

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DODOMA**

**(CORAM: MUGASHA, J.A., LEVIRA, J.A and FIKIRINI, J.A.)**

**CONSOLIDATED CRIMINAL APPEALS NO. 346 OF 2020,  
475 AND 476 OF 2021**

**DANIEL MALOGO MAKASI.....1<sup>ST</sup> APPELLANT**

**ATHANAS MAGALULA.....2<sup>ND</sup> APPELLANT**

**OMARY MUSSA MWAJA @BABU NGOZI.....3<sup>RD</sup> APPELLANT**

**VERSUS**

**REPUBLIC..... RESPONDENT**

**(Appeal from the decision of the High Court of Tanzania,**

**(District Registry) at Dodoma**

**(Mansoor, J.)**

**dated the 20<sup>th</sup> day of December, 2019**

**in**

**Consolidated DC Criminal Appeals No. 1, 34 & 35 of 2019.**

**JUDGMENT OF THE COURT**

27<sup>th</sup> April & 2<sup>nd</sup> May, 2022

**MUGASHA, J.A.:**

The appellants and three others were arraigned before the Resident Magistrate's Court of Singida for the charges of unlawful possession of government trophies contrary to sections 86(1)(2)(c)(ii), (3)(b) and 111(i)(a) of the Wildlife Conservation Act [CAP 323 R.E. 2002] (the Wild life

Conservation Act) read together with paragraph 14 of the First Schedule to sections 57(1) and 60(1) both of the Economic and Organized Crime Control Act, Cap 200 R.E 2002; (the EOCCA); and unlawful dealing in government trophies contrary to section 80(1), 84(1) and 111(1)(a) of the Wildlife Conservation Act read together with paragraph 14 of the First Schedule to and sections 57(1) and 60(1) both of the (the EOCCA).

There were a total of five counts in the respective charges. In the first two counts it was alleged by the prosecution that, on 11/1/2017 at Machinjoni area within Manyoni District, Singida Region, the appellants were found in unlawful possession and dealing with government trophy to wit, six pieces of elephant tusks which are equivalent to three killed elephants valued at USD 45,000.00 equivalent to Tanzania shillings Ninety-Nine Millions, the property of the United Republic of Tanzania. The appellants denied the charges. After a full trial, three other persons were cleared whereas the appellants were convicted of the first count of unlawful possession of government trophy and sentenced to pay a fine of TZS. 600,000,000.00 or in case of default to serve a jail term of twenty years.

Undaunted, the appellants unsuccessfully filed an appeal to the High Court which was dismissed hence, this second appeal.

A brief factual background which gave rise to this appeal is as follows: On 10/1/ 2017, Kiza Baraka and Mrekwa Simon Foka (PW2) were tipped by an informer, that there were people at Manyoni dealing with elephant tusks. Acting on the tip and pretending to be a prospective buyer, on 11/1/2017, PW2 communicated with the would be sellers and a deal was sealed that on the price of each kilogram of the tusk. Initially, the would be sellers met by PW2 introduced themselves as Daniel Malogo, Atanas, Omary Mussa and Yohana and another person. Then they agreed to meet at Machinjioni Area to conclude the deal at around 13.00hrs. Prior to that, PW2 went to the OCCID of Manyoni Police Station seeking to be assisted to arrest the suspects. The OCCID obliged and directed his officers to join PW2 in the operation.

Having secured the assistance of the police officers, DCPL Masoye (PW3) and P/C Andrew (PW4), accompanied PW2 to Machinjioni area where they found five suspects with a motor vehicle make Suzuki Vitara T. 864 AUD and a motorcycle registration No. 1864 and one motorcycle SANLG red in colour, registration No. MC 986 DHE. They immediately arrested them, searched their motor vehicle in the presence of two independent witnesses and found a small bag with *JWTZ* colours containing six pieces of elephant

tusks. The tusks together with the motor vehicle, motor cycle and a scale were seized. The seized items and the tusks were marked, filled in the certificate of seizure which was signed in the presence of the appellants and signed by the 1<sup>st</sup> and 3<sup>rd</sup> appellants.

Subsequently, the appellants were taken to the Anti-Poaching Unit Manyoni and later to the Zonal Wildlife offices. Meanwhile, PW3 who was involved in the arrest handed over the exhibits to the custodian one Athuman Bahati (PW1) in the presence of the appellants. The tusks were valued by Barakaeli Abdul Ndossi (PW8). Subsequently, the appellants were sent to Manyoni Police Station where after interrogation they confessed to have committed the offences. It is against the said backdrop they were arraigned as aforesaid.

