IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SONGEA DISTRICT REGISTRY)

AT SONGEA.

DC. CRIMINAL APPEAL NO. 27 OF 2022

(Originating from Criminal Case No. 35/2016, before Tunduru District Court at Tunduru)

SOPHIA D/O MOHAMED NAHAMA ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

JUDGEMENT

13.10.2022 & 28.10.2022

U.E Madeha, J

The Appellant Sophia Mohamed Nahama was arraigned before the District Court of Tunduru for eight (8th) counts of forgery contrary to sections 333, 335(a), and 337 of the Penal Code (Cap 16, R.E. 2002) and uttering false document contrary to sections 342 and 337 of the Penal Code (Cap 16 R.E. 2002).

As a matter of fact, it was alleged that on diverse dates between 23th, August 2012 and 26th, October 2012 at an unknown place within Tunduru District in Ruvuma Region with intent to defraud or deceive, he made a false

document namely the Transit Guide of forest product No. 3072240. Additionally, in the second (2nd) count the Appellant made a false document namely: Custom Receipt No. 2077. In the third (3rd) count the Appellant made a false document namely, Invoice No. 004934. In the fourth (4th) count the Appellant made a false document namely Custom Receipt with reference number DU 11 2219451 and 115677. In the fifth (5th) count the Appellant made a false document namely Credential No. 16 of 2012. In the sixth (6th) count the Appellant made a false document namely: license No. 59 of 2012: Moreover, in the seventh (7th) count the Appellant made a false document namely Phytosanitary Certificate No. 200/RSV/2012. In the eighth (8th) count the Appellant made a false document namely Certificate of Origin No. 18547/CD/2012 as consignee of two thousand (2,017) pieces of timber from Mozambique to Tanzania purporting to show that the said document is a permission document for the importation of forest produce (timber) into the United Republic of Tanzania issued by the relevant authority from Mozambique a fact which she knew to be false or which she had reasons to believe it to be untrue.

Moreover, the Appellant was charged with another eight counts of uttering false documents contrary to sections 342 and 337 of the Penal code

(Cap 16, R.E. 2002) as amended for the following counts as elaborated hereunder.

It is also alleged that Sophia Mohamed Nahama, on 23rd, August 2012 and 31st October, 2012 at the unknown place within Tunduru District in Ruvuma region, knowingly and fraudulently uttered a false document namely; the ninth (9th) count Transit Guide of Forest Prost Products No. 3072240; the tenth (10th) count false document namely custom Receipt No. 2077. The Eleventh (11th) count is a false document named Invoice No. 004934. Furthermore, the twelfth (12th) count is a false document named Custom Receipt with Reference numbers DU 02SE1 2219451 and 115677. Additionally, the thirteenth (13th) count uttering a false document named Release Credential No. 16 of 2012. To add to it, the fourteenth (14th) count uttering false document named License No. 59 of 2022. The fifteenth (15th) count was uttering false document named Phytosanitary Certificate No. 200/RSV/2012. The Sixteenth (16th) count uttering a false document named Certificate of Origin No. 18547/CD/2012. Besides, purporting to show the permission document for the importation of forest products (timber) from Mozambique into the United Republic of Tanzania issued by the relevant

authority from Mozambique. It is true and factual that he knew to be false or that he had reasons to believe that they were not true.

To add to it, for the seventeenth (17th) count the Appellant was charged with the offence of unlawful possession of forest produce contrary to section 88 of the Forest Act No. 14 of 2002 read together with Regulations 10 and 57 of the **Forest Regulations GN. No. 153 of 2004** and Regulation 2 of the **Forest (Importation of Forest produce) Regulations G.N No. 181 of 2007**. It is important to note that, it was alleged that Sophia Mohamed Nahama, on 25th October 2012 at Ruanda Mchangani village within Tunduru District in Ruvuma Region she was found in possession of two thousand and seventeen (2017) pieces of timber with the value of eighty million, six hundred and eight thousand (80,680,000) Tanzanian shillings without a license issued by the Director of Forests. To crown it all, the Appellant was convicted to serve two (02) years imprisonment concurrently. On the same note, he was sentenced to serve two years imprisonment for the tenth, eleventh, thirteen, fourteen and fifteenth counts and the sentence was ordered to run concurrently.

