

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

DC CRIMINAL APPEAL NO. 187 OF 2020

(Originating from Kondoa District Court in Economic Case No. 07 of 2018)

1. JUMA HASSAN@GINDAE
2. PATRICK MICHAEL@MWALUKO
3. HALFA SHABAN SURUTI
4. DAUDI CHARLES @MASINGA } **APPELLANTS**

VERSUS

THE REPUBLICRESPONDENT

10/9/2021 & 15/9/2021

JUDGMENT

MASAJU, J

The Appellants, Juma Hassan@Gindae, Patrick Michael@Mwaluko, Halfan Shaban Suruti and Daudi Charles@Masinga (the 1st, 2nd, 3rd and 4th Appellants) respectively were jointly and together charged with, and convicted of UNLAWFUL DEALING IN GOVERNMENT TROPHY and UNLAWFUL POSSESSION OF GOVERNMENT TROPHY, the 1st and 2nd counts respectively, before the District Court of Kondoa at Kondoa. They were

sentenced to pay fine of TZs 135,099,000/= in default thereof to serve two (2) years imprisonment on the 1st count and to pay fine of TZS 675,495,000/= in default thereof to serve twenty (20) years imprisonment on the 2nd count. The sentences running consecutively. Hence this Appeal to the Court against the conviction and the sentence. Their Petition of Appeal is made up of eight (8) grounds of Appeal on matters of law and facts, that the prosecution case against them before the trial court was not proved beyond reasonable doubt.

When the Appeal was heard in the court on the 10th day of September, 2021, the learned counsel, Mr. Christopher Malinga who appeared for them dropped the 4th, 5th and 8th grounds of appeal and retained the 1st, 2nd, 3rd, 6th and 7th grounds of appeal and argued them accordingly. The learned Senior State Attorney Mr. Harry Mbogoro, for the Respondent Republic, did not contest the appeal in respect of the 2nd, 3rd, and 4th Appellants on both counts. The Respondent also did not contest the appeal by the 1st Appellant in respect of the 1st count stating that the Appellants conviction on the said count was premised on uncorroborated hearsay evidence and so was the conviction of the 2nd, 3rd and 4th Appellants on both counts. The Respondent Republic however, contested the 1st Appellant's appeal on the 2nd count, stating that there was evidence that the said Appellant was found in possession of the Government trophy as so testified by F.3262 D/Cpl Joseph (PW1), E.7288 Moshi (PW2), Insp. Waziri Nyagawa (PW3) Shafii Swalehe (PW5) and Alais Saimon Munka(PW6) who were at the scene of the crime when the said Appellant was arrested and government trophy seized from him, there was certificate of seizure (Exhibit PE3) thereof made under section 42 of the Criminal Procedure Act,

- [Cap 20] as a result of emergency search. The Respondent Republic drew the attention of the Court to **Mwinyi Jamal Kitaramba@Igonza and 4 others V the Republic** (CAT) Criminal Appeal No. 348 of 2018, Dodoma Registry that elephant tusks do not change hands easily. The Respondent, nevertheless conceded that the certificate of Seizure (Exhibit PE3) had no signature of the independent witness (PW5). The Respondent prayed the Court to dismiss the 1st Appellant's appeal on the 2nd count.


That said, the Court hereby agrees with both parties that the prosecution case before the trial court against the Appellants were not proved beyond reasonable in both counts in respect of the 2nd, 3rd, and 4th Appellants and 1st count in respect of the 1st Appellant on the reasoning that the prosecution case was built on uncorroborated hearsay evidence which cannot ground conviction and that the 2nd, 3rd and 4th Appellant were not found in possession of the government trophy when they were arrested and searched there at the NMB Bank PLC Kondoza Urban on the material day according to the Prosecution witnesses PW1-PW6 & Certificate of Seizure thereof (Exhibit PE4, PE5 & PE7). There was also no witness who did testify the nature of the Appellants dealing in the government trophy say, who was about to buy or bought the said government trophy or who saw the Appellants selling or about to sell the said government trophy. The case of **Ruben Lazaro Mafuta@Mbunde & 3 others V Republic** (CAT) **Consolidated Criminal Appeals No. 503 of 2018, 24 of 2020 & 242 of 2020, Dodoma Registry and Pascal Mwinuka V Republic** (CAT) Criminal Appeal No. 258 of 2019, Iringa Registry were cited and relied upon by the Appellants in support of their Appeal before the Court.

The Court adds that the Respondent Republic's argument that the 1st Appellant was found in possession of the Government trophy on the material day there at the NMB Bank PLC Kondoia Urban Branch was moot one. This is so because the Certificate of Seizure thereof (Exhibit PE3) does not specify or reveal the place where the search was done save that the 1st Appellant was resident of Ndoroboni village within Chemba District. The said certificate of Seizure was signed by the 1st Appellant only. The rest of the witnesses thereof namely A/Insp. Waziri Nyagawa (PW3), F.3262 D/Cpl Joseph (PW1), Shafii Swalehe (PW5) and one Ladslaus Evance who eyewitnessed the search did not sign thereon so did the police officer who searched the 1st Appellant. These contradiction on where the search and seizure of the government trophy from the 1st Appellant was done and the non-signing of the officers who conducted the search and the eyewitnesses of the search on the Certificate of Seizure render the prosecution evidence not credible before the Court. That is to say there was no proof that the 1st Appellant was actually searched there at the alleged scene of crime NMB Bank PLC, Kondoia urban Branch on the material day and that he was found in possession of the alleged government trophy.

With this mind, it follows therefore that the prosecution case before the trial court was not proved beyond reasonable doubt against the 1st Appellant on the 2nd count as well. Since the prosecution case against the Appellants before the trial court was not proved beyond reasonable doubt on both counts, their appeal is hereby allowed. The conviction sentence and the forfeiture order thereof in respect of the two motorcycles with Registration Number, MC 828 AJX and MC 670 BEF make FEKON both red in colour are hereby severally and jointly quashed and set aside accordingly.

- The Appellants, severally and jointly, shall be released forthwith from prison unless there was a lawful cause to the contrary.




GEORGE M. MASAJU

JUDGE

15/9/2021