In their defence, all the appellants denied the prosecution accusations claiming that the case was framed up against them and they as well contended to have been forced to sign the seizure certificate and the cautioned statements without knowing their contents.

Believing the prosecution account to be true, the trial court was satisfied that the prosecution managed to prove the charge of unlawful

possession of government trophy. It convicted and sentenced the appellants accordingly. Meanwhile, it acquitted the appellants on the second count of unlawful dealing in government trophy.

Before the Court, each appellant had filed a separate Memorandum of Appeal and later through their respective learned counsel filed Supplementary Memoranda of Appeal save for the 2<sup>nd</sup> appellant. While two appellants preferred to pursue the grounds in the supplementary memoranda, the 2<sup>nd</sup> appellant opted to abandon five grounds and argue only two grounds in his earlier Memorandum of Appeal. Prior to the hearing, parties agreed and the three appeals were consolidated into one because they emanate from the same trial proceedings and judgment.

At the hearing, the appellants who were present in Court had the services of Messrs. Leonard Mwanamonga Haule and Fredy Peter Kalonga, learned counsel. The respondent Republic was represented by Ms. Lina William Magoma, learned Senior State Attorney and Ms. Bernadetha Sangawe, learned State Attorney.

Following the consolidation of the appeals, the appellants have fronted mainly four main points of grievance namely: **One**, the trial was flawed with

procedural irregularities on account of improper admission of both documentary and physical exhibits; **two**, the defence evidence was not considered by the two courts below; **three**, irregular succession of magistrate which was contrary to the provisions of section 214 of the Criminal Procedure Act [CAP 20 R.E.2019]; and **four**, irregular conviction on the charge based on unproven evidence. Thus, as agreed by the learned counsel the grounds of complaint shall constitute the four grounds of appeal and shall be so addressed in disposing of the consolidated appeal.

Upon taking the floor, following a brief dialogue with the Court, on reflection, the learned counsel for the appellants abandoned the ground of complaint faulting the succession of magistrates and we marked it so.

Mr. Haule commenced by submitting that, all the documentary and the physical exhibits, were either tendered by the prosecutor who is not a competent witness under the law or following their admission, were not read out to the appellants. On this he pointed out that, the documentary exhibits which were tendered by the prosecutor and not read over to the appellants are: the trophy exhibit register (P1); the cautioned statement of the 2<sup>nd</sup> appellant (P8); the cautioned statement of the 1<sup>st</sup> appellant (P10) and the trophy certificate of valuation (P11). He added that the tendered exhibits

which were not read over to the appellants at the trial are: the certificates of search and seizure (P6 and P7). Also it was submitted that, all the physical exhibits which were irregularly tendered by the prosecuting attorney are: eight (8) elephant tusks (P2); a spring scale (P3); a small bag (P4) and a motor vehicle (P5).

On the infractions surrounding the exhibits Mr. Haule urged us to expunge them all and consequently, he argued that in the absence of the exhibits in question the charge is rendered not proved beyond reasonable doubt on account of lacking documented account in respect of arrest, search and seizure of the appellants and the elephant tusks which is the basis of the count of unlawful possession of government trophy. To bolster the stance, the case of **ALOYCE MARIDADI VS REPUBLIC**, Criminal Appeal No. 208 of 2016 (unreported) was referred to us by advocate Fredy Kalonga, who reiterated that the prosecution case has no legs to stand on as the charge remains unproven.

As to the complaint on failure to consider the defence evidence, Mr. Haule faulted the two courts below on the matter. He contended that, none of the courts below considered the appellants' defence on the case being framed up against them because the tusks planted by the police officers who

brought those tusks at the scene of crime. He argued this to be irregular and invited the Court to consider the defence and reverse the decisions of the two courts below.

In relation to the complaint that the conviction was based on unproven charges, Mr. Haule contended that, both the prosecution account was flawed with contradictions such as, the evidence on the tusks being marked differently from other exhibits which was not the case; the first appellate court's reliance on the extraneous factors in its judgment at pages 365 and 379 of this record; a narration of facts and on what was entailed in the investigation process whereby the appellants were taken to the offices of Anti-Poaching Units to confirm if the tusks were trophy. However, upon being engaged by the Court as to what constitutes a contradiction and an extraneous consideration, on reflection, Mr. Haule abandoned his assertions.

