

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**[ARUSHA DISTRICT REGISTRY]**  
**AT ARUSHA**

**CRIMINAL APPEAL NO. 19 OF 2020**

*(C/f Criminal Appeal No. 72 of 2019, Misc. Criminal Appeal No. 21 of 2019, Misc. Criminal Appeal No. 92 of 2018 of the High Court of Tanzania at Arusha, Originating from the Resident Magistrates' Court of Manyara at Babati, Economic Case No. 13 of 2016)*

**PARICULIS SINJOLE TONGOLI**  
**MAKAOLI @TONGOLI SINJOLE MELAA ..... 1<sup>st</sup> APPELLANT**  
**YOHANA KAPURWA KILIMO ..... 2<sup>nd</sup> APPELLANT**  
**ISAYA LEMIKWETI MAKALYA**  
**@LAMBAIWA LEMBRIS ..... 3<sup>rd</sup> APPELLANT**

***Versus***

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

*3<sup>rd</sup> September & 6<sup>th</sup> November, 2020*

**Masara, J.**

In the Resident Magistrates' Court of Manyara sitting at Babati, the Appellants, along with two others, were jointly charged with the offence of Unlawful Possession of Government Trophy, contrary to Paragraph 14 of the First Schedule to, and Section 57(1) and 60(2) of the Economic and Organized Crimes Control Act, Cap. 200 [R.E 2002] as amended by Sections 16(a) and 13(b) 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. It was alleged that on 13<sup>th</sup> July, 2016 at Kinua Village, Kiteto District within Manyara Region, all the Appellants were found in unlawful possession of ten (10) pieces of Elephant tusks weighing

36.8 kilograms valued at Tshs 66,360,000/=. In addition, it was alleged that on 14<sup>th</sup> July, 2016, at the same place, the first Appellant was found in possession of three lion claws valued at Tshs 10,838,800/=. All the Appellants denied commission of the offences they were charged with.

At the conclusion of the trial, the Appellants were convicted of the first count and sentenced to serve a custodial sentence of twenty (20) years imprisonment. The Appellants were aggrieved by both the conviction and sentence meted on them; they have preferred this appeal on the following grounds:

- a) That, the trial Court erred in law and fact for convicting and sentencing the Appellants based on defective Trophy Valuation Certificate/and on Trophy valuation certificate signed with (sic) unqualified person;*
- b) That, the trial Court erred in law and fact for convicting and sentencing the Appellants while the Prosecution failed to prove beyond reasonable doubt that the Appellants were found in unlawful possession of Government Trophy at Kinua Village, within Kiteto District, Manyara as alleged in the charge sheet;*
- c) That, the trial Court erred in law and fact for convicting and sentencing the Appellants based on the caution statements which were illegally/involuntarily taken; and*
- d) That, the trial Court erred in law and fact for convicting and sentencing the Appellants while the prosecution failed to prove beyond reasonable doubt the charge against the Appellants as per the evidence tendered.*

Based on those grounds of appeal, the Appellants pray that this Court allows the appeal and acquits them forthwith. At the hearing of the appeal, the Appellants were represented by Mr. Thadey Lister, learned advocate, while the Respondent was represented by Ms Tusaje Samwel, learned State Attorney. The appeal was to be heard through written submission upon

concurrence of Ms. Tusaje Samwel, learned State Attorney, and Mr. Joseph Mwita Mniko, learned Advocate who held brief for Mr. Lister, learned advocate, for the Appellants.

The filing schedule was fixed in the following manner: Written submissions by the Appellants was to be filed by 17/9/2020, reply submission by the Respondent was to be filed by 1/10/2020 and a rejoinder submissions, if any, was to be filed on 8/10/2020. It was agreed that judgment would be delivered on 6/11/2020.

Unfortunately, neither party has filed the submissions as directed by the Court. The fault falls squarely on the Appellant's counsel as the Respondent could not file her submissions in the absence of the submissions from the Appellants.

It is trite law that failure to file written submission as ordered by the Court is tantamount to failure to prosecute one's case. Failure to file written submissions on the date fixed by the Court bears the same effect as non-appearance in Court on the date the case is fixed for hearing. There is a plethora of authorities to that effect. In ***Godfrey Kimbe Vs. Peter Ngonyani***, Civil Appeal No. 41 of 2014 (unreported) the Court of Appeal while referring to its previous decision in ***National Insurance Corporation of (T) Ltd & another Vs. Shengena Limited***, Civil Application No. 20 of 2007 (unreported), had this to say:

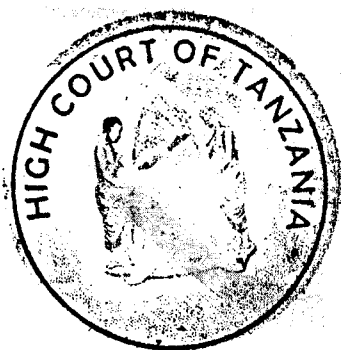
*"In the circumstances, we are constrained to decide the preliminary objection without the advantage of the arguments of the applicant. We*

*are taking this course because **failure to lodge written submissions after being so ordered by the Court, is tantamount to failure to prosecute or defend one's case**"*  
(emphasis added)

See also ***Mechmar Corporation (Malaysia) Berhard Vs. V.I.P Engineering and Marketing LTD***, Civil Application No. 9 of 2011, ***P3525 LT Idahya Maganga Gregory Vs. The Judge Advocate General Court Martial***, Criminal Appeal No. 2 of 2002 (HC) (both unreported).

In the instant appeal, the Appellants did not file their written submissions for unknown reasons. I note that there has not been any application for an extension of time to file one by their counsel. The only presumption the Court can make is that they have failed to prosecute their case. In the circumstance, I dismiss the appeal for want of prosecution.

It is so ordered.



  
Y. B. Masara

**JUDGE**

6<sup>th</sup> November, 2020