For the seventeenth count, she was ordered either to pay a fine to the tune of five hundred thousand (500,000) Tanzanian shillings or to serve two (02) years imprisonment. The sentence and conviction did not amuse her. Therefore, she lodged this appeal on eleven (11) grounds of complaint which are none other than:-

1. *That, the Trial Magistrate erred both in law and facts in convicting the Appellant by relying on exhibits P1, P2, P3, P5, P6, P7, P8 and P9 which were tendered by the prosecutor (State Attorney) contrary to the rules of evidence in criminal procedure.*
2. *That, trial Magistrate grossly misdirected himself in law and in facts, in that, upon exhibits P1, P2, P3, P4, P5, P8, P9, P17 being tendered and admitted into evidence, the contents of the said documentary exhibits were not read in Court whereby this act was prejudicial to the Appellant.*
3. *That, the trial Magistrate misdirected himself in law and fact by dealing with the prosecution evidence on its own and found the Appellant guilty as charged and convicted her without considering the defence evidence.*

4. *That, having found that there was none remittance of records in Criminal No. 164 of 2012 from the High Court of Tanzania at Songea and that the same is yet to be returned to in the records date which findings is extrinsic and not born out.*
5. *That, Criminal Case No. 16 of 2016 and later on Criminal Case No. 35 of 2016 contrary to the order of the High Court in DC Criminal Appeal NO. 40 of 2015 which ordered retrial of Criminal Case No. 164 of 2012, makes both Criminal Case No. 16 of 2016 and Criminal Case No. 35 of 2016 incompetent and were liable to be struck out.*
6. *That. having found that Criminal Case Number 16 of 2016 was dismissed for want of prosecution and that the Appellant was discharged. The Trial Court Magistrate misdirected himself in law and facts by failure to follow the binding authority of the Court of Appeal of Tanzania. Reference is made in Twaha Hussein v. Republic (Criminal Appeal No. 415 of 2017) which the authority has not been departed from and held that the Court had Jurisdiction while he had no such jurisdiction.*
7. *That, Trial Magistrate misdirected himself in law and in fact by holding that since the Appellant had experience in importing timbers*

from Mozambique then she was in a position to know that exhibit P2 is forged as the local condition were not met before the importation. However, local conditions have nothing to do with the documents from Mozambique while there was sufficient evidence that local conditions were met.

8. *That, the trial magistrate misdirected himself in law and facts by holding that the Appellant did not obtain locally issued permits for timber importation from abroad contrary to the evidence on records.*
9. *That, the Trial Magistrate misdirected himself in law and in facts by holding that the Appellant ultered PW2 documents.*
10. *That, the trial Magistrate misdirected himself in law and fact by holding that since the Appellant did not obtain locally issued permits before importing timber this is according to PW1 and PW12. Therefore, exhibit P2 is forged. Moreover, possession of 2017 pieces of timber by the appellant was unlawful while unlawful possession of Forest Produce under the 17th count was specific as a result the Appellant was required to prove in respect to the possession of such*

licence with sufficient explanation given by DW1 and DW2 by the Court never considered the defence evidence.

11. *That, the Trial Magistrate misdirected himself in law and in facts by not taking into account mitigating factors presented by the appellant at the time of passing sentence.*

The brief fact on this appeal is to the effect that, the prosecution paraded a total of thirteen witnesses who testified to the effect that the Appellant was arrested in possession of 2,017 pieces of timber which were unlawfully obtained and she forged the importation documents. Also, the prosecution alleged that the Appellant issued the forged document which she alleged were lawfully obtained from relevant authorities authorizing her to deal with the importation of timber from Mozambique to Tanzania. The prosecution tendered exhibits of the documents and the same were admitted as exhibits.