Picking on the evidence of PW8 a witness who valued the trophies, Mr. Haule faulted the valuation of eight tusks from 5 killed elephants arguing that there ought to have been 10 tusks considering that each jumbo has two tusks. He also faulted the oral account of PW8 who despite testifying to have weighed the tusks, the valuation report (Exhibit P10) is silent on the matter. As for Mr. Kalonga, he argued that, since the six tusks and subject of the



charge were not valued separately, the value was not established and as such, the charge against the appellants was not proven.

Upon being probed by the Court, if oral and direct account of the prosecution witnesses cannot be acted upon in the absence of documentary exhibits, Mr. Haule inclined with a caveat that such evidence must be sufficient adding that if the physical exhibit of the elephant tusks is discarded or ignored by the Court, then the conviction on a charge of unlawful possession cannot be sustained.

As for advocate Kalonga, he was of the view that, the oral account cannot stand on its own without the documentary evidence to prove the manner in which the arrest, search and seizure was effected and how the cautioned statements were procured. In other words, Mr. Kalonga was of the view that without documentary evidence, the oral account cannot in any way sustain the prosecution case. Ultimately, the appellants' counsel reiterated earlier prayer that since the charge was not proved at the required standard, the appeal be allowed and the appellants be set at liberty.

On the other hand, Ms. Magoma from the outset, opposed the appeal. However, she conceded that, the trophy exhibit register (P1); the certificates

of search and seizure (P6 and P7) be expunged because they were not read out following admission. She was adamant to take a similar course on the rest of the exhibits arguing that, they were properly tendered by the witnesses in the course of being led by the prosecuting attorney while on the other hand no objection was registered from the defence. She thus urged us not to expunge the respective exhibits. In the alternative, she was quick to point out that, even if the exhibits are expunged, the oral account of the prosecution witnesses by PW1, PW2, PW6 and PW8 suffice to sustain the conviction of the appellants who were arrested and found in possession of six tusks of 3 killed elephants (Exhibit P2) and confessed to have committed the offence in terms of the cautioned statements namely, exhibit P8 and P10. To support her assertions, she cited to us the cases of **SAGANDA KASANZU VS REPUBLIC**, Criminal Appeal No. 53 of 2019 (unreported).

Ms. Magoma challenged Mr. Haule's contention on existence of contradictions on the valuation of the tusks arguing that, the eight tusks were in respect of a total of three counts but those touching the appellants were six tusks from 3 killed elephants and a subject of 1<sup>st</sup> count. While the two other tusks were in respect of counts against other persons who are not

the appellants herein. Besides, she added, the appellants were not in any way prejudiced by the manner in which the valuation was conducted and it was properly so.

We begin with the complaint on the regularity of admission of exhibits. As earlier stated, while the appellant's counsel invited the Court to expunge all documentary and physical exhibits, this did not augur well with the learned Senior State Attorney who besides the concession on unread exhibits, claimed the rest to be in order and that they should not be expunged.

It is settled position of the law that, failure to read out the contents of an exhibit after its admission, is a fatal omission as it violates the accused's right to a fair trial. See: **ROBINSON MWANJISI AND THREE OTHERS VS REPUBLIC** [2003] T.L.R 218; **ANANIA CLAVERY BETELA VS REPUBLIC**, Criminal Appeal No. 355 of 2017, **ZHENG ZHI CHAO VS THE DIRECTOR OF PUBLIC PROSECUTIONS**, Criminal Appeal No.506 of 2019 and **SIMON SHAURI AWAKI VS REPUBLIC**, Criminal Appeal No.62 of 2020 (all unreported) and **SAGANDA SAGANDA KASANZU V REPUBLIC** (supra).

We agree with the learned counsel for either side that, exhibits register (P1), certificates of seizure (P6 and P7) and the trophy valuation certificate (P11), were not read out after being admitted which was a serious omission. We say so because the appellants were present throughout the trial were convicted on the basis of the documentary evidence they were not aware of and as such, they could not exercise their right to cross-examine such evidence which was indeed prejudicial. Thus, we accordingly discard the exhibits in question.

