IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA

(CORAM: LILA, J.A., MWANDAMBO, J.A., And FIKIRINI, J.A.)

CRIMINAL APPEAL NO. 330 OF 2019

ISSA MUSTAPHA GORA .....ST APPELLANT
ADAM MUSTAPHA HIMAY.....2ND APPELLANT

VERSUS

REPUBLIC .....RESPONDENT

(Appeal from the decision of the High Court of Tanzania at Arusha

(Luvanda J.)

dated on 28th day of June, 2019

in

Economic Case No. 4 of 2019)

JUDGMENT OF THE COURT

28th September, & 19th October, 2022

LILA, JA:

Issa Mustapha Gora and Adam Mustapha Himay, the 1st and 2nd appellants herein together with one Adam Ramadhan (then 3rd accused) were arraigned before the High Court of Tanzania (Corruption and Economic Crimes Division) to answer a charge comprising two counts. The appellants were jointly charged in the first count of unlawful possession of government trophy contrary to section 86(1) and (2) (b) of the Wildlife Conservation Act No. 5 of 2009 (the WCA) read together with paragraph 14 of the Schedule to, and sections 57(1) and 60(2) of

the Economic and Organized Crimes Control Act, (the EOCA). They were convicted as charged and each sentenced to pay TZS 982,800,000.00 as fine or serve 20 years imprisonment in default.

In the second count, the 1st appellant and Adam Ramadhan were charged with unlawful dealing in government trophy contrary to sections 80(1) and 84 of the Wildlife Conservation Act, No. 5 of 2009 read together with Paragraph 14 of the 1st Schedule to and sections 57(1) and 60(2) of the EOCA read together with sections 80(1) and 84 of the WCA. Adam Ramadhan was acquitted and therefore is not a party to this appeal. The 1st appellant was convicted and sentenced to pay TZS 196,560,000.00 as fine or serve two years jail term in default.

In the first count it was alleged that on 30th December, 2016 at Orongadida Village within Babati District, the appellants were found in unlawful possession of two pieces of elephant tusk and seventy-five teeth all valued at TZS 98,280,000.00, the property of Tanzania.

The particulars of offence, in the second count were that, on diverse dates between November and December, 2016 at Mkekena, Kondoa in Dodoma Region, Issa Mustapha Himay @ Gora (1st appellant) and Adam Ramadhan unlawfully dealt in government trophies by

transferring elephant tusk and teeth without trophy dealer's license from authorized officer.

Seven witnesses testified for the prosecution namely; PW1 A/INS Aloyce Bwire, PW2 Madina Idd, a ten cell leader PW3 Ramadhani Juma, PW4 Christopher Peter Laizer, PW5 Donald Shija, PW6 E 3250 CPL Abdallah and PW7 E6749 DC Donald. The witnesses tendered exhibits to support the case. Their evidence was this: Donald Shija (PW5), a Game Warden, who was part of the task force for Northern Zone, on 30th December, 2016 received information from an informer that there were people involving themselves with government trophies business at Orongadida Village. Acting on that information, he mobilized a team of police officers including PW1 and went to the said village directly to the house of PW2 where that business was said would take place. They found PW2 cooking and other two men sitting on the chairs at the sitting room. They ambushed the house and arrested the appellants. PW3 was called and participated in the search during which a polythene bag which was lying there was opened. Two pieces suspected to be elephant tusks and seventy-five teeth of elephant were found in the bag. Outside the house there was a motorcycle black in colour without a Registration Number. According to PW2, the sulphate bag containing the alleged

elephant tusks and teeth came with the appellants at her home on a motorcycle (exhibit P4) which was parked outside the house. A certificate of seizure (exhibit P1) was prepared and the seized items were listed by PW1 and signed by PW7, PW3 and PW2. PW1 took the exhibits to Babati Police Station and handed them to Cpl Abdallah, the exhibit keeper (PW6) for safe custody. They were stored until the 31st December, 2016 when verification of the seized items was done at Babati Police Station by Christopher Peter Laizer (PW4), a Wildlife Officer. PW4 confirmed to be two elephant tusks (exhibit P2) and 75 pieces of molars of elephant or teeth (exhibit P3) and concluded that they were government trophies extracted from three elephants valued at TZS 98,000,000.00. He tendered a Trophy Valuation Certificate as exhibit P5.

