IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA

(CORAM: JUMA, C.J., NDIKA, J.A. And LEVIRA, J.A.)

CRIMINAL APPEAL NO 68 OF 2020

THADEO JOHN BILUNDA.....1ST APPELLANT
DANIEL LAURENT DAAKO @GELASI.....2ND APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from Judgment of the Resident Magistrate's Court of Arusha)

(Temu-SRM (EJ))

dated the 10th day of October, 2019

in

Criminal Appeal No. 118 of 2018

JUDGMENT OF THE COURT

20th & 24th February, 2023

JUMA, C.J.:

THADEO JOHN BILUNDA, the first appellant, and DANIEL LAURENT DAAKO @ GELASI, the second appellant, are before us on a second appeal against the decision of the Resident Magistrate's Court of Arusha in Criminal

Appeal No. 118, which Senior Resident Magistrate Aziza E. Temu heard on Extended Jurisdiction before dismissing it for want of merit. The appellants are urging us first to allow their appeal and quash their conviction. Secondly, they want us to set aside the sentence requiring them to either pay a fine of 326,850,000 shillings or, in default, to serve twenty years (20) in prison.

The single count, for which the appellants were convicted and sentenced related to unlawful possession of Government Trophies (two pieces of elephant tusks) contrary to what the charge sheet describes: *"Paragraph 14 of the First Schedule and sections 57 (1) and 60 (2) of the Economic and Organized Crime Control Act Cap. 200 [R.E. 2002] as amended by Sections 16(a) and 13(b) (2) respectively of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016, read together with section 86 (1) and (2) (b) of the Wildlife Conservation Act No. 5 of 2009."*

The particulars of this count were that on 19/10/2016 at Sangaiwe Village in Babati District of Manyara Region, the game wardens found the appellants possessing two (2) pieces of elephant tusks belonging to the Government of Tanzania. They had no permit to keep the tusks valued at Shillings 32,685,000/=.

It is appropriate at this juncture to look at the background leading up to the arrest and prosecution of the two appellants.

Two Tarangire National Park Wardens, William Malegesi (PW1) and Aldanus Alchelaus (PW2) gave a detailed account of the circumstances leading up to the arrest of the two appellants on 19/10/2016. On that day, PW1 was at work in his Tarangire National Parks office when around 13.30 hrs, he received intelligence from a secret informer that two people were looking for customers to buy elephant tusks. The informer gave PW1 mobile phone numbers of the erstwhile sellers. PW1 called that number and talked to one of the two sellers. After convincing the other person of his willingness to buy the tusks, they agreed to meet at Usolei area within Sangaiwe village. PW1 and three other Park Rangers, including Aldanus Alchelaus (PW2), left around 14:00 hrs in a civilian car, arriving at the Usolei area near Tarangire National Park around 15:30.

PW1 recalled how as they were driving, the Park Rangers saw two people standing, one carrying a black bag on his back. The wardens stopped their vehicle and introduced themselves as potential buyers. The two gentlemen disclosed that they had elephant tusks for sale and suggested they move off the road to the bushes to transact the business. When the

two potential sellers opened the bags, the rangers saw the tusks and immediately introduced themselves as Park Rangers Tarangire National Park. They arrested the two sellers who had walked into a trap. The two arrested gentlemen introduced themselves as Thadei John and Daniel Laurent.

Still, at the scene of the arrest, PW1 took out a certificate of seizure, filled and signed it in the presence of the first and second appellants. The two appellants likewise signed the certificate. The park rangers transported the two appellants from that scene to Sangaiwe village for Prota Nobert Mafulu (PW4), the Village Executive Officer, to formally identify if they were village residents. PW1 recalled that PW4 duly identified the appellants as residents of Sangaiwe village. After that, the rangers took the appellants and exhibits to Magugu Police Station.

The following day, Samwel Daud Bayo (PW3), a Game Warden, visited Magugu Police Station, where the detective constable of Police Donald (PW6) showed him the elephant tusks. PW3 testified that his duties as a wildlife officer and game warden included identifying and valuing government trophies. PW3 identified the tusks PW6 showed him and determined they were elephant tusks and came from one killed elephant. He also observed that those tusks developed fibres because of their long storage under the

soil. After his observation and analysis, PW3 duly prepared a trophy valuation certificate (exhibit P4), which valued the two pieces of elephant tusks at shillings 32,685,000/= (USD 15,000).

