

**IN THE COURT OF APPEAL OF TANZANIA
AT KIGOMA**

(CORAM: MUGASHA, J.A., SEHEL, J. A. And MWAMPASHI, J.A.)

CRIMINAL APPEAL NO. 39 OF 2022

GODFREY ELISALIA.....1ST APPELLANT

PETER PHILIPO MANDAGO.....2ND APPELLANT

PETER DANIEL MWITA.....3RD APPELLANT

HILARY CORNEL MUHONDOLE.....4TH APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

**(Appeal from the decision of the High Court of Tanzania
at Kigoma)**

(Matuma, J.)

dated the 24th day of December, 2021

in

Consolidated Criminal Appeals Nos. 34 and 38 of 2021

.....

JUDGMENT OF THE COURT

02nd & 12th June, 2023

MWAMPASHI, J.A.:

This appeal originates from Criminal Case No. 02 of 2020 before the Resident Magistrate's Court of Kigoma at Kigoma (the trial court) in which a charge sheet comprising three counts was preferred against the appellants who were wildlife officers stationed at Moyowosi Game Reserve. They were jointly charged with 5 others who are, however, not parties to this appeal. In the first count, the appellants herein namely,

Godfrey Elisalia, Peter Philipo Mandago, Peter Daniel Mwita and Hilary Cornel Muhondole (henceforth the 1st, 2nd, 3rd and 4th appellant respectively) were jointly charged with the 5 others with the offence of stealing certain animals, contrary to sections 258 (1) and 268 (1) both of the Penal Code [Cap. 16 R.E. 2002; now R.E. 2022] (the Penal Code). It was alleged that on 15.10.2019 at Kifura area within Kibondo District in Kigoma Region, the appellants and one Athumani Jumanne @ Hassan stole 66 herd of cattle valued at Tshs. 57,000,000/= the property of one Eva d/o Daniel Mtasha.

In the second count, the 1st and 2nd appellants jointly with other two accused persons, were charged with the offence of armed robbery contrary to section 287A of the Penal Code. The prosecution alleged that the 1st and 2nd appellants jointly with other two namely Athumani Jumanne @ Hassan and Eliberati s/o Christopher Temba did, on 08.10.2019, at Ilunde Camp, Moyowosi Game Reserve area within the District of Kibondo in Kigoma Region, steal Tshs. 3,000,000/= from one Ayubu s/o Daniel Mtasha and Philipo Mshingo and that at or immediately after stealing they used violence to the said Ayubu s/o Daniel Mtasha and Philipo Mshingo, in order to obtain and retain the said amount of money.

Lastly, in the third count, the 1st, 2nd and 4th appellants, jointly with other three accused persons, faced an offence of injuring animals, contrary to section 325 of the Penal Code. The particulars of the offence were to the effect that on 20.10.2019 at Sanganyama area, Moyowosi Game Reserve within the District of Kibondo in Kigoma Region, the 1st, 2nd and 4th appellants together with three other accused namely, Leonard s/o Joseph @ Kabadi, Majura s/o William Mabingo and Deogratius s/o Mkassi, did wilfully and unlawfully kill 20 herd of cattle the property of one Eva d/o Daniel Mtasha.

Before proceeding any further, it is apposite that we give the factual background of the case, *albeit* in brief. It all started in the morning hours of 05.10.2019 when Eva Daniel Mtasha (PW5) of Malanga Village in Kaliua District was informed by her children that her 164 herd of cattle had strayed away from the kraal. She reported to the Village Chairman Mr. Said Juma Tambalale (PW14) and then to Usinge Police Station. The search for the missing cattle was mounted and on 07.10.2019, PW5's sons Shiva Mtasha (PW3), Mshiri Mtasha (PW6) and Richard Mtasha managed to locate the missing 124 herd of cattle and it was when they were driving the cattle home, seven (7) wildlife officers in uniform including the 1st, 2nd and 3rd appellants, intercepted and arrested them

on accusations that they were grazing in the Game Reserve without a permit.

After being arrested, PW3 and his brothers were on 08.10.2019 taken at a certain camp with their 124 herd of cattle. On 09.10.2019 they were moved to Kifura Camp where PW6 was asked for Tshs 8,000,000/= as fine. After the bargaining, the officers settled at Tshs. 3,000,000/= and PW6 had to call their mother (PW5) who sent Philipo Mshingo (PW7) and Ayoub Daniel (PW15) to bring the said Tshs. 3,000,000/= to the officers. According to PW3, PW6 and PW7 the officers received the money but they did not release the seized herd of cattle. On 09/10/2019 they moved from Kifura Camp to another camp and on the way one of the cattle got sick and was abandoned. On 11.10.2019, the 4th appellant joined them and they crossed the Malagarasi bridge with the 123 herd of cattle. Later, PW3 and his two brothers were remanded at Kifura lockup. On 15.10.2019 they were shifted to Kibondo Police Station before they were on 16.01.2019 charged before Kibondo District Court for entering and grazing 61 herd of cattle in the Game Reserve without a permit. It was at this moment that they wondered why it was 61 and not 124 herd of cattle and when they complained they were taken to the camp where there were only 61 herd of cattle. The complaint was therefore lodged by

PW5 to various authorities including the Prevention and Combating of Corruption Bureau (PCCB) hence the arrest and arraignment of the appellants before the trial court for, among other offences, stealing 62 herd of cattle.

On 18.11.2019 and 21.11.2019 a total of five cattle identified by PW3 to be among their cattle were found at Kitahana Village and in a kraal belonging to Pambano Samwel (PW17) who named the 3rd appellant as the one who had sold three cattle to him.

The complaint from PW5 that the number of herd of cattle seized was not 61 as indicated in the charge sheet before District Court but 124, led to the special task force, comprising 7 police officer from Dar es salaam CID Headquarters and Morogoro, to be sent to Kibondo for fact finding. Among the members of the team were E. 2710 D/Sgt Kombo (PW10) and E. 9295 D/Cpl. Juma Koroto (PW18). According to these two witnesses, they interrogated a number of witnesses including PW5 and the appellants. PW5 and some of the witnesses interrogated maintained that the herd of cattle seized was 124 and that 20 were killed by the appellants. They also found that there were two Livestock Handling Registers (Exhibit P12) which were collected from the Manager of the Moyowosi Game Reserve Mr. Bigilamungu (PW19). One showed that the

seized herd of cattle were 89 while the other showed that it was 61 herd of cattle. It was also the testimony of PW10 and PW18 that the appellants admitted to have seized 124 herd of cattle and also to have killed 20 of them. Further, on 13.02.2020, the 1st, 2nd and 4th appellants led them to certain places within the Game Reserve where bones of the 20 killed herd of cattle were found and collected by Gabriel Yohana Chitupila, the District Livestock and Fisheries Officer (PW8), who proved that the bones were of cattle. His report for that effect was tendered by him in evidence as Exhibit P5. The evidence that the appellants led the team to locations where bones were found, was supported by Baruan Nditije Gwimo, the Village Executive Officer of Kisongwe Village (PW9) and F.5585 D/Cpl Alex of Kibondo Police Station (PW2).

According to Francis Malangwe Xavery (PW12), on 17.11.2019, he and the 3rd appellant were assigned to guard 81 head of cattle which had been seized by the 1st appellant, for two weeks. On 20.11.2019 he had gone to graze the said cattle with one Hanga Paul when the 1st appellant ordered the cattle to be brought back to Sanganyama Camp. On arrival at the Camp, the 4th appellant who was with the 2nd appellant and other officers ordered for 20 head of cattle to be locked in the kraal and for PW12 to proceed grazing the remaining 61 head of cattle. When PW12

came back to the Camp in the evening, the 20 head of cattle were nowhere to be seen. He also testified that the 4th appellant took a register book in which it had been indicated that the number of cattle was 81 and replaced it with a new one in which it was indicated that the cattle were 61. The two registers were tendered in evidence as exhibit P12.

PW13 was supported by Salvatory Modest Kabakuru (PW13) whose evidence was to the effect that on 20.11.2019, he drove the 4th, 2nd appellants and other officers from Kifura to Sanganyama Camp where he saw PW12 bringing the herd of cattle which were sorted and divided into two groups. He also saw PW12 leaving with a larger group of cattle and the 4th, 2nd and 1st appellants leaving with the smaller group. Later, the 4th appellant and his team came back to the Camp but with no cattle.

In their respective defence evidence, the appellants did not deny to have arrested PW3 and his two brothers with a number of herd of cattle. What was denied by them was that there were 124 herd of cattle. They maintained that the cattle seized were 61 as indicated in the seizure certificate which was signed by PW3 and his brothers. They tendered the said certificate in evidence as exhibit D1. They also denied to have committed armed robbery or killed 20 herd of cattle as alleged by the prosecution.

Having heard evidence from both sides, the trial court found that the offences of stealing certain animals and armed robbery had not been proved beyond reasonable doubt. As for the offence of injuring animals, the trial court found that the offence was proved against the 2nd, 4th appellants and one Leonard s/o Joseph @ Kabadi. In that regard, the three were thus duly convicted and sentenced. While the 2nd appellant was sentenced to serve a term of four (4) months in prison, the 4th appellant and Leonard s/o Joseph @ Kabadi were ordered to serve 12 months in prison each. In addition, the trial court ordered for payment of Tshs. 12,000,000/= as compensation for the 20 killed herd of cattle.

The trial court's decision aggrieved both the Director of Public Prosecutions (DPP) and the appellants. Whereas the DPP preferred to the High Court Criminal Appeal No. 38 of 2021 against all four appellants in respect of the acquittal on the first count of stealing certain animals, the 2nd and 4th appellant together with Leonard s/o Joseph @ Kabadi, filed Criminal Appeal No. 34 of 2021 against the conviction and sentence on the third count of injuring animals. The two appeals were consolidated and heard together. At the end, the High Court dismissed Criminal Appeal No 34 of 2021 but allowed Criminal Appeal No. 38 of 2021 lodged by the DPP against the appellants herein.

In allowing the appeal by the DPP, the High Court was of the view that, the failure by the prosecution to prove when and where exactly the appellant stole the 62 herd of cattle was minor, immaterial and irrelevant and it did not go to the root of the matter. It also found that the variance between the number of head of cattle indicated in the particulars of the offence and the evidence adduced, was also a minor issue. Basing on exhibit P12, the High Court concluded that the number herd of cattle seized was 89 and further that since 61 herd of cattle were tendered in Criminal Case No. 277 of 2019 before the District Court of Kibondo against PW3 and his two brothers, then the number of herd of cattle stolen by the appellants was 28. The High Court therefore, found that there was enough evidence proving the offence of stealing certain animals against the appellants, it accordingly convicted them of the said offence and sentenced them to serve a period of five (5) years' imprisonment and pay Tshs. 2,760,000/= each as compensation to the complainant, Eva Daniel Mtasha (PW5). The instant appeal is against the said decision by the High Court.

The appellants lodged a joint memorandum of appeal comprised of seven (7) grounds of appeal which can be conveniently paraphrased as follows; **One**, that the High Court erred in finding that the case was

proved beyond reasonable doubt in respect of the 1st count and that the number of stolen herd of cattle, the place and date the offence was committed were irrelevant, **two**, that the High Court did not analyse and re-evaluate the evidence in support of the 1st and 3rd counts and that of the defence, properly, **three**, that, the High Court erred in law in basing the conviction on the 3rd count on unreliable and contradictory evidence some from witnesses with interest to serve, **four**, that, in the absence of a valuation report, the High Court erred in law in awarding Tshs. 13,800,000/= as compensation, **five**, that, having applied the doctrine of common intention against the 1st appellant, the High Court ought to have equally applied the doctrine against PW11 Deogratias Charles who was a witness with interest to save, **six**, that, having entertained doubts on exhibits P9, P12 and D1, the High Court erred in law in not giving the appellants the benefits of doubt arising from the absence of other credible evidence to support the case and **seven**, that, the High Court erred in law in allowing the respondent's appeal and dismissing the appellants'.

At the hearing of the appeal, whereas Mr. Ignatius R. Kagashe, learned advocate, represented the 2nd, 3rd and 4th appellants, the 1st appellant was represented by Mr. Thomas Matatizo Msasa, also learned

advocate. On the other hand, the respondent Republic had the services of Ms. Sabina Silayo, learned Senior State Attorney.

Upon taking the stage to amplify on the grounds of appeal, Mr. Kagashe prayed to adopt the appellants' joint written submission he had earlier filed on 08.04.2022. He then joined the 1st, 2nd, 3rd, 4th, 6th and 7th grounds of appeal and argued them together contending that the High Court being a first appellate court failed to properly analyse and re-evaluate the evidence on record hence reaching at a wrong decision. Relying on our previous decisions in **Hassan Mzee Mfaume v. Republic** [1981] T.L.R. 167, **DPP v. Jafari Mfaume Kawawa** [1981] T.L.R. 149 and **Salim Petro Ngalawa v. Republic** [1993] T.L.R. 170, Mr. Kagashe implored us to step into the shoes of the High Court and do what the High Court ought to have done. He submitted that as it was rightly found by the trial court, the prosecution had completely failed to prove the 1st count because the evidence given was at variance with the particulars of the offence as particularised in the charge. It was also pointed out that there was no evidence proving that 62 herd of cattle were stolen and that they were valued at Tshs. 57 million and further that it was doubtful that the offence was committed on 15.10.2019 and

at Kifura area. He faulted the High Court on failing to apply the settled position that time and place an offence is committed must be proved.

It was further submitted by Mr. Kagashe that the total number of the herd of cattle that went missing was also not proved because while the prosecution claimed they were 124, the evidence on record as also found by the High Court, suggested that they were 89 meaning that if 61 herd of cattle were tendered in the criminal case against PW3 and his two brothers then the stolen cattle ought to have been 28 and not 62.

Mr. Kagashe did also fault the High Court on ordering compensation of Tshs 13,800,000/= which was not proved and which was based on guess work of PW3. He insisted that the amount ordered was not justifiable and further that there was needed expert evidence to prove the value of the alleged stolen cattle. The order by the High Court on the mode of execution was also faulted by Mr. Kagashe who contended that that was beyond the High Court Judge jurisdiction.

In regard to the 3rd count, it was submitted by Mr. Kagashe that the High Court wrongly upheld the trial court's conviction on the 3rd count because PW11's evidence on which the conviction was based was unreliable. He pointed out that PW11 was a witness with interest to serve

as he was once accused of the same offence before he was discharged from the charge.

Mr. Msasa supported the submission made by his learned friend Mr. Kagashe and he insisted that the 1st offence was not proved to the required standard. He argued that there was no evidence that 62 herd of cattle valued at Tshs. 57 million were stolen at Kifura on 15.10.2019. He also pointed out that while according to Exhibit P12 by 14.10.2019 the total herd of cattle were 89 meaning that the theft had already been committed, the charge was that the offence was committed on 15.10.2019. Mr. Msasa further argued that PW5 did not know the number of her cattle and also that the account of the total number of the cattle given by PW3 in his evidence at page 65 of the record of appeal, totals 122 and not 124.

Mr. Msasa did therefore pray for the appeal to be allowed.

Ms. Silayo who initially had intimated that she was not supporting the appeal, changed her stance in the course of her submission when she found it hard to support the conviction on the 1st count. She conceded that the offence of stealing 62 herd of cattle was not proved to the hilt because there was no evidence to prove that 62 cattle were stolen. She

pointed out that the High Court found that the stolen cattle were 28 which was not what was charged.

Ms. Silayo maintained her stance on the 3rd count arguing that the case against the 2nd and 4th appellant in respect of the offence of injuring animals was proved against them beyond any doubt. She argued that PW11 had no interest to save. She therefore urged the Court to find the appeal against the appellants regarding the 1st count of stealing certain animals meritorious but not against the 1st and 4th appellants on the offence of injuring animals.

In their short rejoinder, it was insisted by Mr. Kagashe that PW11 had his own interest to save and his evidence was dented because he is the one who led the task force to the places where the 20 cattle were allegedly killed. He also argued that it was only him who signed in the armoury register which substantiates that he was issued with the guns and ammunition used at the fateful incident.

Having considered the submissions made by the counsel for the parties including the written submissions filed by the appellant and also having examined the record of appeal, we are of the considered view that, basically, the issues for our determination is whether the case against the appellants was proved beyond reasonable doubt, **firstly**, on the first

count of stealing certain animals, that is, 62 herd of cattle, and **secondly**, on the third count of injuring 20 herd of cattle.

As the determination of the above posed issue entails proper re-evaluation of the evidence on record, we are mindful of the fact that while the two lower courts concurred on the findings in regard to the 3rd count of injuring animals, when it came to the 1st count on stealing certain animals, they parted ways. In that regard, while it will not be easy for us, as a second appellate Court, to interfere with the concurrent findings of facts by the two lower courts on the 3rd count without any good reasons, that will not be the case for the 1st count. We think that under the circumstances of this case, where the two lower courts did not concur on the findings regarding the 1st count, we are mandated and obligated to re-evaluate and analyse the facts and the whole evidence advanced in the trial court resulting in the impugned judgment. In so doing, we are also mandated to even arrive at our own decision which may not necessarily be the same as that of the High Court. See- **D.R. Pandya v. Republic** (1957) E.A. 336, **Hassan Mzee Mfaume v. Republic** (supra), **Joseph Stephen Kimaro and Another v. Republic**, Criminal Appeal No. 340 of 2015 and **The Director of Public Prosecutions v.**

Stephen Gerald Sipuka, Criminal Appeal No. 373 of 2019 (both unreported).

In regard to the 1st count on the offence of stealing certain animals, we agree with the learned advocates for the appellants, as it was also agreed by Ms. Silayo, that the said offence was not proved beyond reasonable doubt by the prosecution. We share the same view with the counsel for the parties that since it was particularized in charge sheet that the offence was committed on 15.10.2019 at Kifura area and as it was alleged that the number of herd of cattle stolen by the appellants was 62 valued at Tshs. 57,000,000/=, then it was obligatory for the prosecution to prove not only that the offence was committed at Kifura but also that it was committed on 15.10.2019 and further that the number of the herd of cattle stolen was 62.

As rightly argued by the counsel for the parties and as it was rightly found by the trial court, in the instant case, there was no cogent evidence proving, firstly, that the alleged 62 herd of cattle were stolen at Kifura and not at Sanganyama area or Moyowasi Game Reserve. The evidence on record is to the effect that after being seized the cattle were driven from one camp to another but within the Game Reserve. There is no evidence that at one point of time the seized cattle were driven to Kifura

area where it is alleged some of them were stolen. Secondly, there was no evidence to prove that the number of herd of cattle strayed away from PW5's kraal was 124 and that it was the same number that was seized within Moyowasi Game Reserve. We entertain such a doubt because of the contradictory versions given by the PW3 and his two brothers on that respect, while the version of the appellants cast doubts on that contradictory prosecution evidence.

In addition to the above, there was no proof that the herd of cattle allegedly stolen by the appellant were 62. Since it was not certain how many cattle were seized as we have pointed out above and also as according to the two Livestock Handling Registers (Exhibit P12), the herd of cattle seized were 89 and further as it is not disputable that 61 cattle were tendered in the criminal case against PW3 and his two brothers before the Kibondo District Court, then the stolen herd of cattle cannot be 62 as alleged in the particulars of the charge. We have also observed that while according to exhibit PW12, appearing at page 244 of the record of appeal, by 14.10.2019, that is, before the alleged theft, the seized herd of cattle at Sanganyama Camp were 89, the particulars of the offence allege that the theft of 62 cattle by the appellants was committed on 15.10.2019 which is implausible. We also find that if, as testified by

PW13, by 20.11.2019 there were 81 herd of seized cattle at Sanganyama Camp while 62 cattle had already been stolen on 15.10.2019 as alleged in the charge, then the total number of the cattle seized could not be 124 as claimed by the prosecution but 143. Again, if the number of herd of cattle PW3 and his two brothers were found grazing in the Game Reserve and which were seized was 124 as maintained by the prosecution, how comes PW3 and his two brothers were charged of grazing 61 herd of cattle and not 124. All these were the doubts raised in the prosecution case against the appellants which ought to be resolved to the appellants' benefit.

It is therefore clear that there was a great variance between the evidence adduced by the prosecution in their endeavour to prove the 1st count and what was alleged in the charge sheet. The worst part of it is the fact that the prosecution did not find it necessary to amend the charge. Moreover, we also do not agree with the observation by the High Court that, in the circumstances of this case, failure to prove the number of the herd of cattle stolen, the date and place the alleged theft was committed was minor, immaterial and irrelevant. In the case of **Anania Turian v Republic**, Criminal Appeal No. 195 of 2009 (unreported) the Court stated that:

*"When a specific date of the commission of the offence is mentioned in the charge sheet, the defence case is prepared and built on the basis of that specific date. The defence invariably includes the defence of alibi. If there is a variation in the dates, then the charge must be amended forthwith and the accused explained his right to require the witnesses who have already testified recalled. **If it is not done, the preferred charge will remain unproved and the accused shall be entitled to an acquittal as a matter of right. Short of that, a failure of justice will occur**".*

[Emphasis supplied].

Further, in another decision of the Court in **Method Kuluwa Chengula v. Republic**, Criminal Appeal No. 92 of 2021 (unreported), the Court observed that:

"It is trite that where there is a variance between the charge and the evidence and in the absence of any amendments of the charge it is tantamount to the prosecution having failed to prove its case on the required standard in criminal cases".

We fully subscribe to the above position and conclude that the 1st count regarding the offence of stealing 62 herd of cattle was not proved

against the appellant beyond reasonable doubt. The High Court erred in finding the appellants guilty of the offence as there was no sufficient evidence to prove the said charge. The appellants are entitled to be acquitted and we accordingly acquit them of the said offence of stealing animals.

Turning to the second limb of our main issue for determination on whether the 3rd count in regard to the offence of injuring animals was proved to the hilt, we firstly observe that in confirming the trial court's conviction against the 2nd and 4th appellants on that offence, the High Court heavily relied on the evidence from PW11. The High Court found PW11's evidence credible and reliable and that it was corroborated by other pieces of evidence. While the counsel for the appellants implored us to disregard PW11's evidence on account that he had interest to serve, Ms. Silayo maintained that PW11 had no such interest and that his evidence was reliable.

Our observation on PW11 is that according to the record of appeal, this witness was arrested and initially jointly charged with the appellants with the offence of injuring animals. He was later dropped from the case and became a witness. Admittedly, there is evidence in abundance from PW11 himself and from other witnesses like PW12 and PW13, which is to

the effect that on 20.11.2019, PW11 was with the 2nd and 4th appellants when 20 herd of cattle were sorted from the herd of 81 cattle at Sanganyama Camp and then driven to the place where they were killed. He also secured from the armoury several guns and ammunition without documentation, and such weapons are alleged to have been used to kill some of the cattle in question. Under these circumstances where PW11 was a colleague of the 2nd and 4th appellants and where he was dropped from the charge and turned a prosecution witness, the complaint by the counsel for the appellants that PW11 was a witness with his own interest to serve, cannot be disregarded. In the case of **Hassan Mzee Mfaume v. Republic** [1981] T.L.R. 167, the Court stated that:

"Furthermore, it would appear that the witness Asha (PW5) whose evidence tends to implicate the appellant, was a person with an interest of her own to serve in the matter... Once it is held that Asha was a witness with an interest of her own to serve, then her evidence requires close scrutiny and, as a matter of procedure, corroboration".

