IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

CRIMINAL APPEAL NO. 45 OF 2022

(Arising from the Resident Magistrates Court of Arusha at Arusha in Economic Case No. 83 of 2020)

ELIBARIKI PETRO NASARI @ KISETU .....1ST APPELLANT

JACKSON ELIREHEMA MBISE @ KILALA .....2ND APPELLANT

VERSUS

REPUBLIC .....RESPONDENT

JUDGMENT

07/09/2022 & 19/10/2022

KAMUZORA, J.

The Appellants herein, are challenging the conviction and sentence of 20 years imprisonment or payment of fine of Tshs 341,550,000/= imposed on to them by the Resident Magistrate's Court of Arusha at Arusha (the trial court). The Appellants were charged for the offence of unlawful possession of government trophy contrary to section 86 (1) and (2) (b) of the Wildlife Conservation Act, No. 5 of 2009 read together with paragraph 14 of the 1st Schedule to and section 57(1) and 60 (2) of the Economic and Organised Crime Control Act Cap. 200 (EOCCA) as

amended by section 16(a) and 13(b) respectively of the Written Laws (Miscellaneous Amendment) Act No. 3 of 2016.

It was alleged that, on 30th May 2019 at Maji ya Chai Area within Arumeru District in Arusha Region the Appellants were found in unlawful possession of 4 pieces of elephant tusks equivalent to one killed elephant valued at USD 15,000/= equivalent to Tshs. 31,155,000/= the property of the Government of the United Republic of Tanzania. In their defence, the Appellants denied the offence but the trial court found the them guilty, convicted and sentences them as above stated. Aggrieved, the Appellants are now challenging the conviction and sentence and have raised 6 grounds of appeal which are reproduced hereunder: -

1) *That, the trial court erred in law and in facts when convicted and sentenced the Appellants on the case which was not proved beyond reasonable doubt.*
2) *That, the trial court erred in law and in facts when convicted the Appellants by relying on the prosecution evidence which varied with the content of the charge sheet.*
3) *That, the trial court erred in law and in facts when convicted the Appellants while the sulphate where those trophies were purported to be kept was not tendered in court as exhibit.*
4) *That, the trial court erred in law and in facts when convicted the Appellants in the absence of search warrant.*

5) *That, the trial court erred in law and in facts when convicted the Appellants based on poorly and improperly investigated case.*

6) *That, the trial court erred in law and in facts when erroneously relied on Exhibit P6 in convicting and sentencing the Appellants while it was obtained illegally.*

With the leave of the court the Appellant raised an additional ground of appeal,

1) *That, the trial court erred in law and in facts when convicted the Appellants as the trial court lacked jurisdiction to try the case at hand since there was no consent of the Public Prosecution and certificate conferring jurisdiction to subordinate court to try the case at hand which falls under economic offence.*

During hearing of the appeal which proceeded orally the Appellants enjoyed the service of Mr. Fridoline Bwemelo, learned advocate while Ms. Riziki, learned State Attorney appeared for the Respondent, the Republic.

Submitting in support of appeal the counsel for the Appellant abandoned the 3rd ground and submitted jointly for the 1st, 2nd ,4th and 6th ground of appeal and argued separately the 5th ground and the additional ground of appeal.

Submitting for the additional ground of appeal, the Appellant's counsel argued that, the trial court had no jurisdiction over the matter

as there was no any consent from the DPP. That, since the offence to which the Appellants were charged is an economic offence, it must be heard by the High court unless there is a consent from the DPP conferring jurisdiction to the subordinate court. That, the Appellants were not informed by the court if there is any consent from the DPP thus, there is a violation of section 3(1), 3(3) (b), 12(3) and 26(1) (2) of the EOCCA. In support of his argument the counsel cited the case of **Jumanne Leonard Nagana Vs. The Republic,** Criminal Appeal No 115 of 2019 CAT.