During the trial, PW1 identified the two pieces of elephant tusks (exhibit P2) and the black rucksack (exhibit P1), which he handed to Detective Abdallah of Magugu Police Station after the two appellants' arrests. Again, despite objections from the two appellants when PW1 offered to tender the certificate of seizure, the trial magistrate admitted the certificate as exhibit P3, explaining that they had signed the certificates and placed their thumbprints on the document.

In their defence, the two appellants gave a different version of evidence regarding their arrests. The first appellant (DW1) testified that on the day of his arrest, he was at Kibaoni along the main Arusha Road waiting for transport to Magugu to buy fishing nets. Soon the park rangers stopped their Land Cruiser vehicle and asked him where he was heading. He answered that he was waiting for transport to take him to Magugu. Immediately, some officers carrying a small bag alighted from their vehicle and arrested him. After apprehending him, they forced him to take the small bag they claimed belonged to the first appellant. DW1 also testified on the longstanding

enmity between him and park rangers over the fishing camps the first appellant and others set near Tarangire National Park that the park rangers detested. DW1 also contradicted PW1's evidence regarding the type of vehicle. DW1 stated that the car was a Land Cruiser, not a private vehicle.

The second appellant (DW2) gave a similar account of how the park rangers arrested them. He was at Kibaoni near the gate to Tarangire National Park, waiting for transport, when a park ranger arrived to ask him where he was heading. He insisted that the place is a bus stop. Four officers who had a small bag arrested him and another person. Like the first appellant, DW2 also claimed that they and the park rangers had a prior conflict over a camp he built near the lake where animals go for water.

DW2 also cast doubt on PW1 claim that he phoned the appellants pretending to be a potential buyer of elephant tusks. DW2 testified to the contradictions in the prosecution evidence, which created doubt in the prosecution case. He referred to the evidence of PW1, who claimed that the park rangers used a private vehicle at the scene of the arrest, while PW4 and PW7 contradicted this account by referring to a Land Cruiser type of vehicle.

In convicting the two appellants, the trial Resident Magistrate (H.A. Mnguruta-RM) found that the prosecution had discharged its duty to prove the case of unlawful possession of government trophies. She sentenced each appellant to pay a fine of shillings 326,850,000, failure of which to serve a twenty-year prison term.

Aggrieved by the trial court's decision, the appellants lodged their first appeal to the High Court at Arusha. A.E. Temu (Senior Resident Magistrate) heard the appeal on extended jurisdiction and dismissed the appellants' appeal. Still dissatisfied, the appellants filed their memorandum of appeal on 16/11/2021 containing six grounds of appeal, which we paraphrase as follows. Firstly, they complain that the first appellate court failed to properly analyze the chain of custody when the officers seized the trophies from the appellants as they alleged. They think the chain of custody is unclear, broken, and cannot be verified. Secondly, they fault the first appellate court for failing to evaluate the evidence resulting in finding the appellants guilty based on unreliable evidence.

In their third complaint, the appellants question how the trial and first appellate courts failed to properly examine the chain of custody Form (exhibit P5). Contents of this form, they claim, are inconsistent with the evidence of PW5, PW6, and PW7; raising doubt in the prosecution case. Fourthly, the appellants still blame the first appellate court for failing to show how after handing over the tusks to Magugu Police Station, PW1 repossessed the elephant tusks and tendered them in on 25/10/2017. On his fifth ground, the two appellants fault the first appellate court for failing to properly evaluate the evidence of the trophy valuation certificate (exhibit P4). They insisted that the tusks wildlife officers seized on 19/10/2016 are not the same as the tusks that PW3 identified and valued on 20/10/2016.

On the sixth ground, the appellants complain that the prosecution evidence did not prove the offence beyond a reasonable doubt.