The Appellant denied having acquired those timber woods unlawfully and she claimed that she possessed guanine importation documents and he lawfully possessed the pieces of timber. In her defence the Appellant also

argued that, though the documents were tendered in court witnesses didn't claim that they were forged.

This appeal was disposed of by way of written submission and the Appellant was represented by none other than Mr. Wilson Edward Ogunde, the learned advocate whereas the Respondent enjoyed the services of the learned state attorney Kuali George Makasi.

To begin with, in his submission the appellant's learned counsel started by consolidating the first (1st) and second (2nd) grounds of appeal. On the same note, Mr. Wilson Edward Ogunde the appellant's learned advocate invited the Court to carefully look at exhibits P1, P2, P3, P4, P5, P6, P7, P8, and P9. He averred that the prosecutor requested and tendered here above exhibits. Moreover, he could not be subjected to cross-examination by tendering the documents. As a result, the trial court wrongly received the documents as evidence and acted upon the document in convicting the appellant. Notably, he cited and made reference to the case of **Frank Massawe v. Republic,** Criminal Appeal No. 302 of 2012 (unreported). The Tanzania Court of Appeal faced a similar situation whereby it had to state as follows: -

"As alluded to earlier, the said prosecution witness did not tender, in evidence, the short gun allegedly from the Appellant. A short-gun which was admitted by the trial Court as exhibit P1 was introduced in evidence by a public prosecutor."

This court in a recent case of **Thomas Ernest Msungu @ Mkenya v. Republic** Criminal Appeal No. 78 of 2012 (unreported) had an occasion to make the following pertinent observation:

"A prosecutor cannot assume the role of the prosecutor and the witness at the same time. With respect that was wrong because in the process the prosecutor was not the sort of witness who could be capable of an examination upon oath affirmation in terms of section 198(1) of the Criminal Procedure Act. As it is, since the prosecutor was not a witness, he could not be examined or cross-examined."

To add to it, he submitted that exhibits P1, P2, P3, P4, P5, P6, P7, P8 P9, P12, P17 and P18 were tendered in court however they were not read out when they were tendered in court. On the same note, he prayed that

these exhibits be expunged from the Court's records. In that sense, if these exhibits were expunged, there would be no other evidence that related to the count's number nine (09) ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15) and sixteen (16), exhibits. It is true that all the prosecution's evidence relied on the exhibits. Moreover, he contended that the case lacked evidence therefore, the appellant was supposed to be released from prison as required by the law.

Additionally, Mr. Ogunde submitted on the third (3rd) ground to the effect that, the trial court Magistrate did not consider the defence's evidence as a result he convicted the appellant by only considering the prosecution's evidence. To crown it all, he cited and made reference to the case of **Kaenge Christopher v. Republic**, Criminal Appeal No. 187 of 2016 (unreported), **Hussein Idd & Another v. The Republic** (1986) TLR 166, and **Moses Mayanja @ Msoke v. Republic**, Criminal Appeal No. 56 of 2009. In the case of **Moses Mayanja @ Msoke v. Republic** (supra) the Court stated that;

> " ..... *it is now a trite law that failure to consider the defense case is fatal and usually vitiates the conviction".*

Principally, considering the fourth (4th) ground of appeal the appellant's learned counsel submitted that the appellant was convicted on the same offence via criminal case No. 164/2012 and convicted although later on upon appealing to the High Court of Tanzania at Songea, the same was ordered for retrial and it was wrong to file a new case file with a different case number. Basically, on the fifth (5th) ground of appeal, it was submitted by the appellant's learned counsel that the trial court had no jurisdiction since the same case was dismissed by the same court in Criminal Case No.16 of 2016. As a matter of fact, he contended that since the case was dismissed under section 225(5) of the Criminal Procedure Act, (Cap. 20, R.E 2019). There was no need to file another case against the appellant.