What follows is those exhibits which the learned counsel had contending arguments on the regularity of admission as they were tendered by the prosecuting attorney. This need not detain us. The law is well settled that the prosecuting State Attorney is incompetent person to tender any exhibit during trial as he is not a witness under oath or affirmation. This has been emphasized by the Court in a number of its decisions including the cases of **ATHUMANI ALMAS RAJAB VS REPUBLIC**, Criminal Appeal No. 416 of 2019, **SENSO MASWI @ MWITA AND ANOTHER VS REPUBLIC**; Criminal Appeal No. 518 of 2019, **AMOS ALEXANDER@MARWA VS REPUBLIC**, Criminal Appeal No. 513 of 2019 and **ERNEST**

**MSUNGU@NYOKA MKENYAA VS. REPUBLIC**, Criminal Appeal No. 78 of 2012 (all unreported), In the latter case the Court held that:

*"a prosecutor cannot assume the role of a prosecutor and a witness at the same time capable of examination upon oath or affirmation in terms of section 98(1) of the CPA."*

In the circumstances, in the event exhibits P3, P4, P5, P8 and P10 were actually tendered by the prosecuting attorney this was irregular and we accordingly discard them from the record.

As it can be discerned in the foregoing, we have singled out exhibit P2 because we have to consider carefully the context in which the tusks were presented and received in the evidence in order to determine the propriety of admission. What transpired at the trial as reflected at pages 32 to 36 of the record of appeal as here under:

*"Mr. Msemo: I pray the witness to identify the exhibit.*

*Court: PW1 identify the exhibit register date, six elephant tusks and motor vehicle make Suzuki.*

***SGD: J.M. MINDE – SRM***

***25/102017***

*Mr. Msemo: I pray the exhibit register to be admitted as exhibit before this court if the defence side has no objection.*

*Mr. Kuwayawaya for 1<sup>st</sup> accused I have no objection*

*Mr. Chigogo for 2<sup>nd</sup>, 4<sup>th</sup> 5<sup>th</sup> and 6<sup>th</sup> accused*

*I have no objection*

*Mr. Ngongi for 3<sup>rd</sup> accused*

*I have no objection*

**ORDER:** *Exhibit register dated 11/4/2017 admitted as P1*

**SGD: J. M. MINDE – SRM**

**25/10/2017**

**CONTINUE PW1**

*I also [registered] the exhibit make elephant tusk eight of them marked with GD/2/MAN/06/2017. They are marked with PS 1 and PS2, and six others they are marked also with M1, M2, M3, M4, M5, M6 and accused person names four of them I the M1 .... M6 tusks. PS1 tusks is written Thadayo and PS2 is named Philipo Lameck.*

*Mr. Msemo (S/A): I pray the witness to identify the exhibits eight elephant tusks.*

**COURT:** *PW1, identify eight elephant tusks, marked with case file number GD/2AP/MAN/IR/06/2017 and M1 .... M6 and PS1 and PS2.*

**SGD: J. M. MINDE – SRM**

**25/10/2017**

*Mr. Msemo – S/A*

*I pray eight elephant tusks to be admitted as exhibit before this court if defence side has no objection.*

*Mr. Kuwayawaya – 1<sup>st</sup> accused*

*I have no objection*

*Mr. Chigongo, 2<sup>nd</sup> 4<sup>th</sup> 5<sup>th</sup> 6<sup>th</sup> accused*

*I have an objection the elephant tusk not to be admitted as exhibit. That the person [who] tendered it is not competent to tender the exhibit before this court. He is not the arresting officer. The exhibit was supposed to be tendered by the arresting officer.*

*That is all.*

*Mr. Ngongi*

*I also have objection [to] the same as explained by Mr. Chingongo that the witness is not the competent person to tender the exhibit.*

*That is all.*

*Mr. Nghoboko (S/A)*

*I pray the objection to be overruled because the witness testified, he is the custodian of the exhibit and all the exhibits were under his control to date. I pray the objection to be overruled. There is no any provision [requiring] the arresting officer to tender the exhibit. Any person responsible with the exhibits can tender them.*

*That is all.*

*Mr. Msemo (s/A)*

*I pray to add by referring the decision made in the case of MAJID JOHN VICENT @ MLINDI MGABO, AND OTHERS vs The REPUBLIC, Criminal Appeal No. 264 of 2006 decided at Mwanza on which the matter established there is no hard and fast rule on [who should] tender the exhibits but any person who can explain the exhibit. It is the principle that either, custodian or [**possessor**] on per nature the exhibits can tender the exhibits and he is the custodian of the exhibits. He is competent to tender the exhibits*

*That is all.*

*Mr. Chigongo: I heard the submission but I maintain my prayer to be considered as he only received the exhibit.*



*How they were arrested with them, the C/A principle cannot provide each and every case. The arresting officer is the one to tender the exhibit.*

*That is all.*

*Mr. Ngongi: I pray the exhibit not to be admitted as the witness is not the direct witness [who] participated in the recovery of the exhibit. He is not the arresting officer.*