On 13/2/2023, a week before their appeal hearing, the appellants filed a supplementary memorandum of appeal in which they raised three grounds which we paraphrase. The first supplementary ground is jurisdictional. It argues that the record of appeal lacks two jurisdictional documents that are a mandatory requirement under sections 12(3) and (4) of the Economic and Organized Crime Control Act CAP 200 (EOCCA). They identified the missing

documents as "endorsed" CONSENT of the Director of Public Prosecution (DPP) and "endorsed" CERTIFICATE CONFERRING JURISDICTION to a subordinate court. The second supplementary ground raises an issue of law, questioning the admissibility of evidence of the seizure certificate (exhibit P3) of two pieces of elephant tusks. The appellants argue that the trial and the first appellate courts wrongly relied on the certificate of seizure. The third supplementary ground of appeal faults the two courts below for relying on the certificate of seizure (exhibit P3), trophy valuation certificate (exhibit P4), the chain of custody form (exhibit P5), and the sketch map (exhibit P6) without reading them out.

When this appeal came up for hearing on 20/2/2023, the appellants appeared in person, unrepresented. Ms. Tarsila Gervas Asenga learned Senior State Attorney, assisted by Mr. Charles Kagirwa and Ms. Jacqueline Linus, State Attorneys, appeared for the respondent Republic.

The first appellant asked us, and we granted his request to let the second appellant expound their grounds of appeal. But, instead of expounding and relating them to evidence on record, the second appellant read out the same grounds they had earlier filed, but this time he read in Swahili.

Ms. Asenga, for the respondent Republic, opposed the appeal. From the first memorandum of appeal, Ms. Asenga grouped and responded to grounds 1, 3, 4, and 5 dealing with the complaint over the chain of custody. Later, she submitted on the other grounds 2 and 6 in the first memorandum of appeal concerning failure to evaluate evidence and whether there was proof beyond a reasonable doubt. Finally, she dealt with the first ground in the supplementary memorandum of appeal, raising jurisdictional issues concerning the failure of the trial court to endorse the consent and the certificate conferring jurisdiction to the District Court of Babati to try an economic offence.

Ms. Asenga conceded that PW1 did not read out the seizure certificate after the trial court admitted it as exhibit P3. She also acknowledged that PW3 did not read out the trophy valuation certificate after the trial court admitted it in evidence as exhibit P4. The learned Senior State Attorney, however, disagreed with the appellants about the reading out of the chain of custody form (exhibit P5) and the sketch map plan (exhibit P6). She referred to page 34 of the record where, after admitting exhibit P5, PW5 read it out. Likewise, she referred to pages 35 and 36 of the record of appeal

where, after the trial court admitted the sketch map plan (exhibit P6), DC Donald (PW6) read it out.

The learned Senior State Attorney agreed with the appellants on legal consequences on failure to read out exhibits P3 and P4 after their admission as evidence. Failure to read out exhibits P3 and P4, she submitted, is fatal since it denied the appellants the right to know their contents. She conceded the two documents should be expunged from the record. Despite the concession, the learned Senior State Attorney expressed her comfort that there is oral evidence that proved the prosecution case. She cited the case of **SIMON SHAURI AWAKI @ DAWI V. R** [2022] TZCA 51 TANZLII, where the Court stated that oral evidence could prove the prosecution case without documentary evidence. Ms. Asenga submitted that even after expunging the certificate of the seizure (exhibit P3), the oral evidence of PW1, PW2, and PW4 proves the place where the wildlife officers arrested the appellants in unlawful possession of government trophies. She added that the two appellants' evidence on pages 41 and 42 of the appeal record identified Kibaoni as a place of their arrest.

The learned Senior State Attorney submitted that, in so far as she is concerned, there is sufficient oral evidence on record to establish a chain of custody of the government trophy which PW1 and PW2 found in possession of the appellants upon their arrest. She submitted that the chain of custody form (exhibit P5) which still forms part of the evidence, summarizes the movements of the government trophy, which PW1 and PW2 seized from the appellants on 19/10/2016. Exhibit P5 proves the witnesses and exhibit registers through which the government trophy passed from 19/10/2016 to 25/10/2017 when PW1 tendered them in court.