With respect to the sixth (6th) and seventh (7th) grounds of appeal, he submitted that the prosecution's side/respondent failed to prove that the documents which were tendered by the appellant were forged. To add to it, he contended that the evidence adduced by PW2, PW8, PW11, and PW12 were hearsays that is they have no evidential value and they were not supposed to be acted upon.

Furthermore, on the eighth (8th) ground of appeal the appellant's learned counsel submitted that the tendered documents were not false as stated earlier. Notably, the evidence given by the prosecution does not disclose any evidence to prove that offence. Moreover, he cited the case of **Hemed Kanjunjumele v. Republic** (1984) TLR 202, whereby three (03) elements of the offence were given for the offence of altering false document to be proved. Firstly, the document was false, secondly, the person altering the document must know that they are false and thirdly, the person must produce it with intent to defraud therefore must produce the document.

On the contrary, Mr. George Makasi, the state's attorney submitted that the appellant's first (1st) and second (2nd) grounds of appeal considering exhibits P1, P2, P3, P4, P5, P7, P8, and P9, that have been tendered in the trial court, contain no truth and tend to mislead this Court. He emphasized that the record shows that the witness tendered the exhibit in court whereby it was admitted in court.

Moreover, he averred that the prosecutor emphasized that the exhibit was admitted in court as a result there was no objection to the defence's counsel. It is worth considering that, the general rule is that only the witness

who is under oath is allowed to tender the exhibits. He stated further that the said documents were not read over after being admitted. In fact, the said documentary evidence was supposed to be expunged.

With regard to the third (3rd) ground of appeal, the learned State's Attorney submitted that, concerning the grounds of appeal which state that the trial Court did not consider the defence evidence. To add to it, he submitted that, having perused the court records, the trial Court did not analyze the appellant's defense. As much as the fourth (4th) grounds of appeal are concerned, they were procedurally wrong to be charged with a fresh charge sheet in Criminal Case No. 16 of 2016 and Criminal Case No. 35 of 2016. There is retrial case No. 164 of 2012. On the same note, he averred that the filing of two (02) subsequent criminal cases against the appellant was procedural irregularities. It is a fact that, it did not prejudice the appellant with anything in dealing with their cases and that is why the appellant failed to cite any provisions of law to support his arguments. He argued that the fifth (5th) ground of appeal is on the trial court's jurisdiction to try criminal case No. 35 of 2016 while knowing that criminal case No. 16 of 2016 was dismissed for want of prosecution whereby the dismissal order was not set aside. To crown it all, he further contended that the authority

cited by the appellant's advocate in the case of **Twaha Husein v. Republic**, Criminal appeal No. 16 of 2016 CAT cited at Mwanza, in this case, the appeal was dismissed while partly heard. It is worth considering that, the two (02) witnesses had already testified and only two (02) witnesses had not submitted. On the same note, it was observed by the Court that Section 137 of the Criminal Procedure Act Cap 20 as amended does not apply.

He further contended that with regard to the sixth (6th) and seventh (7th) grounds of appeal regarding the appellant's forged exhibit P2 and failure to obtain the permits for the importation of timber from Mozambique, it was his submission that the strong evidence tendered in court by the prosecution's side shows that the appellant intentionally forged and used the said documents. He emphasized that it is true that the appellant forged documents as the appellant accounted for the possession of the property. With regards to the nineth (9th) ground of appeal concerning the seventeenth (17th) count of being found with two thousand and seventeen (2017) pieces of timber without license or permit. Similarly, he submitted that the appellant was importing forest products contrary to the law. (The Forest Act No. 14 of 2002). He submitted further that, the law requires any person who wishes to import forest products in the United Republic of Tanzania to have, among

other things, an import certificate prior to the importation of forest products. In the other way, getting to the ground of appeal that the trial court did not consider the mitigating factors. Like the previous point, the appellant was sentenced to pay a fine of five hundred thousand (500,000) Tanzanian shillings or two (02) years imprisonment. Considering the fact that, the appellant was convicted of forgery that is the sentence that was supposed to be imposed is seven (07) years. It is obvious that the trial court considered the mitigating factor. To crown it all, he asserted that the sentence was not illegal under the law although it was influenced by mitigating circumstances.