*That is all.*

### ***RULING***

*The objection overruled, as the witness is the custodian of the exhibits. Eight elephant tusks marked GD/2AP/MAN/IR/06?2016 four of them M1 ..... M6 and two of them IS1 and IS2 collectively admitted as P2."*

Notwithstanding that, a prosecutor not being a witness is barred to tender exhibits, in the light of what transpired at the trial, we are satisfied that, the present case has to be attended regard being had on its own peculiarities and circumstances. In this regard, after the trial court determined that PW1 being the custodian of exhibits was competent to tender the exhibit. It proceeded to admit the same is thus glaring that

exhibit P2 was received from PW1 which is in our considered view, quite in order. As such, we are satisfied that the exhibit was properly admitted in the evidence. Therefore, the respective ground of complaint on irregular admission of exhibits save for exhibit P2 is partly allowed to the extent stated.

Regarding the complaint that, the defence evidence was not considered as against the appellants' conviction, the learned counsel for either side had contending submissions. On our part, we found the complaint not justified and shall demonstrate why. It is glaring that the defence was considered by the two courts below as reflected at pages 295, 297, 298 and 302 of the record of appeal. To be more precise, on the part of the trial court, having evaluated the entire oral and documentary evidence presented at the trial, it was satisfied that the appellants were found in possession of government trophy without a valid permit having not countered important evidential matters such as, seizure certificates and caution statements tendered and admitted against them. Similarly, before High Court, sitting as first appellate court, re-evaluated the evidence before sustaining conviction against the appellants. In the premises the complaint on the failure to consider the defence is not merited.

Furthermore, we decline Ms. Magoma's argument which was to the effect that, the exhibits tendered by the prosecuting attorney should be spared as they were never objected to by the defence. This is wanting because failure to object the tendering of an exhibit is not a waiver to comply with the dictates of the law or else that would amount to condoning illegally procured exhibits which is not healthy in the criminal justice as it will compromise the tenets of having a fair trial.

Finally, the next crucial issue for our determination is whether with the remaining oral account of the prosecution witnesses regarding the arrest, search and seizure of the jumbo tusks and respective evaluation can sustain the prosecution case. The respective learned counsel locked horns on the issue. While the learned Senior State Attorney argued that the remaining oral account of the prosecution witnesses suffices to sustain the conviction of the appellant, the learned counsel for the appellants argued that, in the absence of documentary account the oral account remains uncorroborated.

The evidential value of oral and direct account of a witness was considered in the case of **COMMONWEALTH VS WEBSTER** 1850 Vol. 50 MAS 255 where Shaw CJ stated:

*"The advantage of positive evidence is that it is direct testimony of witness of a fact to be proved who if speaks the truth so it done. The only question is whether he is entitled to belief."*

The said case was cited with approval in among others the case of **VUYO JACK VS THE DIRECTOR OF PUBLIC PROSECUTIONS**, Criminal Appeal No. 334 of 2016 (unreported). The Court had the occasion to deal with the strength and value of an oral account of a witness. The Court said:

*"Having carefully considered the arguments for and against the appeal and the evidence on record we are alive to the fact that, the conviction of the appellant basically hinges on the credibility of PW2, PW3, PW7 and PW10. These witnesses were present at the scene of crime and to be particular when the appellant was apprehended. The cumulative testimonial account of those witnesses is that, narcotic drugs were retrieved from the appellant's motor vehicle following a search which was conducted by PW3 in the presence of the appellant himself Such evidence is direct ...."*

In the premises, the credible oral prosecution evidence will not fail the test merely because there is no corresponding documentary account. See: **EMMANUEL MWALUKO NYALUSI AND FOUR OTHERS VS REPUBLIC**, Criminal Appeal No. 110 of 2019; **ZHENG ZHI CHAO VS THE DIRECTOR OF PUBLIC PROSECUTIONS**, Criminal Appeal No. 506 of 2019; **ABAS KONDO GEDE VS REPUBLIC**, Criminal Appeal No. 472 of 2017 and **ABDALLA RAJABU MWALIMU VS REPUBLIC**, Criminal Appeal No. 361 of 2017 (all unreported). In the latter case the Court among other things, stated:

*"...Therefore, as rightly submitted by Ms. Mkunde, even in the absence of paper documentation on how the pellets were handled from the time of arrest until when they were tendered in court, the oral evidence of witnesses who described how pellets were handled from the time of arrest until when they were tendered in court was sufficient proof We reiterate the position we stated in our decision in Kadiria Kimaro concerning the importance of oral evidence..."*

