

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MOSHI DISTRICT REGISTRY**

**AT MOSHI**

**CRIMINAL REVISION APPLICATION NO. 1 OF 2022**

(Misc. Criminal Application No. 17 of 2022 of the District Court of Siha at Siha)

**SINJORE NGESEYAN LAIZER----- 1<sup>ST</sup> APPLICANT**

**ISAYA LOSSERIAN LAIZER.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**THE DIRECTOR OF PUBLIC PROSECUTION.....1<sup>ST</sup> RESPONDENT**

**NEWTON GIDEON MAKWALE.....2<sup>ND</sup> RESPONDENT**

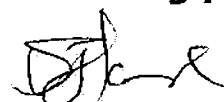
**RULING**

*21/7/2022 & 22/7/2022*

**SIMFUKWE, J**

Under certificate of urgency, the applicants herein have lodged this revision application praying for the court to revise the decision passed by the district court of Siha at Siha (trial court) in Misc. Criminal Application No. 17 of 2022 dated 12<sup>th</sup> day of July 2022.

The Application has been brought by way of chamber summons made under **sections 372 and 373(1)(b) of the Criminal Procedure Act, Cap 20 R.E 2019, sections 43(1) and 44(1)(a) of the Magistrates Courts Act, Cap 11 R.E 2022 and any other enabling provision of**



**the law.** It is supported by joint affidavit deposed by the applicants. The respondents filed a counter affidavit deposed by PF 21578 A/INSP Gere Tumaini Msiba.

The brief facts giving rise to this application is to the effect that, there were a number of livestock which were found in Siha District to wit 485 cows and 963 sheep and goats (hereinafter referred as livestock). The said livestock were seized and detained by the police officers. Since the owners of the said livestock were unknown, the 1<sup>st</sup> respondent herein applied before the District Court of Siha for an order of forfeiture of the seized and detained livestock and appoint a court broker to sale by public auction under extreme urgency the forfeited livestock. The trial court granted the order of forfeiture and sale through the court broker who is now the second respondent.

Before the said auction was effected, the applicants after discovering that their animals are subjected to sale, filed this application under certificate of urgency for the court to revise the said decision of trial court.

For the sake of not pre-empting this application, this court stayed the sale of the said livestock pending determination of this main application.

When the parties were called upon to argue the application, the applicants enjoyed the service of Mr. Elia Kiwia and Yonas Masiyani, learned advocates, while the respondents were represented by Mr. Shedrack Kimaro Principal State Attorney and Mr. Kassim Nassir Senior State Attorney. The hearing proceeded viva voce.


Mr. Kiwia learned counsel started to submit. On the outset, he prayed to adopt the joint affidavit of the applicants to form part of their submission. He submitted to the effect that in the applicants' affidavit they prayed this

court to revise the above noted decision of Siha District court on the reason that their 485 cows and 963 goats and sheep were forfeited and ordered to be sold on auction by the second respondent who was appointed by the trial court. That, the trial court advanced three reasons why the said heads of cattle should be sold. The first reason was that the said cattle were seized while roaming in peoples' farms and destroying crops at Siha without supervision of any person. That, till the date of the ruling, no person had appeared claiming to be the owner of the said heads of cattle. The said livestock were kept at NARCO Ranch at West Kilimanjaro where it was alleged that there were insufficient facilities to keep the said animals. Hence an order of selling the same was issued under **section 61(3)(4) of Animal Diseases Act, Cap 156** as prayed by the DPP in an ex parte application.

Mr. Kiwia continued to narrate that after such order of the trial court, the applicants went to Siha Police station on 13/7/2022 as deponed under paragraph 6 of the applicants' affidavit where they were informed that their livestock were seized and ordered to be sold. That, the reasons which prompted the applicants to go to Siha Police station because on 02/7/2022 was their livestock broke the boma (kraal) at night at Elerai in Longido District and went to unknown place. That they made efforts of searching the said livestock in vain till when they went to Sanya Juu Police station where they were told where their livestock were.