Both appellants admitted being arrested while in the house of PW2 but disassociated themselves from the bag which contained elephant tusks and teeth, subject of the charges. The 1st appellant had it that he hired the 2nd appellant, a motorcycle rider on hire famously known as "bodaboda" to ferry him to Galapo. On the way, the 2nd appellant asked him to meet Madina (PW2) who was related to him. He said that his mission was to meet his friend one Kweka with whom he had regular

conversation over a place he would get 100 kg of elephant tusks. While having that conversation with Kweka, the 2nd appellant was in the kitchen talking to PW2. No sooner had he completed the conversation, than the police officers stormed into the house and arrested them. That, after a while he saw a sulphate bag in the sitting room which he claimed was thrown there by police. He denied that the bag belonged to him but confessed following being tortured at the police station. Upon pouring down the contents the elephant tusks and teeth (exhibit P2 and P3) were seen. That led to their arrest and being taken to the police station.

The story by the 2nd appellant, was brief but substantially and precisely linked with the 1st appellant's line of defence. It was this; on 30/12/2016 after afternoon prayer, he was hired by the 1st appellant to take him to Galapo at a fare of TZS 10,000.00. At Galapo, the 1st appellant told him that the person he was to meet was yet to arrive. He seized the opportunity to ask him that they pass at one Madina (PW2) to greet her. They went there and parked the motorcycle (exhibit P4) outside. While talking to PW2 at the kitchen and when the 1st appellant was at the sitting room, he heard a heavy bang, people entered the house and kept them under arrest. Search was conducted and exhibits

P2 and P3 were seized from a bag that was in the house. He signed on exhibit P1.

In its judgment the learned judge was of the view that the appellants' defence in which they admitted being ambushed and arrested in the house of PW2 substantially placed them at the scene hence advanced the prosecution case. He relied on the Court's decisions in **Ally Haji vs Republic**, Criminal Appeal No. 45 of 2011 which was cited in the case of **Mohamed Haruna @ Mtupeni vs Republic**, Criminal Appeal No. 259 of 2007 (both unreported). The claim by the 1st appellant that the bag was implanted into the house by the police was found to be an afterthought as it was not raised by way of cross-examination when the prosecution witnesses testified. Again, relying on the evidence of PW1 and PW2 that the bag was brought by the appellants on a motorcycle and did not deny exhibit P4 being his, the 2nd appellant's defence that he was a mere "bodaboda" hired to ferry the 1st appellant to Gallapo was brushed off as being baseless. As a consequence, both appellants were, as stated above, convicted and sentenced.

The appellants were aggrieved. They preferred, at first, a joint memorandum of appeal comprising eight grounds of grievance. They,

subsequently, lodged a supplementary memorandum of appeal having four (4) grounds of appeal. A total of twelve grounds were therefore fronted challenging the High Court decision which grounds are now before us for our determination.

"1. *That the High Court erred by failing to note that the consent was obtained from the person who had no power of consenting.*

2. *That the High Court erred by wrongly convicting the appellants without considering the principles guiding chain of custody.*

3. *That the High Court erred when relied on speculative ideals which influenced the judgment therefore abdicated its duty of subjecting the entire evidence to an objective scrutiny.*

4. *That the High Court erred in not finding reasonable doubts in exhibits P5 tendered by PW4 which ought to have been resolved in favour of the appellants.*

5. *That the High Court erred for failure to observe that the prosecution evidence was contradictory, unreliable and had material inconsistences. That the certificate of seizure was prepared under wrong provisions of the law.*