Ms. Asenga demonstrated, in great detail, the movement of the elephant tusks from Magugu Police Station to their tendering as court exhibits. She referred us to the evidence of DC Abdallah (PW7), who was at Magugu Police Station, his place of work, when on 19/10/2016 at around 18:50 hrs, PW1 brought the appellants and the two pieces of elephant tusks. After receiving the appellants, PW7 locked them up and stored the tusks in the exhibit room. The learned Senior State Attorney submitted how the chain of custody of the two elephant tusks continued the following day, 20/10/2016, when, around 11:30 hrs, Corporal Donald (PW6) from Babati

Police Station went to Magugu Police Station and collected the appellants and the two pieces of elephant tusks.

PW6 testified on how he went to collect the appellants after his senior officers had assigned him to investigate the appellants' possession of government trophies. Apart from recording a statement of one appellant, PW6, visited the crime scene and, with the help of PW1, drew a sketch map of the crime scene (exhibit P6). After completing the investigation, PW6 transferred the custody of the elephant tusks and small black bag to Sergeant Masoud (PW5), the custodian of the exhibits register at Babati Police Station. At Babati Police Station PW5 registered the elephant tusks as Number 81/2016. Ms. Asenga submitted that it was logical that later at the trial on 25/10/2017, PW1 collected the exhibits from PW5 at Babati Police Station and returned them that same day at 14:00 hours.

The learned Senior State Attorney next addressed whether the government trophy PW1 and PW2 found in possession of the appellants were the same as those which PW6 invited PW3 to identify and value formally. She submitted that PW1 and PW2, senior wildlife officers, gave a detailed description of the tusks, describing one as big and another as smaller. She added that it was PW1, who later tendered the same elephant tusks in court

which he and PW2 had earlier seized from the appellants. She also referred to the evidence of PW4, the Village Executive Officer of the Sangalawe village, where the appellants were residents. PW4 not only identified the elephant tusks but was able to ask the appellants where they obtained them. According to PW4, the appellants explained that as they were preparing their farm, two pieces of elephant tusks emerged from their digging; the tusks looked to the appellants like bones. The learned Senior State Attorney submitted that PW3 confirmed what PW4 had observed about the tusks. According to PW3, the tusks had developed fibres indicating they had stayed under the soil for some time. Ms. Asenga submitted that since the elephant tusks do not change hands quickly, and their chain of custody cannot easily break down. Ms. Asenga urged us to dismiss the ground that the government trophy which PW1 arrested the appellants with were different from the trophy PW1 tendered in court.

Ms. Asenga also urged us to dismiss the fifth ground of appeal, where the appellants complained that the government trophies that PW1 and PW2 seized were registered under different registration numbers, suggesting that the chain of custody through which the government trophies passed had broken down. She asserted that the difference in the registration numbers

was not because of the breakdown of the chain of custody. She explained that the differences in the numbers resulted from the different police stations the government trophy passed through. Registration number IR1112/2016, the learned Senior State Attorney explained, was the number assigned by Magugu Police Station, where PW1 and PW2 reported the incident for the first time. The police moved the appellants and their government trophies from Magugu Police Station to Babati Police Station, where PW6 conducted the investigation. It is at Babati Police Station, she added, where PW5 received the elephant tusks and registered them as Number 81/2016 in the Babati Police Station Exhibit Register.

Thus, the learned Senior State Attorney urged us to dismiss grounds 1, 3, 4, and 5, which fault the chain of custody of two elephant tusks.

The learned Senior State Attorney turned to grounds 2 and 6 in the first memorandum of appeal, complaining about the failure to evaluate evidence leading to a mistaken conviction of the appellants. She referred us to pages 58 to 62 of the record of appeal, where the trial district court considered, weighed, and evaluated the prosecution and defence evidence. The first appellate court, she added, evaluated evidence from pages 86 to 93 of the record of appeal.

The inescapable conclusion from the evaluation she submitted is that PW1 and PW2 found the two appellants possessing two pieces of elephant tusks (government trophies). Referring to section 100 of the Wildlife Conservation Act Cap 283 (the WCA), she submitted that PW1 and PW2 found two pieces of elephant tusks inside a black bag in the possession and control of the two appellants. She added that under section 100 (3) of the WCA, the appellants failed to show that their possession of the government trophies was lawful.

The learned Senior State Attorney concluded her submissions by urging us to dismiss the ground faulting the alleged lack of endorsement on the consent of the DPP and on the Certificate conferring jurisdiction to the district court of Babati. She referred to page 4 of the appeal record, where both the Consent of the State Attorney in-Charge and the Certificate conferring Jurisdiction appear. She further referred to page 18 of the record, where the Public Prosecutor informed the trial court about the filing of the Consent.

