

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**CORRUPTION AND ECONOMIC CRIMES DIVISION**  
**AT BUKOBA**

**ECONOMIC CASE NO. 02 OF 2020**

*(Originating from Bukoba Resident Magistrate's Court,  
Economic Case No.3 of 2020)*

**REPUBLIC**  
**VERSUS**

**1. JASON PASCAL**  
**2. ANTIDIUS PASCAL**

**JUDGMENT**

Date of last order: 11/08/2020  
Date of Judgment: 18/08/2020

**MASHAKA, J:**

The prosecution advanced the charge against Jason Pascal and Antidius Pascal being the 1<sup>st</sup> and 2<sup>nd</sup> accused persons respectively together and jointly are charged with 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 First Schedule to, and section 57 (1) and 60 (2) of the Economic and Organized Crime Control Act, [CAP 200 R.E. 2019).

The particulars of the offence according to amended information alleges that, Jason Pascal and Antidius Pascal being the first and second accused persons respectively on the 4th day of April 2018 at Bumilo village, Bwoga Hamlet (Kitongoji) within Muleba District in Kagera Region were found in unlawful possession of government trophy to wit; one elephant tusk valued at Tanzanian Shillings Thirty Three Million Seven Hundred Thousands and Eighty Thousand (Tshs. 33,780,000/=) only being the property of the Government of the United Republic of Tanzania.

Before the court, Ms. Suzan Masule, State Attorney, Ms. Veronica Moshi, State Attorney, and Mr. Juma Mahona, State Attorney represented the Republic and Mr. Remidius Mbekomize, Advocate represented the 1<sup>st</sup> and 2<sup>nd</sup> accused persons. I sincerely thank the team of members of the bar for the resilience, hard work in representing the interests of your clients and cooperation for the pursuit of justice in this case.

On 29<sup>th</sup> July 2020 the accused persons entered their respective pleas on the offence charged with. In their plea, the 1<sup>st</sup> and 2<sup>nd</sup> accused persons denied the charge against them, and the court entered a plea of not guilty to the offence. On the same day, the court conducted preliminary hearing. Facts of the case were read over to the accused persons. The 1<sup>st</sup> accused admitted only his name, that the 2<sup>nd</sup> accused is his brother, his tribe, he was interrogated at the Muleba Police Station and he was arraigned in court and the information read over to him. The 2<sup>nd</sup> accused person admitted only his name, his tribe, that 1<sup>st</sup> accused is his brother,

he was interrogated at the Muleba Police Station, he was arraigned in court and the information read over to him.

On the 29<sup>th</sup> July 2020 with the leave of this Court, the prosecution amended the information rectifying error on the statement of offence to read unlawful possession of government trophy c/s 86 (1) and (2) (b) of the Wildlife Conservation Act No. 5 of 2009 read together with Paragraph 14 of the First Schedule to and section 57 (1) and 60 (2) of the Economic and Organized Crimes Control Act, [Cap 200 R.E. 2019) as amended. The two accused persons were asked to plead to the amended information.

Brief facts of the case narrated by the prosecution that, the 1<sup>st</sup> accused Jason Pascal and 2<sup>nd</sup> accused Antidius Pascal are brothers. That on the 04<sup>th</sup> April 2018, at 3.00pm, a Wildlife Officer Vicent Tungilo received information while he was at Biharamulo that there were people transporting elephant tusks in Muleba District. After receiving the information, he informed his fellow Officers Josephat Damas and Buseko and both went to the Police Station at Muleba. They received support from Police Officers of Muleba Police Station and together went to the Kibanga Village, Bwoga Hamlet (Kitongoji), Muleba District.

While at Kibanga Village a motorcycle with registration no. MC 956 ATY make GSM appeared with two people on it. The Wildlife Officers together with the Police Officers stopped the said motorcycle, which 1<sup>st</sup> and 2<sup>nd</sup> accused persons were riding. They were searched and found with one elephant tusk in a black bag, which they were carrying on the motorcycle.

