

**IN THE HIGH COURT OF TANZANIA  
(DODOMA DISTRICT REGISTRY)  
AT DODOMA  
(APPELLATE JURISDICTION)**

**DC CRIMINAL APPEAL NO. 139 OF 2020**

(Original from Manyoni District Court at Manyoni Economic Case No. 40 of 2018)

**ONESMO DANIEL@NYACHIWA ..... APPELLANTS**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**

*27/8/2021 & 23/9/2021*

**JUDGMENT**

**MASAJU, J**

The Appellant, Onesmo Daniel@Nyachiwa@Nyachivi, was charged with, and convicted of UNLAWFUL POSSESSION OF GOVERNMENT TROPHY and UNLAWFUL DEALING IN GOVERNMENT TROPHY in the District Court of Manyoni at Manyoni. He was sentenced to serve twenty (20) years imprisonment on each count, the sentence thereof running consecutively, hence the Appeal to the Court against both the conviction and the sentence.

The Appellant's Petition of Appeal is made up of four (4) grounds of Appeal, including the 4<sup>th</sup> ground that his defence was not considered by the trial court.

When the Appeal was heard in the Court on the 20<sup>th</sup> day of May, 2021, the layman Appellant appeared in person and adopted his grounds of Appeal to form submissions in support of the Appeal in the Court. He prayed the Court to intervene, for he was a layman.

The Respondent Republic in the service of the learned State Attorney, Ms. Rachel Tulli, contested the appeal reasoning that there was evidence that the Appellant was found in possession of the Government trophy. The Respondent, however, observed that the Appellant's defence was not considered by the trial Court contrary to Section 312(1) of the Criminal Procedure Act, [Cap 20 RE 2019]. She advised the Court to step into the shoes of the trial court to consider the Appellant's defence weighing it against the prosecution case as it was held in **Iddy Salum @Fredy V. The Republic** (CAT) Criminal Appeal No. 192 of 2018, Dar es Salaam Registry.

Indeed, as so rightly prayed by the Respondent, the Court is entitled to step into the shoes of the trial Court and consider the Appellant's defence therein *visavis* the Prosecution case against him. Yet, the Court is of the considered position, that the Court could only do so if, the trial court in convicting Appellant had complied with Section 312(2) of the Criminal Procedure Act, [Cap 20 RE 2019] which reads thus;

*"(2) In the case of conviction the judgment shall specify the offence of which, and the section of the Penal Code or other law under which, the accused person is convicted and punishment to which he is sentenced."*

The trial Court's judgment reads thus;

*".....from the above reasoning this court is hereby convicted the accused person for the offences charged before this Court. It is so decided accordingly."*

It is therefore obvious that the trial Court's judgment lacked competence for its non-specifying the offence and the section of law under which the Appellant was convicted. The Appellant had been charged with two counts namely, *the 1<sup>st</sup> count UNLAWFUL POSSESSION OF GOVERNMENT TROPHY contrary to Sections 86(1) (2) (c) (iii) and (3) (b), iii(1) (a) and (d) of the Wildlife Conservation Act, No. 5 of 2009 as amended by Section 59 (a) and (b) of the Written Laws (Miscellaneous Amendments) Act No. 2 of 2016 read together with paragraph 14 of the First Schedule to and Section 57(1) and 60 (2) both of the Economic and Organised Crime Control Act, CAP 200 [R.E 2002] as amended by Sections 13(b) and 16(a) of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016 (sic), the 2<sup>nd</sup> count, UNLAWFUL DEALING IN GOVERNMENT TROPHY, contrary to sections 80(1), 84(1), 111(1) (a) and 113 (1) (2) of the Wildlife Conservation Act No. 5 of 2009 read together with paragraph 14 of the First schedule to and Sections 57(1) and 60(2) both of the Economic and Organised Crime Control Act, Cap 200 RE [2002] as amended by Section 13(b) and 16(a) of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016 (sic).*

The trial Court's judgment in respect of sentence against the appellant reads thus;

**"SENTENCE:**

*The court records reveal that, the convict is the first offender, this court order as follow;*

**1<sup>st</sup> count:**

*As per Section 13(b) (2) (3) (4) and 16(a) of the Written Laws (Miscellaneous Amendments) Act, No. 3 of 2016, this Court is hereby sentence the convict to serve 20 years imprisonment (sic).*

**2<sup>nd</sup> count:**

*As per Section 13(b) (2) (3) (4) and 16(a) of the Written Laws (Miscellaneous Amendment) Act, No. 3 of 2016, this court is hereby sentence the convict to serve 20 years imprisonment sentence shall run consecutive.*

**SGD: S.T.KIAMA, RM**

**23/7/2020".**

Whereas the trial court judgment read that the Appellant was convicted of the offences charged before the said court, the provisions of law cited in sentencing the Appellant on the two economic offences are different from the provisions named in statements of offences on the two counts on the Charge Sheet. Hence contrary to section 312 (2) of criminal procedure Act, [Cap 20] thereby rendering the trial court's judgment incompetent.

That said, on the two procedural irregularities, the Court hereby invokes her revisionary powered under section 372(1) of the Criminal Procedure Act [Cap 20 RE 2019] and declares the trial proceedings, judgment conviction and sentences against the Appellant a nullity, quashed and set aside accordingly. The Appellant shall be released forthwith from prison unless otherwise there was a lawful cause.

There shall be no trial *de novo* on account of the same facts, for it is inadvisable that whenever a trial is a nullity there should be trial *de novo* but each case has got to be looked on its own peculiar facts and circumstances lest there was a court hunting or persecution of accused person in order to just fill up the prosecution or, and judicial gaps in this previous trial on the same facts allegedly in pursuit of justice.



  
GEORGE M. MASAJU

**JUDGE**

23/9/2021