Submitting for the grounds 1, 2, 4 and 6, the counsel for the Appellant argued that, the charge against the Appellants was not proved beyond reasonable doubt as there are some weaknesses in the prosecution case. The first weakness pointed out is that, there is variance between the charge sheet and the evidence on record. That while the charge sheet states that the Appellants were arrested at Mount Maji ya Chai, the evidence by PW4 shows the place of arrest to be Maji ya Chai bridge, PW5 testified that the Appellants were arrested at Moshi Arusha Road and PW6 testified that the Appellants were arrested at Maji ya Chai Village. Pointing at Exhibit P6 which is the handover forms, the counsel for the Appellant contended that, the said

forms indicates that the trophies were seized at Maji ya Chai Kitongoji. To support his argument that there was variance between the charge sheet and evidence the counsel cited the case of **Michael Gabriel Vs. The Republic,** Criminal Appeal No 240 of 2017. Citing the case of **Issa Mwanjiku Vs. The Republic**, Criminal Appeal No. 175/2018 and **Killian Peter Vs. The Republic**, Criminal Appeal No. 508/2016 the counsel insisted that, failure to amend the charge after observing the variances between the evidence and the charge sheet gives favour to the accused persons who are the Appellants herein.

The second weakness pointed out is related to exhibit P6, the search warrant. The counsel for the Appellants submitted that, the search warrant was issued contravened the provision of section 38 (3) of the Criminal Procedure Act as there was no any receipt issued to the Appellants acknowledging the seizure of the trophies. That, exhibit P6 contains file number AR/IR/5080/2019 while the law requires the said exhibit to be filled at the scene of crime and that is done before the case is registered. Reference was made to the case of **Samwel Kibundali Vs. The Republic**, Criminal Appeal No 180 of 2020.

The third weakness is that, there was a broken chain of custody as there was no proper handover of the trophy from one person to

another. That, pursuant to exhibit P3 it shows that on 31/05/2019 PW2 handled the exhibit to PW3 for investigation but the same was not indicated in evidence. He also pointed out that even in exhibit P4 there is different police case number which is not relevant to the accused persons. He insisted that, the issue of documentation in exhibits handling is very important and must show the person to whom it is handled, the time and reason. To buttress this argument the counsel cited the case of **David Athanas Masaki and another Vs. The Republic,** Criminal Appeal No 168 of 2017, **Zainabu Nasoro @ Zena Vs. the Republic**, Criminal Appeal N 348/2018, **Paulo Maduka and others Vs the Republic,** Criminal Appeal No 110 of 2007.

Submitting for the 5th ground, the Appellants counsel argued that, section 21 (1) of the EOCCA requires investigation of an economic offence case to be conducted by a police officer with a tittle of Inspector or Assistance Inspector or as directed by the Director of the Criminal Investigation. He claimed that, throughout the case at the trial court there is nowhere shows that the investigator of the case met the said requirements. The Appellants' counsel prays therefore for the appeal be allowed and this court quash the conviction passed against the Appellants and set aside the sentence there to.

In responding to the submission by the counsel for the Appellant Ms. Riziki, learned State Attorney faulted the argument by Appellants' counsel in respect of the jurisdiction of the trial court that. She submitted that, the consent was filed together with the certificate conferring jurisdiction to the Resident Magistrates Court to try the matter and were both signed on 04/12/2020 by the Prosecution Attorney in charge and was made under section 26(2) and 12(3) of the EOCCA. She added that, the counsel for the Appellant did not state whether the failure to tell the accused that the consent was filed did prejudice the accused. She insisted that, the accused understood the charge against them, and when it was read to them, they pleaded to the charge and during hearing they cross examined the witness and entered defence before the decision was made.

On the case of **Jumanne Leonard** cited by the Appellants' counsel Ms. Riziki argued that, the said case was filed as a normal criminal case instead of an economic case as opposed to this case which the Appellants were charged with an economic case and there is a certificate and consent of the DPP.

Responding to the ground that the case was not proved beyond reasonable doubt as there was variance between the charge sheet and

evidence, Ms. Riziki submitted that, the area mentioned by witnesses is the same area as they were all referring Maji ya Chai area. That, the variance of stating mount Maji ya Chai and Maji ya Chai bridge is a minor variance which cannot affect the prosecution evidence. She referred this court to the decision of the Court of Appeal in **Emmanuel Lyabonga Vs. The Republic**, Criminal Appeal No 257 of 2019. She was of the view that, the contention that the charge was to be amended is unfounded as the variance was minor.

Regarding Exhibit P6 which is a certificate of seizure, the counsel for the Respondent conceded to the argument by the counsel for the Appellant that, there was no search warrant issued as required by section 38 of the CPA which could entail the preparation of the certificate of seizure. She thus urged this court to expunge from record the said exhibit P6, the certificate of seizure. She however insisted that, even in the absence of the said exhibit P6, there is sufficient oral evidence of PW5 Juma Kombo, a witness who witnessed the appellant being found with the sulphate bag with elephant tusks. She referred this court to the decision of the case of **Mandela Maskini Kasalai Vs. The Republic**, Criminal Appeal No. 472 of 2015 where it was held that, even in absence of a search warrant there was a water tight evidence of the

witness showing that they were found with trophy, the lion skin. She maintained that, in the case at hand there exists the evidence of PW4 and PW5 proving case against the Appellants.

