of merit. We hereby dismiss it.

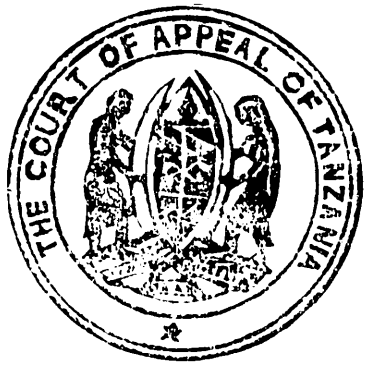
DATED at **KIGOMA** this 14th day of July, 2021.

R. K. MKUYE
JUSTICE OF APPEAL

B. M. A. SEHEL
JUSTICE OF APPEAL

Z. N. GALEBA
JUSTICE OF APPEAL

This judgment delivered this 15th day of July, 2021 in the presence of the Appellants in person through a video link from Bangwe Central Prison in Kigoma and Mrs. Edna Makala, learned State Attorney for the Respondent / Republic, is hereby certified as a true copy of the original.



E. G. Mrangu
DEPUTY REGISTRAR
COURT OF APPEAL