Before Ms. Asenga learned Senior State Attorney could sit down, we asked her to comment on the legality of the sentence of a fine of 326,850,000/= or term of twenty years in prison in case of default, which the trial magistrate imposed under section 86(1)(2)(b) of the WCA. She

described the sentence as illegal because the proper sentencing provision is section 60(2) of the EOCCA and not section 86(1)(2)(b) of the WCA. Section 60(2) of the EOCCA, she submitted, removed the option to pay a fine and imposed minimum punishment of twenty years imprisonment. She urged us to invoke our power of revision under section 4(2) of the Appellate Jurisdiction Act Cap 141 (the AJA) and order a lawful sentence.

From the submissions of the appellant and the learned Senior State Attorney, we shall first address ourselves to grounds raising matters of law.

The first ground in the supplementary memorandum of appeal raises a question of law concerning the jurisdiction of the district court of Babati to try the EOCCA. Section 3 (1) and (2), and 12 (3) of the EOCCA restricts original jurisdiction to try economic offences to the Economic Crimes Division of the High Court and can only be transferred to a court subordinate to the High Court by a Certificate under the hand of the Director of Public Prosecutions or any State Attorney under section 12 (3) of the EOCCA.

Section 26(1) of the EOCCA prohibits courts from trying economic offences without the consent of the Director of Public Prosecutions. We agree with Ms. Asenga that the consent of the State Attorney in charge of the Manyara Region and the certificate conferring jurisdiction to the district court of Babati appear on page 4 of the appeal record were endorsed when the Public Prosecutor (Ms. Kisinga) informed the trial magistrate that the prosecution had already filed the consent to prosecute an economic crime at Babati District Court.

As far as we are concerned, after receiving information from the public prosecutor about filing the two documents, the trial magistrate duly recorded the information. The trial magistrate thus accepted that proper Consent of the State Attorney in-Charge of Manyara Region and the Certificate of the State Attorney in-Charge were on court record conferring jurisdiction on the District Court of Babati to try an economic offence. We are, as a result, satisfied the trial court had jurisdiction to try an economic offence. We dismiss ground number 1 in the supplementary memorandum of appeal.

We, as a result, find that the District Court of Babati had jurisdiction to try an economic offence, unlawful possession of a government trophy.

The next question of law concerns exhibits which were not read out after their admission hence the complaint that they were improperly admitted in the trial court. We have looked at page 24 of the typed record of proceedings which bears out the appellants' complaint that indeed the certificate of seizure (exhibit P3) was not read out in court. After dismissing the appellants' objections against the certificate's admission, the trial magistrate admitted the document as exhibit P3 and allowed PW1 to continue with his evidence without reading out the exhibit. We agree with the appellants and the learned Senior State Attorney, that failure to read out the certificate of seizure of the two pieces of elephant tusks (exhibits P3) and the trophy valuation certificate (exhibit P4) after their admission as evidence must result in the expunging from the record of pieces of documentary evidence.

We must however, point out that our sustaining the appellants' grounds of complaints over the failure to read out the exhibits concerns only the certificate of seizure (exhibit P3) and the trophy valuation certificate (exhibit P4). We do not sustain the appellants' complaint on the chain of custody

form (exhibit P5) and the sketch map (exhibit P6). Page 34 of the record shows that after Police Sergeant Masoud (PW5) had tendered the chain of custody form, the trial court admitted it as exhibit P5 and allowed PW5 to read it out. Another police officer, PW6, tendered the sketch map of the scene of the appellants' arrests. Pages 35 and 36 of the record show the trial magistrate admitting the sketch as exhibit P6, and PW6 read out its contents.

The appellants under grounds 2 and 6 of the memorandum of appeal fault the two courts below for failing to evaluate evidence. The main question here is, whether, after expunging the certificate of seizure (exhibits P3) and the trophy valuation certificate (exhibit P4), there is other evidence that two courts below failed to evaluate.

We are satisfied that the trial and the first appellate court sufficiently evaluated the evidence relating to the appellant's arrest and their possession of government trophies. In the totality of the evidence, the prosecution evidence preponderates the defence version of the appellants' arrest and their unlawful possession of government trophies.