Responding to the issue of chain of custody, the counsel for the Respondent submitted that, there was no broken chain of custody as argued by the Appellant. She pointed out that, PW4 after arresting the Appellant with the exhibits on 30/5/2019 he handled the same to PW2 who is the exhibit keeper who kept them until 31/05/2019 when he handled the same to Natanael for identification and valuation purposes and the handover note between the two was signed. That, after valuation the exhibit was returned to CPL Evance on 03/06/2019 and was received at KDU by PW1 who labelled it as MC1-MC4 and the handover form was received as exhibit P1. That, the exhibit was kept by PW1 until when he testified in court and tendered it together with the sulphate bag and they were admitted as exhibit P2. She maintained that, the chain of custody was clear. Referring the case of **Anania Clevary Beitera Vs the Republic,** Criminal Appeal No 355 of 2017, the counsel for the Appellant insisted that, some of the exhibits can be tempered with but not the exhibits like elephant tusks.

On the argument that this case was not well investigated, the learned state attorney submitted that, the evidence proves that the case was well investigated as shown from the time of the arrest to the time of the handover of the exhibit. She added that, section 3 of the Wildlife Conservation Act mentions the authorised officer for investigation to be the director of wildlife or wildlife officer or any other officer. she maintained that, the case at hand was investigated by wildlife officer and police D/Sgt. Unuku, hence the case was well investigated and the accused were arrested while in possession of the elephant tusks after search in the presence of an independent witness.

In a rejoinder submission, the counsel for the Appellants added that, the case was first read in court on 07/12/2020 hence it is not true that the certificate and consent were issued on 04/12/2020 as it is not recorded in the proceedings. He insisted that, the trial court heard the case without jurisdiction and according to the principle of a fair trial the accused persons were prejudiced. Regarding the place of arrest, the counsel for the Appellant submitted that, Maji ya Chai is a Ward with many villages and many streets with hills and bridges and Maji ya Chai village is different from Moshi Arusha Road. On the aspect of chain of custody, the counsel insisted that, there was a broken chain of custody

as the document received in court did not show the place and the time for handover hence exhibit P3 has variance. On the 5th ground the counsel insisted that, there was violation of section 21(1) EOCCA and not section 3 of the Wildlife conservation Act in the investigation of the case. The Appellants' counsel reiterated the prayer in the submission in chief.

I have considered the submissions by the counsel for the Appellants and that of the Learned State Attorney appearing for the Republic. I will start determining the issue of jurisdiction of the trial court in adjudicating the matter. It is the claim by the Appellants that there was no consent from the DPP for the trial court to hear an economic case against the Appellants.

It is in record that the Appellants herein were charged for economic offence under the EOCCA. The law is clear that economic offences are triable by the High court but, the DPP can issue consent and certificate conferring jurisdiction subordinate courts; District court and Resident magistrates court to try economic cases. Reading carefully the trial court's record, the charge sheet against the Appellants was filed in court on 7th December 2020 together with the certificate and consent from the DPP conferring jurisdiction to the Resident Magistrates Court of Arusha

at Arusha to try Economic Case No. 83 of 2020. On the same first date the Appellants were arraigned before the trial court and the charge was read to them, they were asked to plea on the charge meaning that, there existed a valid certificate and consent from the DPP. Therefore, claim that the court had no jurisdiction is wanting and the said ground fails.

Reverting to the consolidated grounds 1, 2, 4 and 6, they basically focus on the argument that the case was not proved beyond reasonable doubt on the basis of weaknesses in prosecution evidence. It is trite law that, the burden of proof in criminal cases always lies on the prosecution to prove the case beyond reasonable doubt. For one to conclude that an offence was proved beyond reasonable doubt, it entails the evaluation of prosecution evidence and defence evidence in totality. It is the claim by the Appellants that there were variances between the charge and the evidence suggesting that the case was not proved beyond reasonable doubt.