6. *That the High Court erred in failing to consider the period the appellants spent in custody awaiting trial.*

7. *That the High Court erred by holding that the appellant's defence did not raise reasonable doubts against the prosecution evidence.*

8. *That the High Court erred in finding that the prosecution case was proved beyond reasonable doubt."*

The supplementary grounds of appeal are **one**; that section 312(1) of the CPA was not complied with for want of points for determination, **two**; that, there was variance between the charge and evidence regarding the place where the government trophies were retrieved, **three**; that, sections 106 of the WCA and section 38(1) of the CPA were not complied with during the search and seizure of the government trophies, and **four**; that, the exhibit register was not tendered to prove paper trail of the government trophies seized.

There was no legal representation on the part of the appellants before us when they appeared for hearing of the appeal. For the respondent Republic, Ms Janeth Sekule, learned Senior State Attorney, Ms. Upendo Shemkole and Ms. Lilian Kowero, both learned State Attorneys, appeared.

Exercising their right to begin to elaborate their grounds of appeal, the 1st appellant opted for the 2nd appellant to keep the ball rolling promising to argue the appeal after him.

Beginning with the supplementary grounds, the 2nd appellant made a relatively long submission and referred the Court to various Court's decisions to support his arguments.

His first onslaught was directed to the trial court's judgment claiming that it did not comply with the requirements of section 312(1) of the CPA. He contended that no reasons for the decision are shown and he cited the case of **Tanzania Breweries Limited vs Anthony Nyingi** [2016] T.L. S.-LR 1999 and **Theobald Charles Kessy and Vincent Mwaikambo vs Republic** [2000] TLR 186.

In ground two (2), the 2nd appellant alleged that there is variance between the charge and evidence. The pointed out variance is on the place where the offence was committed. He argued that while the charge stated that it was at Orongadida Babati District, PW2, the owner of the house searched and where the government trophies were found said she was living at Galapo. For this shortfall, he urged the Court to find that the charge is a nullity because the prosecution did not discharge their duty of regularly checking the propriety of the charges and in the

event of any deficiency, amend it out rightly as was insisted in the case of **Mohamed Kaningo v R** [1980] TLR 279.

In ground 3 of appeal in the supplementary memorandum of appeal, the 2nd appellant claimed that there was contravention of sections 106 of the Wildlife Conservation Act and section 38(1) of the CPA by the police who conducted search at night without search warrant while the search was not an emmergence one. He relied on the case of **Shaban Said Kindamba v Republic**, Criminal Appeal No. 390 of 2019 (unreported).

Chain of custody of the government trophy seized at PW2's house was questioned by the 2nd appellant in ground four (4) of appeal. He submitted that there was no paper trail (register) showing movement of the trophies from seizure to the time it was produced in court or label showing that it was stored in the police exhibit room as required by Police General Order 229 (15) raising doubt if chances of it being tempered could be eliminated. That contention was supported with the Court's unreported decision in the case of **Michael Gabriel v Republic**, Criminal Appeal No. 240 of 2017.

The 2nd appellant then moved to the substantive memorandum of appeal to which he urged the Court to consider the grounds of appeal

and determine them as presented serve for ground four (4) of appeal which he chose to submit on. That ground touches on the Trophy Valuation Report (exhibit P5) which he contended that it was doubtful because PW4 did not show how the elephant tusks were identified.

Confident on the substance of the above grounds, the 2nd appellant urged the Court to allow the appeal and set him free.

The 1st appellant, who keenly listened to the 2nd appellant addressing the Court, fully associated himself with the submission by the 2nd appellant without more and urged the Court to set him at liberty.

Ms. Shemkole resisted the appeal on behalf of the respondent Republic. She began responding on the substantive grounds of appeal. According to her, ground one (1) of appeal is without merit. She reasoned that consent to the prosecution of the appellants with the offences charged which appears to have been issued by the Prosecutions Attorney In-charge was properly issued under section 26(1) of the EOCA because the Director of Public Prosecutions (the DPP) vide Government Notice No. 284 published on 15/8/2014 delegated his powers (mandate) to give such consent to a State Attorney In-charge or a Prosecution Attorney In-charge.