After being found with the elephant tusk, a certificate of seizure was filled and both accused persons and witnesses to the search signed the said certificate. Both the accused persons and the exhibit were taken to Muleba Police Station where both accused persons were interrogated. A Wildlife Officer Fredrick Severine Kobero arrived at the Muleba Police Station, after being informed of the arrest of the accused persons with a government trophy for identification and valuation of the government trophy. After identification he identified it was an elephant tusk valued at TZS. 33,780,000/= and filled a Certificate of Valuation of Trophy. The one elephant tusk exhibit was taken to the Weights and Measures Agency Office to determine its weight which was 1915grams. The Weights and Measures Agency Office issued a report of the said weight. Further investigation was conducted about the motorcycle and a report from TRA was issued and taken to the CID Unit, Police Station Muleba District.

After completion of investigation both accused persons were arraigned in court with the offence of unlawful possession of government trophy to wit one elephant tusk.

To prove the case against the accused persons, the prosecution paraded seven witnesses and tendered six documentary and physical exhibits. Prosecution witnesses were PW1 Othumani Hamisi Othumani, PW2 Vicent Tungilo, PW3 E.6688 D/CPL Rudovick, PW4 E.4534 D/CPL Augustino, PW5 Fredrick Severine Kobero, PW6 Harrieth Lukindo and PW7 Anyitike Tumaini. Documentary and physical exhibits admitted in

evidence are a certificate of seizure Exhibit P1, a nylon black bag, rubber strip and elephant tusk respectively Exhibit P2A, B and C, a motorcycle Exhibit P3, a letter from TRA Exhibit P4, a Certificate of Valuation of Trophy Exhibit P5 and letter from Weights and Measures Agency Exhibit P6 and its attachment.

In his testimony PW1 Othumani Hamisi Othumani stated that on the 04/04/2018 at 4.00pm while on road patrol at the Muleba area Police Station Muleba town, he was called by his boss A/Insp. Bishon Head of Intelligence Police Muleba and he went to his Office. He informed PW1 that he received information from Wildlife Officers there are people who are trafficking government trophies. That PW1 together with G792 D/C Isack and H 802 PC John were instructed by their boss to go and accompany the Wildlife Officers who were to go together to Kibanga Village, Bwoga Hamlet (Kitongoji).

PW1 further stated that on the same day at 6.00pm they left for Kibanga Village. When they reached the Buoga area they set a trap after being informed by the informant that he knows them and when they pass with their motorcycle, he will inform the officers. They stayed there in the forest until 7.00pm, a motorcycle with registration no. MC 956 ATY make GSM (Exhibit P3) came with two people on it. When the motorcycle was about to pass, the informant told them that was the motorcycle they had been told. That according to Muleba timings 7.00pm was not dark yet, there was light and it enable PW1 and the other officers to identify and see things clearly. Together they all entered the road, all of them stood on the road and the motorcycle stopped while the informant remained in the hiding place. PW1 and the other officers

introduced themselves to the 2 people on the motorcycle that they are Police Officers and Wildlife Officers. PW1 asked the 2 people their names, what they were carrying and where are they coming from. One of them who introduced himself to be Jason a "boda boda" driver of the motorcycle and the second person stated his name is Antidius, that they were coming from Mbunda, Muleba District and together replied that they do not know what they are carrying.

PW1 took the nylon bag from the motorcycle and opened it to see what was inside. Inside the nylon black bag, PW1 saw suspected one elephant tusk. PW1 seized the suspected elephant tusk which was admitted in this case and marked Exhibit P2A, B and C and the motorcycle which was also seized from the 1<sup>st</sup> and 2<sup>nd</sup> accused person was admitted and marked Exhibit P3. PW1 filled the certificate of seizure dated 04/04/2018, which was signed by both PW1, PW2 and the two accused persons. PW1 tendered the certificate of seizure, was admitted and marked Exhibit P1. After the said seizure together with the 2 accused persons and the Officers went to the Muleba Police Station.

When they arrived at the Muleba Police Station, PW1 registered a case with reference no. MUL/IR/659/2018. PW1 took the Exhibit P2A, B and C placed the label mark of the case number MUL/IR/659/2018. PW1 also labelled the seat of the m/cycle Exhibit P3 the same case number and handed them over to CPL Augustino the Exhibits keeper. PW1 correctly identified the 1<sup>st</sup> accused person is Jason Pascal and the 2<sup>nd</sup> accused is Antidius in the court. PW1 stated further that he recorded his statement at

the Police Station but he did not mention that PW1 and the other officers hid in an area where there are planted trees, that he did not mention the names of the said suspects in the his statement and did not mention that he prepared the certificate of seizure and filled it.

PW2 Vicent Tungilo, testified that, on the 04/04/2018, he received information through a phone call from his informant that there are two (2) people in Muleba District have in possession elephant tusks. That they were coming from Mbunda. After receiving the information, PW2 went to his Office in Biharamulo and he reported to the Patrol Officer and he was assigned two Wildlife Officers, named Josephat Damas and Biseko. PW2 informed the informant they are on the way to arrest the said two people and the informant should wait for them.

PW2 and the two Wildlife Officers Josephat Damas and Biseko left Biharamulo and went to Muleba Police Station, they arrived at 4.00pm in the evening. PW2 reported to the Police Officer who was on duty at the Police Station, Muleba. Three Police Officers were assigned to join with the Wildlife Officers in the said task. The police officer in charge was called Othumani (PW1). Together they left at 6.00pm and went to the area where the said people would pass towards the Kibanga Village. When they reached a place near the road which had trees, they met the informant and concealed themselves in the said area.

PW2 further stated that at around 7.00pm there was still light, they saw a motorcycle and the informant told them that is the motorcycle, it had two people riding it. That six officers that is

three Police Officers and three Wildlife Officers stood on the road, while the informant remained in the hiding place where they were before. That PW1 stopped the motorcycle, it stopped and PW1 introduced himself and told the two persons that, they are suspected to be carrying elephant tusks. After the motorcycle stopped PW2 saw a baggage (*mzigo*) which was packed and a rubber tyre strip (Exhibit P2B) was used to tie it to the back of the motorcycle.

PW2 testified that PW1 removed the baggage from the motorcycle, opened the black plastic bag inside took out one elephant tusk. The two people on the motorcycle were placed under arrest by PW1 and PW1 seized the one elephant tusk (Exhibit P2C) and the motorcycle with registration no. MC 956 ATY make GSM (Exhibit P3). After the seizure, PW2 wrote his name and signature on the seizure certificate. They took the two suspects, one elephant tusk and the motorcycle to the Muleba Police Station where PW2 recorded his statement. The exhibits remained at the Police Station for further action. PW2 identified Exhibit P1, Exhibit P2A, B and C and Exhibit P3. PW2 also identified the 1<sup>st</sup> and 2<sup>nd</sup> accused persons as the two persons who were arrested with the one elephant tusk and riding a motorcycle with registration no. MC 956 ATY make GSM.

That PW1 recorded his statement at the Muleba Police Station and he signed it but he did not read it. PW2 stated that in his testimony he mentioned that the elephant tusk was taken from the motorcycle and seized, but the facts were not recorded in his



said statement. Also, PW2 did not record the time of seizure. PW2 measured the length of Exhibit P2C, it was 59cm.

PW3 E.6688 D/CPL Rudovick testified that, on the 05/04/2018 morning hours at 8.00am at the Criminal Investigation Unit Office, Muleba Police Station, he was called by his boss OC-CID Muleba and assigned a case file no. MUL/IR/659/2018 concerning unlawful possession of government trophy to conduct further investigation. The case file involved two people namely Antidius Pascal and Jason Pascal, (2<sup>nd</sup> and 1<sup>st</sup> accused persons).

PW3 further stated that he took the two suspects out of the Police lock – up for the purpose of recording their statements. Also, PW3 went to the Exhibits Keeper D/CPL Augustino to see the exhibits. PW3 was shown the elephant tusk, which was in a black nylon bag tied by a rubber strip (Exhibit P2A, B and C) and a motorcycle make GSM with registration number MC 956 ATY (Exhibit P3). PW3 requested a Wildlife Officer (PW5), through a phone call to go to the Police Station to identify the suspected elephant tusk. The Wildlife Officer (PW5) arrived on the same day and PW3 went to take the suspected elephant tusk from the Exhibits keeper (PW4) for the purpose of showing the Wildlife Officer who identified it was an elephant tusk (Exhibit P2C).

On the 01/05/2018, PW3 prepared a letter to the Weights and Measures Agency Office Bukoba requesting to weigh the one elephant tusk exhibit. On the 03/05/2018 PW3 took the Exhibit P2A, B and C to the Weights and Measures Agency Office to be weighed, he signed the Exhibit Registration Book. The Weights

Officer weighed the one elephant tusk (Exhibit P2C) and its weight was 1915 grams. The Weights Officer handed over and returned the exhibit back to PW3 together with the form issued by the Weights and Measures Agency Office. PW3 took the Exhibit P2A, B and C and returned it back to the Exhibits keeper (PW4) and PW3 kept the form from the Weight and Measures Agency Office in the case file.

PW3 stated that, on the 08/04/2018 he wrote a letter to TRA, Muleba District requesting for information on the motorcycle exhibit registration number MC 956 ATY to know the owner of the said exhibit. That on the 12/04/2018, PW3 received a reply which he tendered, was admitted and marked Exhibit P4 from TRA Muleba District stating that the owner was a company known as Africa Logistics Solution. The suspects were arraigned in court as directed by the OC-CID on the 10/04/2018. As PW3 continued with investigations he was instructed to complete by preparing a report and the case file be forwarded to the RCO Kagera region. On the 26/02/2020, the case was withdrawn from the District Court Muleba and the accused were out on bail. Later, the case was transferred to the RCO Kagera Region and the accused persons were arraigned in court. PW3 identified Exhibit P2A, B & C and Exhibit P3. Also, PW3 identified both the 1<sup>st</sup> and 2<sup>nd</sup> accused persons at the dock.

PW3 stated that he did not mention the name of the Wildlife Officer during his examination in chief and in his recorded statement. That in order to take an exhibit from the Exhibits room one has to sign the Exhibit Registration book and when the exhibit

is returned, the Exhibits Keeper signs that too. PW3 also stated that he did not state in his testimony before court that he signed the Exhibit Registration Book when he took the exhibit and that he did not record in his statement. PW3 did not tender any document showing the chain of custody record in the handing over of the exhibits. PW3 stated that the value of one elephant tusk is USD 15,000, which is equivalent to TZS. 33,780,000/=. PW3 did not tender any document to show that he handed over the elephant tusk to the Weights Officer and the letter Exhibit P4 from TRA did not have the official stamp. PW3 stated that the accused persons were arrested on 04/04/2018 and interrogated on the 05/04/2018.

The fourth prosecution witness was E.4534 D/CPL Augustino, in his testimony stated that on the 04/04/2018 at around 9.00pm at night he was called by phone by the OC-CID and instructed to go to the Police Station Muleba to receive an important exhibit. PW4 went straight to the Police Station where he met PW1 who told PW4 that he seized an elephant tusk and was instructed by the OC-CID to hand over the said exhibit to PW4. PW1 handed over one elephant tusk to PW4, which was packed in a black nylon bag and tied up by a rubber tyre strip together with a motor cycle Exhibit P2A, B, C and Exhibit P3 respectively.

That PW4 opened the black nylon bag to see what was inside it, there was one elephant tusk. PW4 received it and registered it in the Exhibits Register Book and kept in the Exhibits room. The said elephant tusk was labelled a mark on it read MUL/IR/659/2018. When PW4 registered it, he placed on the same label

Exh. Reg. no. 09/2018. The said label was tied to the exhibit the black nylon bag, it was a hard paper.

The motorcycle had the same label mark MUL/IR/659/2018 written on the seat of said motorcycle. PW4 received the motorcycle and placed it in the Exhibits room. That on the 05/04/2018, D/CPL Rudovick (PW3) told PW4 that he was assigned the case file no. MUL/IR/659/2018 and wanted to see the exhibits of the case file on unlawful possession of government trophy. Together they went to the Exhibits room, PW4 handed over to PW3 the one elephant tusk and the motorcycle. PW3 took the said exhibits and checked them. Both PW3 and PW4 signed the handing over book, when PW4 handed over the exhibits to PW3 and when PW3 returned back the exhibits to PW4.