Starting with the variance related to place of arrest, the charge sheet indicate that the Appellants were arrested on 30/05/2019 at Maji ya Chai area within Arumeru District in Arusha region. Reading the evidence by PW4 from page 19 to 22 the witness narrated the story

leading to the arrest of the Appellants and in that evidence, PW4 claimed that he was informed that there were people planning to do illegal business of elephant tusks at Maji ya Chai area. That, they were able to arrest the Appellants' near Maji ya Chai bridge. PW5 is an independent witness and he also mentioned that, he was at Maji ya Chai area walking along Arusha-Moshi Road when he was asked to witness the search to the Appellants.

When testifying before the trial court each Appellant had a different story of his arrest. The first Appellant claimed that he was working in the farm at Tengeru on 21/05/2019 and he had a quarrel with one man over water. He was later arrested at evening and sent to the police station. On the fourth day, he was tortured and forced to sign papers and on 09/08/2019 he was sent to central police station at Arusha and charged with the offence he did not know. The second Appellant acknowledged being arrested on 30/05/2019 at 09:00hrs but he claimed that he was at home. That, he was sent to Ngulelo police post and asked about Mama Caren. That, he was bitten up and stayed at the police post for three days before he was sent to Arusha central police station on 09/06/2019 and asked to sign papers and then sent to court.

In considering the Appellant's defence, they are in total denial of even being arrested at the scene. But the prosecution evidence is very clear proving that the Appellants were arrested together at Maji ya Chai area. I agree with the submission by the learned State Attorney that the claimed variances of place of arrest in the charge sheet and witnesses' evidence are minor not affecting the evidence. PW4 stated that the place of arrest was Maji ya Chai near the bridge and based on his evidence PW4 was still referring Maji ya Chai area as he was informed that the incident was to take place at Maji ya Chai area. In my view, Maji ya Chai bridge was still within Maji ya Chai area but it was mentioned with specification of the bridge. Similarly, PW5 testififed that he was at Maji ya Chai area and was walking along Arusha-Moshi Road, thus he was not referring a different place than Maji ya Chai area. Thus, it cannot be said that the evidence of PW4 and PW5 was referring to a different area from that mentioned in the charge sheet. In my view, the road and bridge were mentioned as special features within Maji ya Chai area to where the arrest took place. With the evidence on record, one will draw a clear conclusion that the area of arrest was Maji ya Chai Area along Moshi Arusha Road near the bridge. I therefore find this variance

immaterial and could not entail for the need of the amendment of the charge sheet.

Regarding Exhibit P6, it is true that the law under section 38 of the Criminal Procedure Act Cap 20 R.E 2019 requires issuance of search warrant by a competent authority prior to the conduct of a search. The Respondent's counsel conceded to the argument that the procedure was not followed and urged the court to expunge the certificate of seizure that was prepared without a search warrant. I therefore proceed on adopting the Respondent's prayer by expunging the same from records.

Having expunged the certificate of seizure, the question is, whether there is evidence proving the case against the appellants. It is settled principle that evidence of both parties needs to be assessed in totality before reaching to a conclusion. Oral evidence cannot be left out merely because there is no corresponding documentary evidence. Basically, oral evidence must be assessed/tested to see if they are reliable. In the case of **Saganda Saganda Kasanzu Vs. Republic**. Criminal Appeal No. 53 of 2019 (TANZLII), both Certificates of seizure and valuation certificate were not read out and as a result they were expunged from the record. The Court of Appeal of Tanzania held:

"...evidence of those two prosecution witnesses together with that of PW5 proved the contents o f both expunged exhibits."

A similar position was taken by the Court of Appeal in **Huang Qin & Xu Fujie Vs. Republic**, Criminal Appeal No. 173 of 2018 (TANZLII) when it held:

"Nevertheless, we agree with Mr. Msemo that even if the said exhibits are expunged from the record of appeal, the respective witnesses who tendered them in court sufficiently explained their contents. As was correctly argued by Mr. Msemo, Exh PI was explained by PW3 as a search order in which the items belonging to the appellants were seized on 2/11/ 2013 at Mikocheni B. He also explained how they prepared the Certificate of Seizure (Exh. P2) indicating the items taken from the appellants. PW3 also explained Exh. P3 being the Handing Over Certificate that was used in handing over the seized items including 706 elephant tusks to the Wildlife Department at Mpingo House."