The applicants thus filed the instant application praying that their livestock should not be sold.

Submitting in respect of the reasons for applying for revision, Mr. Kiwia argued that the first reason is found under paragraph 9 of the applicants'



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affidavit. That, the whole process from seizure of the said livestock to the order of sale of the same is tainted with irregularities. He said that as per paragraph 10 of the affidavit, the applicants would like to be accorded with right to be heard so that they know what transpired in respect of their livestock. He further stated that for the interest of justice if the said heads of cattle are sold, the applicants will suffer irreparable loss economically and food.

Submitting in support of the point of irregularity, Mr. Kiwia contended that the law and sections which were used to issue the said order was not the right section. That **section 61(4) of Animal Diseases Act** (supra) empowers the court to forfeit livestock on belief that there is an offence committed. Mr. Kiwia was of the opinion that, the said section is subject to subsection 2 which provides that the said person should have been arrested which is contrary to the situation of this case since the applicants had not been arrested and were unknown.

Mr. Kiwia also stated that according to the ruling of the trial court, the trial magistrate referred to section 61(3) and (4) only. Subsection (3) provides that the orders directed in the provisions are subject to the provisions of **Animal Diseases Act**. That the offences in the cited law are provided under **section 62** of the Act. Construing the ruling, Mr. Kiwia argued that the trial magistrate stated that she was satisfied that there were offences which were committed. Meaning that either there was cattle trespass to the land or damage to the properties, which are not provided for under **section 61 and 62** of the said Act. That even on the whole Act there are no such offences. In that regard, Mr. Kiwia formed the opinion that the ruling of the trial court is a nullity as it applied the law incorrectly which is as good as there is no ruling before the court.

Moreover, Mr. Kiwia submitted that it is a principle of natural justice that one should be heard before the decision is issued against him as enshrined under the Constitution of united Republic of Tanzania. He argued that in this case the applicants were never heard. That, they were not summoned anywhere and refuse to appear. Considering the fact that the owners of the said livestock were truly unknown. That after the owners are known, the applicants would like to be heard so as to explain what transpired. That, if they will be found guilty, justice will be done as shown in their affidavit.

Mr. Kiwia referred to paragraph 13 of the applicants' affidavit and prayed that since in the ruling of the trial court it has been stated that there are no sufficient facilities to accommodate the seized livestock and that the same may die, he implored the court to order the said livestock to be handed over to the owners on condition which will deem fit and just so that those who look after the said livestock do not incur more costs. He argued that **section 61 (6) of Animal Diseases Act (supra)** empowers the Magistrate to make such order. Thus, the court may rely on that section and other steps may follow thereafter.

Supporting the point of procedural irregularity, Mr. Yonas submitted that **section 61 (3) of Animal Diseases Act (supra)** which was cited by the 1<sup>st</sup> respondent in their application before Siha district was insufficient to establish forfeiture of the seized livestock since in all their submissions before the trial court, they did cite specific provision which was contravened. It was the argument of Mr. Yonas that in law in order to establish an offence you should give statement of offence itself and particulars of the offence. Whereas in the statement of offence the section of the contravened law should be cited. That, **section 132 of Criminal**

**Procedure Act** (supra) lay down procedures where there is any criminality. Thus, failure to state the section of the law is irregularity whose remedy is to nullify and set aside the proceedings, ruling and order of the trial court.

Mr. Yonas, referred to paragraph 5 of the affidavit of the 1<sup>st</sup> respondent which was filed before the trial court which stated that the owner of the seized livestock was unknown. In that respect it was Mr. Yona's opinion that the law applicable to unclaimed property is **Police Force and Auxiliary Service Act, Cap 322 R.E 2022** at **section 47(1)** which is found at Part V of the Act which provides that:

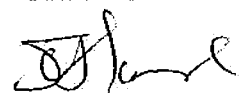
*"It shall be a duty of every police officer to take charge of all unclaimed movable properties and to furnish an inventory or description thereof to a Magistrate."*

It was his emphasis that after seizure of unclaimed property the police officer should furnish an inventory to the Magistrate.