As a matter of fact, having gone through, the petition of appeal which encompasses eleven (11) grounds and the submissions made by counsel of both parties, I eventually find that they boil down to the following issues;- **Firstly,** whether the procedure of tendering exhibits was followed by the trial court. **Secondly,** whether the trial court failed to consider the defence case. **Thirdly,** the issue dismissing the case for want of prosecution under section 225(5) of the Criminal Procedure Act (Cap. 20 R.E 2019). **Fourthly,** whether the trial court considered the mitigation and aggravating factors of

the Appellant. **Lastly**, whether the prosecution proved its case beyond a reasonable doubt.

To start with the issue of whether the procedure of tendering exhibits was followed by the trial court, in that regard, the Appellant's learned advocate submitted that the prosecution exhibits have to be expunged from the Court's records. First and foremost, the State Attorney tendered the exhibits in court instead of the witness. Secondly, the exhibit was not read in court in order to give the Appellant a chance to cross-examine the witnesses. As a matter of fact, in building this argument, let's have a look at the decisions that have been addressed on the issue of receiving the exhibits. It is worth considering that, according to part 11 of the Evidence Act (Cap 6, R.E. 2022) read together with chapter three, paragraph 3.2 of the Exhibits Management Guidelines of 2020, the general principles for admitting or rejecting exhibits in both civil and criminal cases include relevance, originality and authenticity.

> *"The general principles governing admission of exhibits in both civil and criminal proceedings underscore factors include the following:(a) Relevance: the exhibit is relevant*

if tends to make the fact that it is offered to prove or disprove either more or less probable, For the document to be admitted it must be both authentic when it is written by its supposed author and is genuinely and what it purports or is asserted to be. (b) Originality: The document is receivable in evidence when it's original (Primary evidence). 19 (c) Authenticity: Reliability may be established by first explaining the foundation of the exhibit. So, when the exhibit is objected for want of foundation it means its competency is called upon into question."

On the same note, as it can be vividly seen from the records of the District Court, prosecution exhibits were not read over after the admission of evidence. Moreover, the content of the exhibits was not communicated, in order for each party to grasp the full evidence so as to counter and go through cross-examination. Basically, this renders the exhibits lacking its evidential value. To crown it all, this statement was stated in the case of **Samweli Kambanga v. UFK, North West** Land Appeal No. 21 of 2019, High Court of Kigoma, whereby it was stated that: -

"On my part, I should at the outset state that if has been clearly settled that whenever a documentary exhibit is tendered in evidence, the same must be read loud in the presence of parties to accord them an opportunity to hear its contents for their guard in defence against the document. This is both in Civil and Criminal trials."

To add to it, reference is made to the case of **Jumanne Mondolo v. Republic, Criminal Appeal No. 10 of 2018** (Unreported) where the Court emphasized the importance of reading a documentary exhibit after its admission. Furthermore, at this juncture, I am inclined to state that, as rightly pointed out by the Appellant's counsel, I strongly agree with the first (1st), second (2nd) and tenth (10th) grounds of appeal. In fact, the District Court (the trial court) erred in law by admitting the prosecution exhibits because they were admitted and tendered unprocedural, as a result, they were made erroneously. As much as the prosecution's evidence is concerned, the Appellant accounted for the possession of the property. In fact, some exhibits were found in the Appellant's hands because the Appellant admitted that he possessed five hundred (2017) pieces of timber from Mozambique.

Moreover, he proved that he transported the timber produced from Mozambique to Tanzania. It is conclusively obvious that the timber products belong to the Appellant. The fact is, along with the exhibit tendered in court it was enough to say that he failed to ask the important questions related to these exhibits when his case was heard at the trial court. I find that the failure to cross-examine a witness as a matter of principle. Thereafter, there are many authorities in relation to a party who fails to cross-examine the witnesses on a certain matter is deemed to have accepted the matter and will be estopped from asking the trial court to disbelieve what the witness said. The issue had been raised in the case of **Nyerere Nyague v. Republic, Criminal Appeal No. 67 of 2010** (Arusha May 2012), **Cyprian A. Kibogoya v. Republic, Criminal Appeal No. 88 of 1992**, **Paulo Yusuph Nchia v. National Executive Secretary, CCM & Another, Civil Appeal No. 85 of 2005** (both unreported). The Appellant's learned advocate stated that the Appellant accounted for the possession of the property in his defence case. Basically, he transported timber products from Mozambique to Tanzania. On the same note, I observed that if the Appellant proved the possession of the exhibits and timber products. Additionally, he was actually the one who used to transport the same to Tanzania. In that

case, I see that there are no sufficient reasons discussed by the Appellant's learned advocate which led this Court to expunge the prosecution exhibits in the case records. Furthermore, the timber products belonged to the Appellant and the exhibits belong to the Appellants too. In that regard, the Appellant does not deny the statement that the burden of proving is on the Appellant. Therefore, they should not be expunged from the Court records because it does not lack evidential value. As far as this Court can see, the first (1st), second (2nd), and tenth (10th) grounds of appeal failed.

In the same way, referring to the issue of the failure to consider the defence case, I have realized that because this is the first (1st) appeal, I will therefore evaluate the defence evidence as follows; the Appellant in his defense evidence said that she accounted for the possession of the timber product as follows: It is worth considering that, DW1 is said to be a timber dealer. He actually used to import timber from Mozambique from the year 2010. It is true that she obtained a business license and a certificate of registration from the Forest and Bee Department, Ministry of Natural Resources and Tourism. Generally, in his defence evidence, the Appellant did not deny the exhibit tendered and he eventually accounted for the possession of the arrested timber products. In other words, that he is the

one who owned the timber product by providing the defence exhibits corroborated the prosecution case. I hereby mark that the defence case was considered.

With regard to the issues concerning the withdrawal of the case under section 225(5) of the Criminal Procedure Act. Additionally, having heard the submission of both parties. I hereby quote section 225(5) of The Criminal Procedure Act (Cap 20, R.E. 2019).

> *"225(5) Where no certificate is filed under the provisions of subsection (4), the court shall proceed to hear the case or, where the prosecution is unable to proceed with the hearing discharge the accused in the court save that any discharge under this section shall not operate as a bar to a subsequent charge being brought against the accused for the same offence."*

Consequently the Court reckon with the appellant"s learned advocate's arguments that if the case has been dismissed for want want of the prosecution. In that regard, what should be done is to set aside the dismissal order. Notably, based on the explanation of the appellant's learned Counsel,

there was no setting aside of the dismissal order. To put it in a nutshell, I agree with the submission of the appellant advocate that there should be an order to set aside the dismissal order and then proceed to file another criminal case. In respect of this case at hand, there is no evidence brought by the appellant advocate to show that there was a criminal case that was dismissed for want of prosecution under section 255 (5) of the Criminal Procedure Act. Additionally in the absence of the supporting order which dismissed the case for want of prosecution under section 255(5) of Cap 20 (Supra). I, therefore, find that this ground of appeal is meaningless and unenforceable.

To start with, whether the Appellant forged the prosecution exhibits. In fact, in the instant case, the offence of forgery was not proved by the prosecution. In that regard, this means that there is no combination of events that shows that the documents that transported a load of timber products from Mozambique were forged.

To add to it, the prosecution failed to prove the following first (1st), that the appellant did make the false document. Second (2nd) with intent to defraud or deceive. Third (3rd), the document was made by the accused. To

crown it all, in the absence of the hereabove it is obvious that the prosecution failed to prove that the Appellant forged the documents.

With regard to whether the Appellant uttered forged documents, the offence of uttering forged documents includes three (03) elements passing or making use. Additionally, intent to defraud and knowledge of forgery, passing and making use is constituted by putting into circulation a written document that involves forgery. It is true that any form of material gain may be the motive but generally, financial gain is the motive. The second (2nd) element is the same intent to defraud under forgery knowledge. In fact, the issue of forgery is held to exist when the person uses a forged document with the knowledge that it is forged. To crown it all, this stance was stated in the case of **Uganda v. Okiroe James Criminal Appeal No.39 of 2008 [2009] UGHC** (11 November 2009). Eventually, from the information provided above it seems that the prosecution has failed to prove the case of forgery or forged documents. Also, the offence of uttering forged documents has failed to be proven.

As a matter of fact, the prosecution must establish a prima facie case. This is important because if no prima facie case is established, the Court

could always give an accused person the benefit of the doubt and acquit him. Reference is made to the case of **The Director of Public Prosecutions v. Morgan Maliki and Nyasa Makorii,** Criminal Appeal No 133 of 2013 (unreported), the Court stated that: -

> *"A prima facie case is made out if, unless shaken, it is sufficient to convict an accused person with the offence which he is charged or kindred cognate minor offence... the prosecution is expected to have proved all the ingredients of the offence or minor cognate are thereto beyond reasonable doubt. If there is a gap, it is wrong to call upon the accused to give his defense so as to fill it in, as this would amount to shifting the burden of proof".*

Basically, in all fairness under the prevailing circumstances of this case, this Court holds that the guilt of the Appellant was not proved beyond reasonable doubt. It is as conceded by the Appellant's learned advocate concerning the offence of forgery and uttering forged documents. To add to it, the prosecution's evidence was scant to convict the Appellant for forgery and uttering forged documents that were tendered as exhibits in court.

On the same note, the issue of whether the Appellant was found with the forest products. The Appellant was charged with unlawful possession of forest produce contrary to section 88 of the Forest Act No. 14 of 2002, as well as Regulations GN. No. 153 of 2004 and Regulation 2 of the Forest (Importation of Forest Produce) Regulation G.N No. 181 of 2007. Eventually. In a nutshell, I strongly agree with the State Attorney's submissions whereby I find that this ground has no merit since the Appellant, does not deny the ownership of the pieces of timber and was not prejudiced.

Consequently, the fourth (4th) and fifth (5th) grounds of appeal are unfounded and are hereby dismissed. Additionally, after going through the judgment, it is worth considering that, the prosecution has proved the presence of the Appellant being arrested with 2017 pieces of timber without a permit or licence.

In fact, the prosecution side proved the seventeenth (17^{th}) count for the offence of unlawful possession of forest produce contrary to section 88 of the Forest Act No. 14 of 2002. To add to it, this is read together with Regulations 10 and 57 of the Forest Regulation 2 of the Forest (Importation of Forest Produce) Regulations GN No. 181 of 2007, which provides the

punishment of a fine not exceeding one million (1,000,000) Tanzanian shillings or imprisonment for a period of not more than two (02) years or both fine and imprisonment. As a matter of fact, the Appellant in respect of this count was convicted to pay five hundred (500,000) Tanzanian shillings as a fine or to serve two (02) years imprisonment.

It follows that the appellant's conviction in respect of the tenth, eleventh count, thirteenth, fourteenth, and fifteenth count are quashed and the sentence and conviction of the appellant are set aside. On the whole instant case. It is the findings of this Court that the trial Magistrate took into account all factors including the period the appellant had to spend on remand and carefully considered them before imposing sentence in respect of the seventeenth count. I hold that the learned trial Magistrate imposed the appropriate sentence in respect of the seventeenth count; in the circumstance of this case, I find no reason to interfere with it. In conclusion, I uphold the sentence of a fine of Tshs 500,000 or serve two-year imprisonment. This appeal is partly dismissed. Order accordingly.

DATED at **SONGEA** this 28th Day of October 2022

U.E. MADEHA

JUDGE

28/10/2022