A follow up question in this case is whether the oral account of the prosecution witnesses is credible and worth belief. At the outset, we restate

the principle that, although the credibility of a witness is the domain of the trial court but only in so far as the demeanour is concerned, it can still be determined by the appellate court in two other ways namely: **One**, when assessing the coherence of the testimony of that witness, **two**, when the testimony is considered in relation to the evidence of other witnesses, including that of the accused person. See - **SHABAN DAUDI VS REPUBLIC**, Criminal Appeal No. 28 of 2001 (Unreported). On the said account, every witness is entitled to credence and must be believed and his testimony accepted unless there are good and cogent reasons not believing a witness. Good reasons for not believing a witness include the fact that the witness has given improbable or implausible evidence, or the evidence has been materially contradicted by another witness or witnesses. (See in **GOODLUCK KYANDO VS REPUBLIC**, [2006] TLR 363, and **MATHIAS BUNDALA VS REPUBLIC**, Criminal Appeal No. 62 of 2004 (unreported).

We shall accordingly be guided by the stated principles. Having carefully scrutinized what transpired at the trial court, we find no cogent reasons to disbelieve the credible account of the eye witnesses which was coherent on what had transpired at the arrest, seizure and retrieval of six jumbo tusks which were found in possession of the appellants who all went at the scene

to sell the tusks to PW2 who posed as a prospective buyer. However, they were arrested on the spot as deposed by PW2 who was involved in the arrest, search and seizure, marked the tusks as M1 to M6 in the presence of the appellants. The said exercise was conducted in the presence of the appellants and PW6 who was an independent witness who witnessed the search. Such evidence is corroborated by PW3 and PW4 the police officers involved in the arrest, search and seizure who were directed by the OCCID to accompany PW2 who earlier on had reported to the OCCID that the appellants were about to sell to him jumbo tusks. Subsequently, it is PW3 D/CPL MASOYA who entrusted the tusks to PW1 the custodian of exhibits at the Anti-Poaching Unit offices at Manyoni. According to Barakael Abdul Ndossi a warden officer (PW8) having been satisfied that the tusks were from three killed elephants, relying on GN 207 which prescribes the value of each elephant to be USD 15,000, he valued the tusks at TZS. 99,000,000/= as reflected at pages 145 and 150 of the record of appeal. Although he was not a wildlife officer, he gave a detailed description of the tusks and in our considered opinion, he had requisite expertise to conduct the valuation and could differentiate the tusks from the horns of other animals. Moreover, at the trial the prosecution witnesses managed to identify the tusks by their

marks inserted at the scene of crime. In the circumstances, such, cumulative evidence of the prosecution militates against the appellant's account on the case being framed up because it was proved beyond doubt that they were actually found in possession of six jumbo tusks and this is what culminated to their arraignment.

The concern raised by Mr. Kalonga on the valuation of the six tusks being conducted together with other two tusks is without basis. We are fortified in that regard because, it is on record that the appellants were arraigned together with other persons alleged to be found in possession of two pieces of jumbo tusks which were marked IS1 and IS2. However, the trio were cleared and the appellants were convicted. Thus, there was no mixing up of the jumbo tusks as seems to be suggested by Mr. Kalonga and besides, the valuation of the six (6) tusks together with other two did not in any way prejudice the appellants because PW8 in his testimony had established that the six tusks were from three killed jumbos.

All said and done we are satisfied that, the available credible account from the prosecution witnesses, and exhibit P2 (the six jumbo tusks), points to the guilt of the appellants to have been found in possession of government trophy without a valid permit. Thus, as earlier stated, save for the complaint



on the exhibits which were not properly admitted in the evidence, the remaining complaints are not merited and are accordingly dismissed and the convictions and the respective are sustained.

**DATED** at **DODOMA** this 30<sup>th</sup> day of April, 2022.


S. E. A. MUGASHA  
**JUSTICE OF APPEAL**

M. C. LEVIRA  
**JUSTICE OF APPEAL**

P. S. FIKIRINI  
**JUSTICE OF APPEAL**

This Judgment delivered this 2<sup>nd</sup> day of May, 2022 in the presence of Mr. Fred Peter Kalonga, learned counsel for the Appellants and Ms. Benadetha Thomas, learned State Attorney for the respondent Republic, is hereby certified as a true copy of the original.



  
H. P. NDESAMBURO  
**SENIOR DEPUTY REGISTRAR**  
**COURT OF APPEAL**