Moreover, the learned advocate attacked the trial court ruling by stating that at page 3 paragraph 2 it states the seized livestock were tendered as exhibit and the ruling does not mention the inventory which to him is an irregularity since the law has used the word shall.

Mr. Yonas also stated that as per paragraph 10 of the counter affidavit, it has been stated that the said livestock are exhibits of investigation which is still going on. Thus, it is not appropriate for the said livestock to be sold.

Also Mr. Yonas faulted the ruling of the trial court for not containing the order to dispose the said exhibits which the respondents admitted that are under investigation. He added that **section 353 of Criminal**

  
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**Procedure Act** (supra) prescribes disposal of exhibits. He said that the said provision was not complied with in this case which amounts to an irregularity.

Cementing on Mr. Kiwia's prayer that the seized livestock should be released pending other procedures, Mr. Yonas argued that this prayer is not a new thing since in the case of **DPP vs Lee Lenina and Baraka Lemina, Misc. Criminal Application No.23 of 2018** this court ordered the release of the seized cows under **section 353 of Criminal Procedure Act** pending appeal. The cows were ordered to be under supervision of local authorities. He prayed the court to be persuaded by said decision in order to avoid conflicting decisions.

Further to that, Mr. Yonas submitted that the condition of the seized livestock is worsening and the respondents have admitted that they have no facilities for keeping the animals. Thus, continuing staying with the same is contrary to **Animal Welfare Act** which provides that there should be assurance that the animals are cared and that the animals should be in freedom from injury, pain and malnutrition. That, the animals should be free from diseases. That, there is no assurance if the seized animals are treated.

Mr. Yonas prayed this court to nullify the decision of the trial court and the applicants be accorded rights to be heard and if the applicants will be found liable, the order against them be issued as it deems fit and just to the court.

In his reply Mr. Kassim Nassir learned State Attorney based his submission on two issues which were argued jointly. Thus, procedural irregularity and that the applicants were not accorded right to be heard. Opposing the



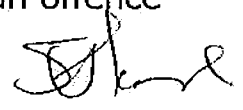
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application, Mr. Kassim submitted that there was no procedural irregularity and the applicants were not denied right to be heard. He prayed to adopt the counter affidavit of PF 21578 A/Inspector Gere Tumaini Musiba to form part of their submission.

From the outset, Mr. Kassim noted that the order of the trial court is not against the heads of cattle of the applicants since in the joint affidavit of the applicants at the 2<sup>nd</sup> paragraph the applicants alleged that they are the owners of 1300 goats and 485 cows which were seized and forfeited by the court. However, the decision which want this court to nullify is in respect of 485 cows and 963 goats and sheep. Mr. Kassim was of the view that since the affidavit of the applicants is evidence before this court, then the impugned decision is not in respect of the applicants' livestock.

Submitting in respect of right to be heard, Mr. Kassim stated that in the affidavit supporting the application of the Director of Public Prosecution before the trial court it was stated that when the said application was filed, the owner of the seized livestock was unknown. That, the applicants' affidavit is to the effect that since 2/7/2022 to 11/7/2022 they had not appeared to claim their livestock which were missing, before any authority be it police station or local government offices. In such circumstances, Mr. Kassim was of the view that there could not be right to be heard to unknown person. Therefore, it is not correct to state that the matter proceeded *ex parte* in the circumstances of this case and the allegations that the applicants were not accorded right to be heard has no merit.

Regarding the allegation that the ruling of the trial court was coupled with irregularities on the reason that there was no person who was arrested and that the magistrate did not satisfy herself that there was an offence





which was committed and did not state the provision of **Animal Diseases Act** which was contravened; Mr Kassim submitted that pursuant to Inspector Gere's affidavit, the said livestock entered in Siha district without permission from the authorities. That the said livestock did destroy various farms of farmers valued more than Tshs 166,000,000/=. In that respect, Mr. Kassim raised a question as to whether taking heads of cattle into another district without permission amounts to a criminal offence. Answering the raised question, he referred to **section 43(1)(a)(b) of the Animal Diseases Act** which is read together with **Regulation 10(1) of Animal Diseases Regulations** which prohibits taking animals from one district to another without permission of animal inspectors. He added that, the affidavit of Inspector Gere is prima facie evidence that the seized livestock committed the said offence. Also, even the applicants in their affidavit admitted that their livestock had escaped from Elerai village in Longido District to Siha District in Kilimanjaro region. The learned State Attorney emphasised that there is prima facie evidence that the applicants' animals contravened the provisions of **the Animal Diseases Act** pursuant to **section 62(1)(a) of the Act** which provides that contravening the provisions of the same Act is an offence. Therefore, the argument that the trial magistrate didn't satisfy herself that there was an offence committed is not correct and should be disregarded. That the offences which were suggested by the applicants' counsel are not provided for in **the Animal Diseases Act**.

On the issue of procedural irregularity that for the court to apply **section 61(4) of Animal Diseases Act**(supra) there should be an accused or a person who has been arrested. That the said section should be read together with **section 61(2)** of the said Act, Mr. Kassim submitted that

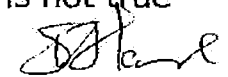
there is no such requirement of law as subsection (2) does not provide in respect of the arrest of a person but it provides for seizure of an animal or thing where the owner of the same is unknown. Mr. Kassim was of the opinion that the submission of the learned advocate for the applicants is misleading and the same should be disregarded.

Moreover, Mr. Kassim submitted that the said livestock did not contravene the **Animal Diseases Act** alone, but also contravened **section 6(1) and 7 of Animal (Pound) Act, Cap 154 R.E 2002** by the said animals destroying the crops of the farmers. That the punishment of the said offence entails the same consequence of forfeiture and sale.

The learned State Attorney prayed on the scales of justice this court to examine the applicants' affidavit. That from 2/7/2022 to 9/7/2022 the said animals were surviving by eating what? That, they have stated before this court that the said animals were eating crops of farmers. The reason that the said animals broke the kraals is unfounded and does not make sense. He implored the court to consider rights of both parties' interests of innocent victims. That if the court will order the release of the said livestock, it won't be justifiable as the same were seized by using great effort.

It was further contended that as per paragraph 4 of the counter affidavit, Inspector Gere, visited the kraal of the applicants on 17/7/2022 in order to satisfy himself, he discovered that the kraals of the applicants were not broken. That the statement of the village Chairperson of Elerai has been attached to substantiate that the kraal of the applicants was not broken.

Responding to the averment in the applicants' affidavit that they went to inquire at Olmolog Police Post, it was stated that the averment is not true



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since the OCS of that police post denies that fact. In conclusion Mr. Kassim was of the view that there is fraud in the statements of the applicants and he prayed the court to examine the same.

In his reply, Mr. Kimaro Learned Principal State Attorney, insisted what had been submitted in respect of the right to be heard. In addition, argued that this application is not proper forum for according right to be heard to the applicants. He stated that forfeiture in this case is governed by **Animal Diseases Act** which does not state what should be done where the owner of the animals is unknown. He was of the view that the same is cured by **the Proceeds of Crimes Act Cap 256 R.E 2019** in which under **section 16(2)(6) and (7)**. That, the applicants should have applied the said provisions.

Contesting the submissions made by Mr. Yonas in respect of the charge sheet, Mr. Kimaro said that the same is misconceived since there was no charge sheet in this case because the applicants were unknown.

Responding to the issue that the said livestock were unclaimed properties; it was submitted that that was not the only way of dealing with unclaimed properties. That the application before the district court was made under the provisions of the law which backed up the decision of the trial Magistrate.

On the issue that the seized livestock were subject of ongoing investigation, Mr. Kimaro replied that the application for forfeiture does not close on-going investigation and forfeiture is not a punishment. Thus, if the applicants will be found responsible, they will be punished accordingly.



Responding to the cited case of **Lee Lenina** (supra), it was submitted that the same is distinguishable to the instant case since in that case the seized cows were handed over to the local government leaders and almost 46 cattle had already disappeared, while in the instant case there is no such situation.

Concerning the allegation that the seized livestock are starving, it was argued that the livestock are fed adequately and taken care.

The learned Principal State Attorney urged the learned counsels for the applicants to file proper application under relevant laws. He objected the prayers of the applicants on the reason that it has been preferred in a wrong forum. He prayed this application to be dismissed for lack of merit.

In rejoinder, to allegation that this was not a proper forum, Mr. Kiwia argued to the contrary on two reasons. First, that the issue is not interests to the animals rather it is the irregularities before the trial court. Second, that where parties were not parties to previous matter and they have interests in the said matter, the remedy is revision of the said decision. Thus, since the applicants in this case were not party in the matter before the trial court, there is no other remedy other than filing revision.

Concerning the cited provisions of **Proceeds of Crimes Act**, Mr. Kiwia submitted that the law does not provide what has been stated. That, there is decision of the Court of Appeal to that effect. That's why the respondents did not raise a preliminary objection in respect of the same.

Mr. Kiwia insisted that the decision of High Court which has been cited by his fellow learned advocate is relevant to the instant matter. He reiterated that the respondents have alleged that there are no sufficient facilities to take care of the seized cattle.



Concerning the provisions alleged to have been contravened, which were cited by Mr. Kassim, Mr. Kiwia was of the view that the same were not stated in the ruling of the district court.

Regarding **section 62 (a)** which was cited by Mr. Kassim, Mr. Kiwia said that they have deponed in their affidavit that the said cattle were lost. So, there was no way they could get a permit. Thus, no law was contravened. In addition, it was stated that the respondents are contradicting themselves since the ruling shows that there were crops which were destroyed valued at Tshs 166,000,000/-. That the prescribed sentence under **section 62(a)** is a fine not exceeding Tshs 300,000/-. He insisted that the section which was preferred by the trial court was wrong thus there was no order.

The learned counsel also argued that the attachments by Mr. Kassim were afterthoughts. He gave an example of the affidavit of Inspector Gere which is dated 17/7/2022, while the ruling had already been delivered before the trial court.

Emphasizing on the issue of right to be heard, Mr. Kiwia argued that they had said that the applicants were not accorded right to be heard and not denied right to be heard. He added that the said livestock were not found with any one thus, *mes rea* has not been established.

It was argued that the respondent had not disputed the fact that the said livestock were lost on 2/7/2022 and the complaint was lodged on 9/7/2022 meaning that nothing wrong had happened throughout that time. Mr. Kiwia reiterated their prayers as submitted in chief.

Mr. Yonas also re-joined briefly in respect of the allegation that the affidavit of Police Officer is prima facie evidence that there was an offence

committed. He stated that offences are provided under the provisions of the law and not in the affidavit.

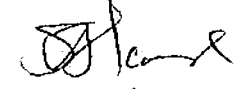
Mr. Yonas emphasised that there should be a provision of the law establishing an offence since it is the requirement of the law. He referred to the case of **Halfan Ndumbashe vs Repulic, Criminal Appeal No. 493 of 2017** (CAT) at page 8 to substantiate his point. He emphasised that it was right when he stated the issue of statement of the offence. He prayed for the application to be granted.

I have given due consideration to the parties' submissions, the trial court ruling and parties' affidavits. The main issue for determination is *whether this application for revision has merit.*

The applicant has moved this court under **section 372 and 373(1)(b) of Criminal Procedure Act** (supra) and **sections 43(1) and 44(1)(a) of Magistrates Courts Act** (supra). For ease reference and for the reasons which I will elaborate later I wish to quote the provision of **section 372** of the said Act as hereunder:

*372.-(1) The High Court may call for and examine the record of any criminal proceedings before any subordinate court **for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any subordinate court.*** [Emphasis added]

On the strength of the above provisions of the law, it goes without saying that the purpose of revisions is well elaborated there. That, in an application for revision, the court will not be dealing with substantive part

  
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of the decision rather it looks on correctness, legality and propriety of the impugned decision or order and proceedings of the lower court as grounds for revision. In an application for revision, there are three factors to be considered, **One**, correctness, that is, was the order or decision, correct? **Two**, legality, that is, whether the order or decision was pursuant to the law and **three**, propriety, that is regularity of the proceedings (whether there was any irregularity in the proceedings).

In the case of **Jacqueline Ntuyabaliwe Mengi and Others vs Abdiel Reginald Mengi and Others, Civil Application No.332/01 of 2021** the Court of Appeal emphasized that for the court to exercise revisional powers, there should be no right to appeal and the applicant must demonstrate sufficient and exceptional circumstances.

In the instant matter, the applicants' advocates tried to point out irregularities in the decision of the trial court. Unfortunately enough the noted irregularities based on the decision of the trial court and not in respect of proceedings contrary to what the law dictates.

The learned advocates faulted the trial magistrate by relied on section **61(3) and (4)** of the Animals Diseases Act and that even the offences which were stated in the ruling are not found in the **Animal Diseases Act**. Mr. Kiwia also challenged the ruling of the trial court by stating that the cited section is subject to subsection 2 which provides that the said person should have been arrested which is contrary to the situation of this case since the applicants had not been arrested and were unknown. Further to that, Mr. Yonas argued that section 61(3) which was used by the trial magistrate was insufficient to establish forfeiture of the seized livestock since before the trial court the 1<sup>st</sup> respondent did not cite specific

provision which was contravened.

With due respect to the applicants' advocates. This is not the position of the law. In revision, specifically the instant revision, the issues to be considered are correctness, legality and propriety of the impugned decision. This court is of considered opinion that the trial court had jurisdiction to issue the order of forfeiture and sale. This mandate is provided for under **section 61(4) of the Animal Diseases Act** that the trial magistrate has power to issue such decision and order forfeiture. The said section provides that:

*"Where it is reported to a Magistrate that any animal or thing has been seized and detained under subsection (2) and the person who is alleged to have committed an offence in respect thereof is unknown, the Magistrate may if he is satisfied that there is reason to believe that such offence has been committed, order the animal or thing to be forfeited."*

With due respect to Mr. Kiwia, he misinterpreted subsection 2. Also Mr. Yonas misdirected himself by stating that section 61(3) which was used by the trial magistrate was insufficient to establish forfeiture of the seized livestock since in all their submissions before the trial court the respondents did not cite specific provision which was contravened. I wish to make it clear that offences committed in this matter were well stated by the learned trial Magistrate at page 3 and 4 of her typed ruling. That, the seized livestock trespassed to Olmolog village without a valid permit from the authority concerned, and that the said seized livestock had pastured the crops of different peasants and caused irreparable loss. Moreover, the trial Magistrate made it clear that till the time she was



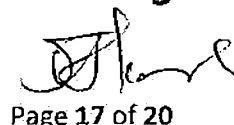
composing her ruling, the owner of the seized livestock was unknown.

The law confers powers to the magistrate to issue forfeiture order if there is reason to believe that such offence has been committed. Thus, the decision of the trial court was justified.

Looking the whole process of seizure of the said livestock till when the livestock were forfeited, the applicants through their advocate have failed to demonstrate any irregularity in respect of the whole process. From the day when the livestock disappeared and seized to the time when the same were forfeited the 1<sup>st</sup> respondent had stayed with the said livestock for more than a week without knowing the owner of such a huge herd. Reasonability would take the 1<sup>st</sup> respondent to act the way they acted.

Apart from that, I concur with Mr. Kassim learned State Attorney that it seems that the applicants are not the owners of the forfeited livestock since at paragraph 2 of their joint affidavit, they deponed that they are the owners of 1300 goats and 485 cows which were forfeited by Siha district court. It is trite law that the one who alleges must prove as provided in **the Evidence Act, Cap 6 R.E 2022**. It's obvious that the submission of Mr. Kiwia contradicts with the affidavit of the applicants in respect of number of the forfeited livestock. On this, evidence of the respondents is heavier than that of the applicants.

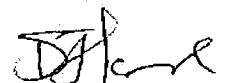
Concerning the issue that there was no offence committed in respect of the forfeited livestock, it should be understood that in law a property can be forfeited even where there is no offence which has been committed. The same can be done where the property is unclaimed or tainted. pursuant to the **Proceeds of Crimes Act** or **Anti Money Laundering**



**Act.** In cases of unclaimed properties, the proceeds of sale are kept. Thus, where the owner of the unclaimed property is found, he can apply for the same pursuant to the law. In this case, at page 2 of the ruling the 1<sup>st</sup> respondent stated clearly that the said livestock had pastured on farms of several farmers whose values were indicated, the grand total being Tshs 166,290,000/=. Apart from that the said livestock were unclaimed. That being the case, the trial court was justified to issue the forfeiture and sale order.

Coming to the second ground of revision in respect of the right to be heard, it was submitted that the applicants were not heard in respect of the application which was filed before the trial court. The learned counsels for the applicants implored this court to order the said livestock to be handed over to the owners on condition which will deem fit and just. To the contrary, the learned State Attorney submitted that the applicants cannot claim that they were not heard since the owners of the livestock were unknown by the time the trial court issued the order of forfeiture. Mr. Kimaro added that this is not the right forum for the applicants to pray to be heard. He was of the view that the applicants could have resorted to **section 16 of the Proceeds of Crimes Act** (supra)

I wish to make it clear that, I am very sensitive when dealing with the issue of right to be heard. I am aware of the importance of this constitutional right of being heard. The court in a number of occasions has emphasized the adherence to this principle of natural justice. Much as I am aware of the importance of right to be heard, in the instant matter, I am of considered view that the applicants were not denied right to be heard since by the time when the trial court issued such order, the owners



of the livestock were unknown. Thus, the issue of right to be heard cannot stand at this juncture. For allegation of the right to be heard to stand, one should have been a party in the impugned decision. Otherwise, the applicants should have pursued their right objection proceedings objecting the forfeiture and sale of their alleged livestock on the grounds which if found reasonable, the orders could be set aside.

I therefore join hands with the learned State Attorneys that this is not a proper forum to pray for such an order in the circumstances of this case. First, in revision the court cannot analyse evidence and give orders sought given the consideration the fact that the applicants have failed to establish grounds of revisions as demonstrated herein above. Had the applicants established the grounds of revisions as enshrined under section **372 of Criminal Procedures Act** (supra) then the court could have revised the ruling of the trial court.

There was another allegation from the applicants' counsels that, since the livestock were unclaimed properties, then the respondent ought to deal with the same as per **section 47(1) of the Police Force and Auxiliary Service Act (supra)**. With due respect to Mr. Yonas, as rightly submitted by Mr. Kimaro that is not the only way to deal with unclaimed properties. I am of considered view that since the **Animal Diseases Act** deals specifically with animals then the same law squarely fit the instant matter as the unclaimed properties are animals/livestock.

Also, it has been argued by Mr. Yonas that the said livestock are exhibits subjected to ongoing investigation; Thus, it is not appropriate for the said livestock to be sold. With due respect to the learned advocate forfeiture is not a punishment. Thus, it cannot be said that the order of sale can

affect the ongoing investigation as the proceeds of the said sale may be kept pending other legal actions.

For the foregoing reasons, I do not see any justifiable reason to fault the reasoned decision of the district court. Hence, I hereby dismissed this application forthwith.

It is so ordered.

Dated and delivered at Moshi this 22<sup>nd</sup> day of July, 2022.



**S. H. SIMFUKWE**

**JUDGE**

**22/7/2022**