On the issue of chain of custody as complained in ground two (2) of appeal, Ms. Shemkole was not ready to agree with the appellant. She argued that it is evident from page 79 of the record of appeal that PW1 handed the trophies to Cpl Abdallah (PW6) an exhibit keeper and on 31/12/2016 whereas PW4 (at page 94) was given the trophies for identification and valuation by exhibit keeper and (at page 108) PW6 stated that he was given the trophies for keeping by PW1. She admitted that although no Register was tendered, the oral evidence proved that chain of custody was not broken. She added that the exhibit being elephant tusks, it could not easily change hands and be easily tempered with. She relied on the Court's decision in the case of **Jason Pascal and Another vs Republic**, Criminal Appeal No. 615 of 2020 which cited the case of **Issa Hassan Uki vs Republic**, Criminal Appeal No. 129 of 2017 (both unreported).

Ground three of appeal appeared baseless to the learned State Attorney who argued that the evidence of both sides was objectively evaluated and weighed and she subscribed to the findings by the learned trial judge.

In respect of the reliability of Trophy Evaluation Report (exhibit P5) subject of ground four (4) of appeal, Ms. Shemkole found no reason

to doubt it as it was prepared by a proper person and, in law, it is *prima facie* proof of its contents as was held by the Court in **Emanuel Lyabonga vs Republic**, Criminal Appeal No. 122 of 2020 (unreported).

In ground five (5) of appeal, the learned State Attorney fully agreed with the learned judge's finding without any addition.

Failure to consider the period the appellants spent in prison and mitigations as a whole as complained in ground 6 of appeal could not move the learned State Attorney an inch as she argued that the sentence meted out was in accordance with the law and the learned judge had no discretion to impose any other sentence as he stated in the judgment.

In respect of ground seven (7) of appeal the appellant attacked the trial court for not considering the defence evidence. In response, the learned State attorney had it that the contention is vividly untrue as the same was considered at pages 160 to 162 of the record and found weak to shake the all strong prosecution evidence against the appellant.

Given the evidence by the prosecution witnesses and exhibits tendered, Ms. Shemkole was of the view that ground eight of appeal is baseless. Instead, she contended that the case was proved against the appellants beyond reasonable doubt.

Turning to the supplementary grounds of appeal, she argued that ground one (1) of appeal is without merit because, generally examined, the points and reasons for the decisions can be seen in the learned judge's judgment although they were not specifically shown.

According to the learned State Attorney, a mention by PW2 that the place where the appellants were arrested was Galapo was a mere confusion on his part because the rest of the witnesses including the chairman said it was Orongadida Babati. She downplayed the alleged variance to be able to displace the fact that the appellants were arrested at Orongadida as stated in the charge.

The complaints in grounds three (3) and four (4) were similar to those argued when the learned State Attorney was arguing grounds 5 and 2 respectively in the substantive memorandum of appeal hence she referred to her earlier submissions in those respects. In the end, she urged the Court to dismiss the appeal.

After our careful examination of the evidence on record we have found it convenient to first consider the appeal by the 2nd appellant. It is evident from the record that the evidence implicating him and consequently linking him with the offences charged is his being a motorcycle rider used to ferry the 1st appellant and a polythene bag

seized at PW2's house, searched and found to contain elephant tusks. To the extent that he was the motorcycle rider and taking the 1st appellant to Galapo, he did not dispute. The issue here is whether, on the evidence, he was responsible with the offence of being in unlawful possession of government trophy with which he was convicted. This being a first appellate court, in law, we have the power to re-evaluate the evidence on record and make our own findings. (See **Christina d/o Damiano vs Republic**, Criminal Appeal No. 178 of 2012 (unreported). Although the learned trial judge did not address himself on the issue of common intention, we think that was the only way that would link both appellants with the offence. Section 23 of the Penal Code, Cap. 16 (the Penal Code) provides that:-