Being guided by the above case laws which their circumstances fit to our case at hand, I find it necessary to evaluate the remained evidence in record. It is in evidence that, PW4 Inspector Joseph Labia is a police officer and an assistant OC/CID at Arusha. On the material date of incident, he leaned from an informer that there were people planning to do illegal business of selling elephant tusks at Maji ya Chai area. He went to the scene with other police officers and saw a black car parked

near Maji ya Chai bridge which the informer directed them as the car used by the buyer of the elephant tusks. They parked their car a bit distant from that car and after like 70 minutes they saw two people approaching the black car. When they started moving towards that car, the driver became suspicious and drove away. They were able to arrest those two people who are now the Appellants in this appeal with a sulphate bag and asked PW5 who was passing by the road to witness the search of that sulphate bag found with the Appellants. Upon search, they found four pieces of elephant tusks in the sulphate bag and PW4 prepared a certificate of seizure that was signed by him, two other police officers, the Appellants together with PW5 as an independent witness. The certificate of seizure was admitted as exhibit P6 and four pieces of elephant tusks together with one sulphate bag were admitted as exhibit P2.

From that evidence, this court is satisfied that the appellants were arrested while in possession of elephant tusks. So, the fact that they skipped legal procedures of obtaining the search warrant before going to the scene does not vitiate clear evidence of prosecution witnesses whom the court did not find any reason to disbelieve them. I also hold the

same view that, the oral evidence by prosecution witnesses proves that the appellants were searched and found with elephant tusks.

The Appellant's counsel in supporting the argument that the case was not proved beyond reasonable doubt, he also referred the issue of chain of custody. Pointing at exhibit P3 and P4 the Appellants" counsel faulted the chain of custody on account that, it lacked proper paper documentation suggesting that the exhibits were tempered with. The Respondent's counsel submitted that, there was no any broken chain of custody much as there exists exhibits P1 and P2 which are the handover note between the prosecution witness.

It is in evidence that after the appellants were arrested, they were sent to the police station and PW4 handed over the exhibits to PW2, CPL. Evance who labelled the exhibit and stored the same in the exhibit room. The next day on 31/05/2019 PW2 handed the exhibit to PW3 Nathaniel Laizer, a wildlife warden as indicated in the handover form, exhibit P3 for purpose identifying and valuating the same. He prepared the trophy valuation certificate that was admitted as exhibit P5 and after the valuation PW3 handed back the trophies to PW2. On 03/06/2019 PW2 went with Sgt. Unuku to KDU offices where they handed the trophies to PW1, James Kugusa and the handover certificate was

admitted as exhibit P1. PW1 kept the exhibit until when he was called to testify in court and he tendered four pieces of elephant tusks that were admitted together with the sulphate bag as exhibit P2.

Looking into the evidence in records it is clear that, the evidence by PW4 who is the arresting officer indicates that, after seizing the trophy from the Appellants, the same were handed to one CPL. Evance (PW2) as per exhibit P4 on 30/05/2019 which is the date of arrest. When PW2 testified in court he admitted to have received the trophies from PW4 and claimed to have handed the same to PW3 Nathanael Laizer who is the Wildlife Warden. This is also evidenced by exhibit P3 and the evidence by PW3 who also confirmed to have received the trophies for the purpose of identifying and valuating them. PW3 claimed to have returned the trophies to PW2. Although there is no handover form for handing the exhibit back to PW2, there is evidence by PW1, a store keeper at KDU who acknowledged to receive the trophies from PW2. This is also supported by exhibit P1. He measured and marked the exhibits and kept it in the store until when the same were sent to court. In my view, even in the absence of that one form showing PW3 handing back the exhibit to PW2 after valuation, the evidence by PW1 support the fact that the exhibit was handled back to PW2 and that is why PW1

was able to receive the same exhibit from PW2. In fact, in this matter I do not see how one missing form vitiate the chain of custody in this matter. Looking into the evidence in totality, the same is clear and direct connecting dots on the handover of the exhibits. I have similar reasoning as that in the case of **Joseph Leonard Manyota Vs. R,** Criminal Appeal No. 485 of 2015 CAT (Unreported) where it was held that,

> *"It is not every time that when the chain of custody is broken, then the relevant item cannot be produced and accepted by the court as evidence, regardless of its nature. We are certain that this cannot be a case say, where the potential evidence is not in the danger of being destroyed or polluted and or in any way tempered with. Where the circumstance may reasonable show the absence of such danger, the court may safely receive such evidence despite the fact the chain of custody may have been broken, of course this may depend on the prevailing circumstance in every particular case."*

The prevailing circumstance in this matter proves a clear and direct chain of custody. I therefore do not agree with the contention by the Appellant's counsel that there was a broken chain suggesting that the case was not proved. I maintain that, the circumstance of this case did not reveal any possibility of change of hands or tempering with

exhibit P2 which are four pieces of elephant tusks which by its nature cannot easily change hands. The prosecution evidence is very clear and do not indicate if at any time the said exhibit was handled to a different person apart from the witnesses who testified in court. Thus, apart from the handover form, even oral evidence by prosecution witnesses which was not in any way shaken by the defence, are very clear proving the chain of custody. I therefore conclude that, there was no broken chain of custody which could invalidate the exhibit tendered.