We agree with Ms. Asenga that there is oral evidence of PW1, PW2, PW3 and PW4 that proved the arrest of the two appellants while they were in unlawful possession of government trophy. The appellants walked into a trap set by PW1 and PW2, caught red-handed in possession of the black bag containing two pieces of elephant tusks.

Next, it is appropriate to determine the statutory burden of proof the appellants had, albeit not as heavy as that on the prosecution, of proof beyond a reasonable doubt. The charging section 85 (1) of the WCA declares all government trophies identified under subsection 85 (1) to be the property of the Government, meaning the Government owns all the trophies. Whoever has possession of the trophy as the property of Government, bears evidential burden to show a licence, permit, written permission, or written authority granted under the WCA justifying possession. In other words, Section 85 (1) of the WCA declaring Government trophies to be the property of the Government places an evidential burden on anyone possessing, buying, selling, or dealing with government trophies to show a licence, permit, written permission, or written authority granted under the WCA. Section 100

(3) of the WCA elaborates that evidential burden on the appellants to show lawful possession of Government trophies:

> *"100 (3) In any proceedings for an offence under section 86 the burden of proof that-*
>
> *(a)* ***the possession of the Government trophy was lawful;***
>
> *(b) the sale, purchase or other transaction relating to the Government trophy was lawful;*
>
> *(c) the accused had assumed possession of the trophy in order to comply with the requirements of sections 85 and 86; or*
>
> *(d) the trophy is not a Government trophy,*
>
> *shall lie on the person charged.* [Emphasis added].

The appellants did not show any permit from the Director of Wildlife or his authorized officer to justify their possession of the Government Trophy.

In their first ground in the memorandum of appeal, the appellants cast doubt in the chain custody of the two pieces of elephant tusks. We agree with Ms. Asenga that oral evidence on record proves the two pieces of elephant tusks, PW1 and PW2, impounded from the appellants were same government trophies that PW1 later exhibited in court. After arresting the

appellants in possession of two elephant tusks, the oral evidence chain moved on to the Sangaiwe village office. PW4, the village executive officer of Sangaiwe village, testified that around 16:00 hrs on 19/10/2016, the two wildlife officers (PW1 and PW2) took the appellants to the village office. After explaining the appellants' arrest while possessing two pieces of elephant tusks, PW4 looked inside a small black bag and saw tusks looking like bones. PW4 knew the second appellant Daniel Laurent from his childhood. He did not, however, know the first appellant before that day.

From the office of the Sangaiwe Village, the oral evidence chain next moved to Magugu Police Station. DC Donald (PW6) testified that around 19:00 hrs on 19/10/2016, Inspector James, the head of the Anti-Poaching Unit, assigned him to investigate a file concerning unlawful possession of two pieces of elephant tusks. Amongst the investigative functions PW6 performed included taking the statement of the second appellant and, with the assistance of PW1, drawing the sketch map (exhibit P6).

Police Sergeant Masoud (PW5) joined the chain of oral evidence. He testified that on 20/10/2016 around 01.00 hours, he was in his Babati Police Station office when he received from PW6 two pieces of elephant tusks inside

a small bag. He registered the exhibit under Number 81/2016 in the exhibit register.

The oral chain of evidence moved from DC Donald (PW6), the officer overseeing the trophies' unlawful possession, to PW3. It was PW6 who invited Samwel Daud Bayo (PW3), a wildlife officer, to go to Magugu Police Station to identify and value the seized trophies.

The evidence of Samwel Daudi Bayo (PW3), a wildlife officer, established in definite terms that the two pieces of elephant tusks PW1 and PW2 arrested the appellants with and which to PW4 appeared like bones were government trophies. PW3 testified how PW6 showed him the tusks identified as elephant tusks. He determined that the two pieces of tusks came from one elephant. He testified that on that day, he made the valuation of one USD dollar exchanged for 2179/=. The value of an elephant was USD 15,000. PW3 valued the elephant at shillings 32,685,000/=.

From the above chain of oral evidence, we failed to see the inconsistencies of the evidence of PW5, PW6 and PW7 as appellants allege in the third ground of memorandum of appeal.