Basing on the above, we find that PW11 was a witness with his own interest to serve and his evidence ought to have acted upon with great caution. A follow up question is whether, in the absence of PW11's

evidence, there is sufficient evidence in support of the charge on the 3rd count against the 2nd and 4th appellants. On this, we are satisfied as it was for the two lower courts that the offence of injuring 20 herd of cattle was proved against the 2nd and 4th appellants beyond reasonable doubt. The key witnesses on this were PW12 and PW13, who, apart from the fact that they did not directly see the offence being committed, they saw the 20 herd of cattle being sorted from 81 cattle and driven away by the 2nd, 4th appellants and others. When the 2nd and 4th appellants returned to the Camp, they had no cattle. The evidence by PW12 and PW13 circumstantially pointed a finger to the 2nd and 4th appellants that they were the last persons to be seen with the cattle alive and responsible for killing the 20 herd of cattle. We are of settled mind that looking at the evidence from PW12 and PW13 and considering the defence put by the 2nd and 4th appellants, this piece of circumstantial evidence left no any other conclusion other than that the said two appellants killed the 20 herd of cattle in question.

We also find from the record of appeal that, the evidence by PW12 and PW13 was corroborated by the evidence of PW2, PW8, PW9, PW10, and PW18 whose evidence was to the effect that the 2nd and 4th appellants led the Task Force to the places where the 20 herd of cattle

were killed and where bones of the killed cattle were collected by PW8 and proved by him to be of cattle. This was also supported by his report admitted in evidence as Exhibit P5.

Finally, in the light of what we have endeavoured to discuss above, we hold that the case against the appellants in respect of the 1st count of stealing animals was not proved beyond reasonable doubt. The High Court erred in convicting the appellants of that offence and for that reason we quash the conviction and set aside the sentence imposed on the appellants as well as the compensation order and the mode of recovery or execution as ordered by the High Court. The appellants be released from the custody forthwith unless they are so held for any other lawful cause.

As for the 3rd count in respect of the offence of injuring animals against the 2nd and 4th respondents, we find that the case against them was sufficiently proved and the High Court was justified in confirming the trial court's conviction on them. We therefore retain the conviction and orders made by the trial court for the 2nd appellant to serve a term of four (4) months in prison and the 4th appellant to serve twelve (12) month's imprisonment. The trial court's order for payment of Tshs. 12,000,000/=

(Twelve Million) to PW5 as compensation by the two appellants and one Leonard Joseph Kibadi, is also retained.

Appeal partly allowed.

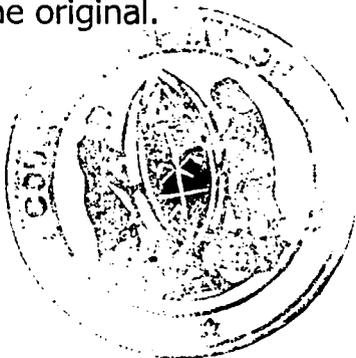
DATED at KIGOMA this 10th day of June, 2023.

S. E. A. MUGASHA
JUSTICE OF APPEAL

B. M. A. SEHEL
JUSTICE OF APPEAL

A. M. MWAMPASHI
JUSTICE OF APPEAL

The judgment delivered this 12th day of June, 2023 in the presence of Mr. Ignatus R. Kagashe, learned advocate for the 2nd, 3rd and 4th appellants also holding brief for Mr. Thomas Matatizo Msasa, learned advocate for the 1st appellant and Ms. Amina Mawoko, learned State Attorney for the respondent Republic is hereby certified as a true copy of the original.




D. R. LYIMO
DEPUTY REGISTRAR
COURT OF APPEAL