It was also argued that, the handover form contained different case number and thus unclear as to which case concerned the Appellant. Looking into the handover forms, exhibit P3 was issued first indicating the case report number while exhibit P2 was issued after the investigation had commenced thus showing the investigation case file number. Exhibit P4 does not refer any case number as suggested by the counsel for the Appellant except for the items listed in other two exhibits. I find the omission a minor one as the same reflect nothing more than what was referred by the witnesses in their evidence and other exhibits.

On the 5th ground that the case was not well investigated, I find the same baseless as well. The counsel for the Appellant did not even

point out the person he referred as investigator of the case before he could claim that he did not meet investigation quality under the law. It is in records that, the Appellants were all charged in contravention of the Wildlife conservation Act as well as the Economic and Organised Crimes Control Act (EOCCA). Under section 20 of the EOCCA, the investigation of economic offences must be conducted in accordance to the provisions of the CPA except where the law creating the offence expressly provides for acts to be done under that law. The said provision reads: -

> *"20.- (1) Except as is provided in this Part, and in any other written law creating an economic offence in respect of which the Court has jurisdiction by virtue of this Act, the investigation of all economic offences triable by the Court shall be conducted in accordance with the provisions of the Criminal Procedure Act, subject to the following provisions of this section.*
>
> *(2) Where in relation to any offence which is an economic offence under this Act, the law creating the offence expressly provides for specific acts to be done in the process of investigation, those acts shall be done in accordance with that law to the extent only to which that law derogates from the provisions of the Criminal Procedure Act."*

Subsection 2 above is relevant to the matter at hand as it allows the law creating the offence if expressly provides for specific acts to be

done in the process of investigation, the acts can be done in accordance with that law to the extent only to which that law derogates from the provisions of the Criminal Procedure Act. In this case the appellants were charged with offences created under the Wildlife Conservation Act. Section 106 of the WCA allows arrest and search and it allows the authorised officer to arrest, search and seize exhibits relating to wildlife crimes. Section 3, the interpretation clause to the Wildlife Conservation defines an authorised officer for investigation purpose as;

> *"the Director of Wildlife, a wildlife officer, Wildlife warden, wildlife ranger or police officer, and includes the following-*
>
> *(a) an employee of the Forest and Beekeeping Division of, or above the rank of forest ranger;*
>
> *(b) an employee of the national parks of, or above the rank of park ranger;*
>
> *(c) an employee of the Ngorongoro Conservation Area of, or above the rank of ranger;*
>
> *(d) an employee of the Fisheries Division of, or above the rank of fisheries assistant;*
>
> *(e) an employee in a Wildlife Management Area of a designation of a village game scout;*
>
> *(f) an employee of the Marine Parks and Reserve of, or above the rank of marine parks ranger;*
>
> *(g) an employee of the Antiquities Division of, or above the rank of conservator of antiquities; and*

(h) any other public officer or any person, who shall be appointed in writing by the Director;

The whole process of arrest and charging the Appellants involved both the police officers and wildlife officers. PW1 is an officer working with KDU who was involved in keeping the exhibits, PW2 CPL. Evance is a police officer who was involved in keeping the exhibits at the police station, PW3 a wildlife Warden was involved in identification and valuation of the trophies and measured its weight and PW4 is an officer who worked on the information regarding the crime and arrested the Appellants. It is true that an officer who interrogated the Appellants at the police station was not paraded in court to testify but with the above evidence in record, it cannot be said that the case was not properly investigated.

In the upshot and in considering all what has been discussed above it is my conclusion that, there was no material variance between the charge sheet and evidence. The prosecution evidence was watertight proving the offence against the appellants beyond reasonable doubt. The findings of the trial court cannot be faulted even in the absence of exhibit P6. That being said, this appeal lacks merit and it is

hereby dismissed. The conviction is sustained and the Appellants shall continue to serve the sentence imposed to them by the trial court.

DATED at **ARUSHA** this 19th Day of October, 2022

D.C. KAMUZORA

JUDGE