We further agree with Ms. Asenga that difference in the registration numbers was not because of the breakdown of the chain of custody, but due to different police stations through which the chain of custody moved. Oral evidence of witnesses in the chain tallies with the chain of custody form (exhibit P5). Discrepancy in the numbering, if any, did not go to the root of the matter because there is sufficient oral evidence linking the elephant tusks PW1 and PW2 found on appellants, with the government trophy PW1 tendered in court.

As a result, we dismiss grounds 1, 3, 4, and 5, which faulted the chain of custody of two elephant tusks.

In discharging our duty as second appellate Court, we found no ground of appeal that can move us to interfere with how the two courts below considered, weighed, and evaluated the prosecution and defence evidence.

It is appropriate to conclude by turning to the remaining question of law, which Ms. Asenga described as the illegality of the sentence which the trial court imposed under section 86(1)(2)(b) of the WCA instead of section 60(2) of the EOCCA. In dismissing the appeal, the first appellate court did

not interfere with the earlier sentence the trial court had imposed of a fine of 326,850,000/= or serving twenty years (20) in prison.

We agree with Ms. Asenga that section 60 (2) of the EOCCA is the sentencing provision for unlawful possession of a government trophy. She elaborated that following the addition of new section 60 (2) in the EOCCA by the Written Laws (Miscellaneous Amendments) Act 2016 Act No. 3 of 2016, section 86 (1)(2) (b) is for purpose of punishment, subject to the provisions of section 60(2) of the EOCCA:

> *"60(2) Notwithstanding the provision of a different penalty under any other law and subject to subsection (7),* ***a person convicted of*** *corruption or* ***economic offence shall be liable to imprisonment for a term of not less than twenty years but not exceeding thirty years,*** *or to both such imprisonment and any other penal measure provided for under this Act;*
>
> *Provided that, where the law imposes penal measures greater than those provided by this Act, the Court shall impose such sentence"* [Emphasis added].

In **MUHSIN MFAUME VS REPUBLIC** [2021] TZCA 318 TANZLII, the Court took judicial notice that the Written Laws (Miscellaneous Amendments) Act 2016 Act No. 3 of 2016 which came into operation on 8/7/2016 the date of its publication. It is evident that on 19/10/2016 when the appellants were arrested and later charged with unlawful possession of Government Trophy, sentencing provision of section 60(2) of the ECCCA was already in operation.

Paragraph 14 of the First Schedule to the EOCCA designates Possession of a Government Trophy under section 86 as an economic offence. The EOCCA creates a legal position where ingredients of unlawful possession of government trophy are under section 86 of the WCA, while the EOCCA prescribes minimum punishment of imprisonment for a term not less than twenty years but not exceeding thirty years.

We think, after convicting the appellants under section 86(1)(2)(b) of the WCA, the trial District Court of Babati should have sentenced the appellants under section 60(2) of the EOCCA by imposing a sentence of not less than twenty years but not exceeding thirty years, without an option of a fine.

In the upshot of what we have said above, we are inclined to exercise our powers of revision under section 4(2) of the AJA, we nullify the sentence of fine of 326,850,000 or in default 20 years imprisonment. In the circumstances of this case, we order the appellants to continue serving the twenty years in prison they are currently serving.

Otherwise, we find no merit in this appeal. We accordingly dismiss it.

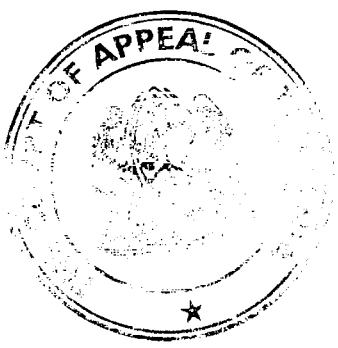
DATED at **ARUSHA** this 24th day of February, 2023.

I. H. JUMA
CHIEF JUSTICE

G. A. M. NDIKA
JUSTICE OF APPEAL

M. C. LEVIRA
JUSTICE OF APPEAL

The Judgment delivered this 24th day of February, 2023 in the presence of the appellants in person and Mr. Felix Kwetukia, learned Senior State Attorney for the Respondent/Republic, is hereby certified as a true copy of the original.



E. G. MRANGU
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL