IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MWAMBEGELE, J.A., LEVIRA, J.A., And KENTE, J.A.)

CRIMINAL APPLICATION NO. 30/01 OF 2021

HUANG QUIN ..... 1ST APPLICANT

XU FUJIE ..... 2ND APPLICANT

VERSUS

THE REPUBLIC ..... RESPONDENT

(Application for Review from the Judgment of the Court of Appeal of Tanzania at Dar es Salaam]

(Mkuye, Ndika and Mwambegele, JJA.)

dated the 20th day of May, 2021

in

Criminal Appeal No. 173 of 2018

.....

RULING OF THE COURT

15th March & 24th April, 2023

MWAMBEGELE, J.A.:

The applicants Huang Qin and Xu Fujie were appellants before this Court in Criminal Appeal No. 173 of 2018 in which they sought to assail the decision of the High Court (Mwandambo, J. - as he then was) which had convicted them of the offence, *inter alia*, of unlawful possession of

Government trophies contrary to section 86 (1) (2) (ii) and (3) (b) of the Wildlife Conservation Act, 2009 (the WCA) read together with paragraph 14 (d) of the first schedule to, and sections 57 (1) and 60 (2) of the Economic and Organized Crime Control Act (the EOCCA). The High Court had sentenced the appellants to pay a fine of Tshs. 54,358,650,000/= which was tenfold the value of the trophy or thirty years' imprisonment in default thereof.

The Court (Mkuye, Ndika and Mwambegele, JJA) partly allowed the appeal by reducing the custodial sentence from thirty years' imprisonment to one of twenty years' imprisonment. The Court held:

> *"... in terms of section 86(I)(2)(b) of the Wildlife Conservation Act, we reduce the said sentence from thirty years to twenty years and order that the appellants should pay a fine of not less than ten times the value of trophy."*

The applicants have come to this Court on a review application preferred under rule 66 (1) (a) of the Tanzania Court of Appeal Rules, 2009 claiming that the decision has a manifest error on the face of the record resulting in a miscarriage of justice on the part of the applicants. Their

application is supported by an affidavit deposed by Augustino Edwin Ndomba, an advocate of the High Court and courts subordinate thereto.

When the application was placed before us for hearing on 16.03.2023, the applicants were present and represented by the said Augustino Edwin Ndomba, learned Advocate. The respondent Republic appeared through Ms. Mwanaamina Kombakono, learned Senior State Attorney and Ms. Nura Manja, learned State Attorney. As the applicants were not conversant with the language of the Court, Mr. Ernest John Matesa was sworn to interpret Kiswahili into Chinese and vice versa.

Having adopted the contents of the supporting affidavit, Mr. Ndomba clarified that the Court reduced the custodial sentence in respect of the offence under the WCA from thirty to twenty years' imprisonment. At the time of the commission of the offence, he submitted, the punishment under section 60 (2) of the EOCCA, under which the applicants were also charged, was a maximum of fifteen years. Given the authority of our decision in **Issa Hassan Uki v. Republic,** Criminal Appeal No. 129 of 2017 (unreported) in which the Court advocated for the principle of a milder sentence in favour of an accused person, he argued, the Court should have gone for a sentence

under the EOCCA. That is to say, the custodial sentence in respect of the offence of unlawful possession of Government trophies should have been not more than fifteen years as provided for by section 60 (2) of the EOCCA as it stood then, he argued. That error is apparent on the face of the record and prejudiced the applicants and thus the Court should rectify it in this review, he concluded.

For her part, Ms. Kombakono resisted the application terming it as an appeal in disguise. The learned Senior State Attorney admitted that, indeed, the argument that the appellant should have been sentenced under section 60 (2) of the EOCCA which then provided a milder sentence of not more than fifteen years holds water. However, the learned Senior State Attorney was quick to submit that the ailment is rectifiable in an appeal, not in an application for review.

Lending a helping hand to Ms. Kombakono, but in a somewhat contrary view, Ms. Manja, added that we held in **Anania Clavery Betela v. Republic** [2020] 2 T.L.R. 112, a sentence under the WCA which has an option for fine was milder than the one under section 60 (2) of the EOCCA which had no such option. In the premises, basing on the principle of a

milder sentence to be imposed in favor of an accused person stated in **Issa Hassan Uki**, the Court did not err in meting out such a punishment, she argued.

In a short rejoinder, Mr. Ndomba submitted that, in the circumstances of the case the subject of this application for review, the punishment under the WCA, was not milder. He contended that the amount of fine was colossal to make it prohibitive and thus making it not milder than the punishment under section 60 (2) of the EOCCA.

We should start the determination of this matter by underscoring the principles underlying applications of this nature. We haste the remark that the law on this area is settled. The jurisdiction of this Court to review its own decision is provided for by statute; section 4 (4) of the Appellate Jurisdiction Act, Cap. 141 of the Laws of Tanzania. Such powers are exercisable in very limited circumstances spelt out in rule 66 (1) (a) – (e) of the Tanzania Court of Appeal Rules (the Rules). One of them is when there is a manifest error on the face of the record under paragraph (a) of sub rule (1) of rule 66 of the Rules relied upon by the applicants. But what is a manifest error on the face of the record envisaged by the maker of the Rules

in rule 66 (1) (a) of the Rules? For easy reference, we reproduce it hereunder:

> *"66 (1) The Court may review its judgment or order, but no application for review shall be entertained except on the following grounds-*
>
> *(a) the decision was based on a manifest error on the face of the record resulting in the miscarriage of justice;*
>
> *(b) ...."*

