

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DODOMA DISTRICT REGISTRY)
AT DODOMA**

DC CRIMINAL APPEAL NO. 70 OF 2020

(Originating from Manyoni District Court in Economic Case No. 71 of 2017)

KULWA SUBILA @NGELEJA APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

22/12/2021 & 27/12/2021

JUDGMENT

MASAJU, J

The Appellant, Kulwa Subila@Ngeleja, was charged with, and convicted of UNLAWFUL POSSESSION OF GOVERNMENT and DEALING IN GOVERNMENT TROPHY, (The 1st and 2nd count) respectively in the District Court of Manyoni at Manyoni. He was sentenced to serve twenty (20) years imprisonment on each count, the sentences running consecutively, hence this appeal to the Court against the conviction and sentence.

The Appellant's Petition of Appeal is made up of four (4) grounds of appeal, including the ground that the prosecution case against him in the trial court was not proved beyond reasonable doubt.

The layman Appellant appeared in person when the appeal was heard in the Court on the 13th day of December, 2021. The learned Senior State Attorney, Mr. Mbogoro, who appeared for the Respondent Republic

supported the appeal on the 2nd count which, he argued that was not proved because there was no evidence by G. 9803 PC Musa Chacha (PW3) to the fact that the Appellant was dealing in government trophy. But, the Respondent contested the appeal on the 1st count because allegedly there was ample evidence by the prosecution witnesses E. 9803 PC Musa Chacha (PW3) and Mdamo Thomas (PW6) that the Appellant was found in unlawful possession of the Government trophy. There was the Appellant's Cautioned Statement prosecution (Exh. P6) and Certificate of Seizure prosecution (Exh. P4) that chain of custody of the government trophy was proved by prosecution (Exh. P5) as so testified by Musongo Mwigeri (PW1). That all the documentary evidence were read over to the trial court accordingly.

The Respondent however, conceded that the Appellant's defence was not considered by the trial court when it found him guilty. The Court was invited to step into the shoes of the trial court to consider the Appellant's defence and decide the case.

That said, the Court is of the considered position that the prosecution case against the Appellant before the trial court was not proved beyond reasonable doubt. This is so because the Appellant's defence was not considered by the trial court as so rightly conceded by the Respondent Republic.

Secondly, the Appellant's Cautioned Statement (Exh. P6) was recorded beyond the timeline without there being extension contrary to sections 50 and 51 of the Criminal Procedure Act, [Cap 20 RE 2021]. This is because the Appellant was allegedly arrested at 22:00 hours on the 20th day of September, 2018 but his Cautioned Statement by E 9184 D/CPL Chiganga (PW4) was recorded at 04:00 hours -05:00 hours on the 21st day of September, 2018 well past the four (4) hours limit for recording such

Statement upon one's Police restraint. The said Cautioned Statement (Exh. P6) is hereby expunged from the record of the trial Court.

The Exhibit Book (prosecution Exhibit P2) was read over to the Court, but the record is silent as to who read the said exhibit before the trial court upon its admission in evidence. The Trophy Valuation Certificate prosecution (Exhibit "P3") and Certificate of Seizure prosecution (Exhibit "P4") were not read over to the court upon its admission in evidence. The omission deprived the Appellant the right to know the nature of evidence against him for his would be well-informed defence. The said prosecution exhibits P2, P3 & P4 severally are hereby expunged from the record of the trial court accordingly. Once the prosecution Exhibits "P2", "P3", "P4" & "P6" have been expunged from the record of evidence in the trial court, the remaining prosecution case evidence would be hanging on a too thin thread to sustain conviction against the Appellant.

The meritorious appeal is therefore hereby allowed accordingly. The conviction and sentence of twenty (20) years imprisonment on each count, respectively, are hereby quashed and set aside. The Appellant shall be released forthwith from released except if there was a lawful cause.




GEORGE M. MASAJU

JUDGE

27/12/2021