> *"When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose each of them is deemed to have committed the offence."*

Giving a proper perspective of the section, the Court in the case of **Daimon Malekela @ Maunganga vs Republic**, Criminal Appeal No. 205 of 2005 (unreported) observed that:-

"Suffice it to say here that the doctrine of common intention, as distinguished from similar intention, can only be successfully invoked where two or more persons form a common intention to prosecute an unlawful purpose and they commit an offence and are eventually jointly charged and tried together"

In establishing common intention it is crucial therefore that cogent evidence must be led to show that there was meeting of the mind of two or more persons in pursuing a common plan to commit an offence.

It is undisputed, in the instant case, that both appellants were ambushed and arrested in PW2's house. As to how they reached there, we do not have the benefit of being told by the prosecution witnesses other than PW2 herself. According to her, the appellants arrived at her house on the motorcycle which also carried a polythene bag which one of them took it inside the house. She could not tell who actually did so. But there is evidence by the 1st appellant that he was the one who hired the 2nd appellant to take him to Galapo to meet his friend, one Kweka. He did not tell the 2nd appellant the mission behind that journey and they left for Galapo. The record is silent whether or not the polythene bag was on the motorcycle when he hired the 2nd appellant. Such was

also what the 2nd appellant told the trial court. It becomes obvious to us therefore that there was nothing else linking the 2nd appellant and the 1st appellant apart from the fact that the 2nd appellant was hired by the 1st appellant to take him to Galapo as they told the trial court. There was, therefore nothing establishing common intention. Accordingly, we find that the charge against the 2nd appellant was not proved. He deserved an acquittal.

In our consideration of the 2nd appellant's appeal we desire to discuss the grounds raising legal issues first. We shall start with ground one (1) in the supplementary grounds of appeal. We wish to associate ourselves with the learned State Attorney that consent to try the appellants was properly issued by the Prosecuting Attorney In-charge as a person whom the mandate to issue it was delegated by the DPP in terms of G. N. No. 284 of 2014. This ground therefore fails.

In ground two of appeal, the appellants' complaint is on variance between the charge and evidence. We entirely agree with the appellants on the legal standing that the prosecution is obligated to regularly crosscheck and ensure that the charge they filed is proper and amend it if found otherwise. Section 234 of the CPA imperatively places that duty on them as was stated in the case of **Mohamed Kaningo vs Republic** (supra). However, failure to amend the charge does not necessarily

render it fatally defective. As rightly argued by the learned State Attorney, where the particulars of the offence and evidence presented inform an accused in sufficient details the offence laid against him, the defect is curable in terms of our various decisions; **Jamali Ally @ Salum v. Republic**, Criminal Appeal No. 52 of 2017 (unreported) being one of them.

Chain of custody of the elephant tusk seized forms the crux of the appellant's ground two (2) of appeal in the substantive memorandum of appeal and ground four (4) of the supplementary memorandum of appeal. The contention here is that movement of the seized properties from one person to another was not documented. Like the learned State Attorney, we agree with the appellant that no register evidencing documentation on the handling of the government trophy (paper trail) was tendered in court in line with Court's findings in **Paulo Maduka and 4 Others vs. Republic**, Criminal Appeal No. 110 of 2007, **Chacha Jeremia Murimi vs Republic**, Criminal Appeal No. 551 of 2015 and **Abuhi Omari and 3 Others vs Republic**, Criminal Appeal No. 28 of 2010 (all unreported). But that, in effect, does not affect the credence of exhibits seized and tendered in court as exhibit where it is established by cogent, consistent and credible evidence that the seized property was properly handled such that it eliminated the possibilities of it being

tempered with or implanted. In such situations and in particular where the items subject of custody cannot change hands easily, this Court has held that the need for paper trail may be relaxed. (see **Leonard Manyota vs. Republic**, Criminal Appeal No. 485 of 2015, **Kadiria Said Kimaro vs Republic**, Criminal Appeal No. 301 of 2017 as well as **Jason Pascal and Another vs Republic** (supra)(all unreported). For instance, in the latter case, pellets of drugs, subjects of the case, were held to be items which cannot change hands easily and therefore not easy to temper with. Ms. Shemkole argued, in the instant case, and rightly so in our unshaken view, that elephant tusks are not items which change hands easily and that the chain of custody of the elephant tusks was intact and left no room for them to be contaminated. PW1 who participated in seizing them told the trial court that upon arrival at the police station he handed them to PW6 who stored them and PW4 went to identify and do the valuation at the police station after being issued the same by PW6. PW6 confirmed so in his testimony. Such oral evidence was sufficient to show movement of those elephant tusk. There is, therefore, no merit in this complaint and we dismiss it.

Ground four of appeal was in respect of the Valuation Report (exhibit P5) tendered by PW4 which the appellant said it was doubted by the learned judge but the doubt was not resolved in his favour and

instead, the learned judge held that there was no other report contradicting its contents. In her brief response, the learned State Attorney argued that there was no reason to doubt it because it was done by a proper person. We had no advantage of getting the essence of the 1st appellant's complaint because he did not elaborate it. However, on our examination, we are satisfied that it was prepared by PW4, a Wildlife Officer who, in our recent decision in **Jamali Msombe and Another vs Republic**, Criminal Appeal No. 28 of 2020 (unreported), we held that in terms of section 86(4) of the Wildlife Conservation Act, 2009 a person mandated to issue a Trophy Valuation Report is the Director or a Wildlife Officer from the rank of Wildlife Officer. The complaint is hereby dismissed.

Another legal issue raised is in ground 7 of appeal of the substantive memorandum of appeal that the defence evidence was not considered. Responding to it, the learned State Attorney was brief that pages 160 to 162 vividly show that it was considered and found weak to shake the prosecution evidence. Indeed, the record displaces the appellant's contention. The claim that the polythene bag was implanted by police officers who ambushed and arrested him, discrepancy in the prosecution evidence and the validity of exhibit P5 which the appellant

banked on in his defence were considered and found to be without substance on the above stated pages. The complaint fails.

The sentence meted out not reflecting and according weight to the appellant's mitigating factors is another issue for deliberation. In **Shene Ramadhan @ Idd vs Republic**, Criminal Appeal No. 80 of 2020 (unreported) the Court warned on the danger involved in not attaching a deserving weight to mitigating factors that it may lead to imposition of unwarranted harsh or severe sentences. But we think that is the case where the learned judge or magistrate is vested with discretion to determine an appropriate sentence by the law. In the instant case, the appellant was sentenced to a mandatory minimum prescribed sentence under section 86(2)(b) of the WCA to which the learned judge had no discretion to impose a lesser sentence. That section provides:

> *"86 (2) A person who contravenes any of the provisions of this section commits an offence and shall be liable on conviction-*
>
> *(b) where the trophy which is the subject matter of the charge or any part of such trophy is part of an animal specified in Part I of the First Schedule to this Act, and the value of the trophy exceeds one hundred thousand shillings, to a fine of a sum not less than ten times the value of the trophy or imprisonment for a term of not less*

than twenty years but not exceeding thirty years or to both."

In line with the above provision, consideration of the mitigation would not have reduced the sentence below the minimum set by law. The sentence meted out to the appellant was the minimum. Consequently, failure to consider mitigating factors caused no any injustice to the appellant. The learned judge was therefore justified to hold as he did that notwithstanding the mitigating factors, his hands were tied because the law provided for the minimum custodial sentence and ceiling of the amount of fine to be levied. Without hesitation, we dismiss this ground of appeal.

Last to be considered under this category is ground three (3) of the appellant's supplementary grounds of appeal. It is a complaint about the search being conducted without search warrant when it was not an emergence search conducted at night time. The case of **Shaban Said Kindamba** (supra) was cited to augment that contention. We agree with the appellant that the search was conducted at night, that is, between 19:45hrs and 20:00hrs. However, according to PW1, after seizing the elephant tusks they filled a seizure certificate which was also a search warrant (exhibit P1) and its admission as exhibit was resisted

by Mr. Moses, Mr. Miraji and Mr. Ngemela who were representing then 1st, 2nd and 3rd accused (now 1st appellant and 2nd appellant) respectively but was admitted with a caveat that its status would be tested by way of cross-examination. Ms. Shemkole invited us to decide on its status. We think this issue should not hold us long. Exhibit P1 is written" **HATI YA UPEKUZI NA KUKAMATA** /KUCHUKUA VIELELEZO AU VITU VINAVYOTILIWA MASHAKA KUWA VIMEPATIKANA KWA NJIA ISIYO HALALI". It indicates that the house of PW2 was searched for suspicion of being in possession of government trophies on 30/12/2016. Below it, it is shown that two pieces of elephant tusks and 75 molars were seized and the names of the accused persons (then suspects) and those of witnesses of the search are reflected and they signed on it. It served several purposes as reflected on its headline. Sections 106 of the WCA and 38 of the CPA serve the same purpose as they provide for the manner of conducting search. They insist on the need to have a search warrant before conducting search. Neither the two provisions nor the cited case provide for a special format of the search warrant and seizure certificate. Since exhibit P1 reflected the necessary information required of a search warrant and a seizure certificate, we find no difficult to accept it served as being both a search warrant and a seizure certificate. We dismiss this complaint.

The remaining grounds of appeal for our deliberations are grounds three (3) and eight (8) of the substantive grounds of appeal in which the attacks are directed towards failure by the learned judge to objectively evaluate the entire evidence and hold that the charge was not proved beyond reasonable doubt. We did not hear the appellant point down the basis of his assertions as he did not amplify them. That notwithstanding, the learned State Attorney insisted that the prosecution evidence was strong and was properly evaluated. We entirely agree with her. PW1, PW5 and PW7 who participated in ambushing and arresting the appellant told the trial court that upon searching the house of PW2, they found elephant tusks and 75 molars in the polythene bags which was found besides the appellants. PW2 told the trial court how the sulphate bag reached her home and PW3 who witnessed the search and opening of the sulphate bag confirmed what PW1, PW5 and PW7 said while PW4 confirmed that they were government trophies and the value thereof. Their evidence was consistent and coherent eliminating any doubt on their credibility. The more so, they were believed by the trial court to be truthful. More importantly, the 1st appellant's defence evidence was all about his communication with one Kweka on dealing with trophy business which the learned judge considered and held, rightly so, that it advanced the prosecution case. We would also add that

his evidence not only exonerated the 2nd appellant from responsibility, but also directly linked him with the presence of polythene bag in which government trophies were kept when they were seized at PW2's house. Like the learned State Attorney, we are convinced that the charge was proved against him as required by law.

Finally and for avoidance of doubt, it is our finding that the appeal against the 1st appellant lacks merit. It is dismissed. The appeal against the 2nd appellant succeeds and we allow it, quash his conviction and set aside the sentence meted on him. We hereby order his immediate release from prison if not held for another lawful cause.

DATED at **ARUSHA** this 18th day of October, 2022.

S. A. LILA
JUSTICE OF APPEAL

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

P. S. FIKIRINI
JUSTICE OF APPEAL

The Judgment delivered this 19th day of October, 2022 in the presence of the 1st and 2nd Appellants in person and Ms. Eunice Makala, State Attorney for the Respondent/Republic both appeared through Video Link is hereby certified as a true copy of the original.

L. KALEGEYA
DEPUTY REGISTRAR
COURT OF APPEAL