In terms of the above provision of the law as well as case law, for an applicant to succeed in an application for review pegged on that paragraph, he must prove that there is a manifest error apparent on the face of the record and that ailment must have resulted in a miscarriage of justice. The Court has had an opportunity to answer the question what is a manifest error envisaged in rule 66 (1) (a) of the Rules in a number of its decisions. Such decisions include **Mathias Rweyemamu v. General Manager (KCU) Limited**, Civil Application No. 3 of 2014, **Emmanuel Malahya v. Republic**, Criminal Application No. 105/11 of 2018, **Issa Hassani Uki v. Republic**, Criminal Application No. 122/07/ of 2018, and **Raphael Saiboku v. Shenya John Imori,** Civil Application No.132/02 of 2022 (unreported). In those

decisions we relied on our previous decisions in **Chandrakant Joshubhai Patel v. Republic** [2004] T.L.R. 218 and **Tanganyika Land Agency Limited and 7 Others v. Manohar Lai Aggrwal,** Civil Application No. 17 of 2008 (unreported) to underscore the point. We reproduced a passage from **Mulla: The Code of Civil Procedure** (14th Ed), pages 2335-2336 as quoted in **Chandrakant Joshubhai** Patel:

> *"An error apparent on the face of record must be such as can be seen by one who runs and reads, that is, an obvious and patent mistake and not something which can be established by a long-drawn process of reasoning on points on which there may conceivably be two opinions: State of Gujarat v. Consumer Education and Research Centre (1981) AIR GU [223] ... Where the judgement did not effectively deal with or determine an important issue in the case, it can be reviewed on the face of the record [Basselios v. Athanasius (1955) 1SCR 520] .... But it is no ground for review that the judgement proceeds on an incorrect exposition of the law [Chhajju Ram v. Neki (1922) 3 Lah. 127]. A mere error on law is not a ground for review under this rule. That a decision is erroneous in law is no ground for ordering review: Utsaba v. Kandhuni (1973) AIR Ori.94. It must*

further be an error apparent on the face of the record. The line of demarcation between an error may sometimes be thin. It can be said of an error that is apparent on the face of the record when it is obvious and self-evident and does not require an elaborate argument to be established [Thungabhadra Industries Ltd v. State of Andhra Pradesh (1964) SC 1372]."

In **Tanganyika Land Agency Limited** we also added what the court in India stated in **M/S Thungabhadra Industries Ltd v. The Government of Andra Pradesh**, AIR 1964 SC 1372 where it was observed:

"A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error ... it would suffice for us to say that where without any elaborated argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two options entertained about it, a clear case of error apparent on the face of the record would be made."

In the case at hand, the applicants' main complaint is that the sentence meted out to them should have been under the EOCCA and not under the WCA, as it was. The applicants' advocate cites a decision of the Court; **Issa Hassan Uki** (supra), which, in his conviction, should have been followed. With utmost respect to the learned counsel for the applicants, this is an appeal in disguise against sentence. He wants us to sit on an appeal on sentence against our own decision. That, as already shown above, is not legally acceptable.

We also wish to remind the learned counsel for the applicants that no judgment will attain perfection and that not every error is amenable to review. As we observed in **Chandrakant Joshubhai Patel** (supra):

> *"It is, we think, apparent that there is a conflict of opinion as to what amounts to an error manifest on the face of the record and it is important to be clear of this lest disguised appeals pass off for applications for review. We say so for the well-known reason that* ***no judgment can attain perfection but the most that courts aspire to is substantial justice. There will be errors of sorts here and there, inadequacies of this or that kind, and generally no judgment can be beyond***

criticism. *Yet while an appeal may be attempted on the pretext of any error,* ***not every error will justify a review****. As held by the Supreme Court of India in* ***Thungabhadra Industries Ltd v. State of Andhra Pradesh****, [(1964) SC 1372]* ***a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error***". [Emphasis added].

What the advocate has succeeded to bring before us is a ground of appeal which is not amenable to review. The arguments that the Court should have followed the principle in its previous decision in **Issa Hassan Uki** and the response that the sentence which has an option for fine is the one which is milder as well as the rejoinder that the amount of fine is colossal and therefore not milder have the hallmark of a ground of appeal than one for review. We cannot indulge ourselves in determining these arguments for doing so will entail sitting on the appeal of the judgment complained of. It should be underlined that the decision is one of the apex court of the land and therefore final. We reiterate in this ruling, as we have done in many others we need not mention here, that it is in the interest of the State that litigation must come to an end. In this jurisdiction, we cherish this principle

of law embedded in the Latin maxim that goes: *interest Republicae ut sit finis litium.*

In view of the reasons we have set out above, we find this application without merit and, consequently, dismiss it entirely.

DATED at **DAR ES SALAAM** this 19th day of April, 2023.

J. C. M. MWAMBEGELE
JUSTICE OF APPEAL

M. C. LEVIRA
JUSTICE OF APPEAL

P. M. KENTE
JUSTICE OF APPEAL

The Ruling delivered this 24th day of April, 2023 in the presence of Mr. Augustino Ndomba, learned advocate for the applicants and applicants who are connected via video facility from Ukonga Prison, and Ms. Agness Mtunguja, learned State Attorney for the respondent Republic, is hereby certified as a true copy of the original.

THE COURT OF APPEAL OF TANZANIA

F. A. MTARANIA
DEPUTY REGISTRAR
COURT OF APPEAL