That on the 05/04/2018 around 12.00noon in the afternoon, PW3 went to the Exhibits room accompanied by a Wildlife Officer (PW5). The Officer introduced himself to PW4. PW3 requested for the Exhibit P2A, B and C and he signed the handing over book. PW3 left with the Wildlife Officer (PW5) together with the said Exhibit P2A, B and C. Later PW3 returned to the Exhibits room and handed over to PW4 the one Exhibit P2A, B and C, signed the handing over book and PW4 kept the said exhibit in the Exhibits room.

On the 03/05/2018, while PW4 was at his place of work, PW3 requested for the Exhibit P2A, B and C to take it to the Weights and Measures Agency Office to weigh and know its weight. PW4 handed over the one elephant tusk (Exhibit P2A, B and C) to PW3 who signed the handing over book and left with the exhibit. On the

same day evening hours, PW3 returned the Exhibit P2A, B and C and handed it over to PW4 who signed in the handing over book.

On the 05/08/2020 PW4 was instructed by the OC-CID that the exhibits Exhibit P2A, B and C and Exhibit P3 are needed at the High Court, Bukoba. PW4 brought the exhibits and handed them over to the State Attorney, who signed the Exhibit Register to have received the said exhibits. PW4 identified Exhibit P2A, B & C and Exhibit P3.

PW4 testified that PW1 handed over to him (PW4) and PW4 signed to acknowledge receipt and PW1 also signed for the handing over in the OB (Occurrence Book), which keeps record of all the events that took place in the Police Station. That PW4 has not tendered any document to prove the said handing overs. PW4 recorded his statement at the Police Station on how he was involved in this case but he did not state the facts that on the 04/04/2018 he received the exhibits from PW1 and about the black nylon bag and the rubber tyre strip. Also, PW4 did not state that PW3 went with the Wildlife Officer (PW5) to the Exhibits room to take the exhibit to wit one elephant tusk and did not mention the chain of custody record, which is how the handing over of exhibits was done in the issuing and receiving of exhibits.

In the testimony of PW5 Fredrick Severine Kobero stated that on the 05/04/2018, he was in his Office at Biharamulo and received a phone call from a person who introduced himself as a Police Officer Rudovick (PW3). PW3 requested PW5 to go to the Muleba Police Station. After the phone call, PW5 received another phone call from his Manager who was outside the Office, he

informed PW5 that a tusk had been seized and it is claimed to be an elephant tusk, that PW5 had to go to identify and value it. He told PW5 to wait for him and together they went to Muleba. They arrived at the Muleba Police Station and PW5 met the Police Officer Rudovick PW3.

PW5 and PW3 went together to the door of the Exhibits room where they found an Officer in the Exhibits room, who spoke with PW3 and the officer took a tusk and handed over to PW3 and PW3 handed it over to PW5 in front of the Exhibits room Officer (PW4), to identify. PW5 received the tusk which was packed in a black nylon bag and a rubber tyre strip was used to tie up. PW5 opened the rubber tyre strip, then opened the black nylon bag and inside there was a tusk. PW5 identified the schreger lines which are only found in an elephant tusk, they are V – shaped on the said tusk. That an elephant tusk differs from other tusks, due to the middle part which is hollow is very narrow, hence it increases the weight of an elephant tusk. That the elephant tusk is not sharply pointed, it is blunt shaped on the one end of the elephant tusk. PW5 identified the Exhibit P2A, B and C.

Also, PW5 stated that, after identifying the one elephant tusk, he handed over Exhibit P2A, B and C to PW3. That PW5 went to the NMB Muleba to get the exchange rate of USD at that time. That the value of an elephant is USD 15,000. The exchange rate of USD to Tanzanian shillings at the NMB was one USD equivalent to TZS. 2252/=. PW5 returned to the Muleba Police Station and filled the Valuation of Trophy Certificate, which he tendered, was admitted and marked Exhibit P5. That according to his statement, it states

that PW5 left Biharamulo for Muleba on the 03/04/2018 and not on the 05/04/2018 as he stated in his testimony which is the correct date. PW5 did not sign anywhere when he received and handed over the Exhibit P2A, B and C from and back to PW3. Also he did not mention the name of the bank in his recorded statement.

In her testimony PW6 Harrieth Lukindo stated that on the 03/05/2018 she was in her Office; a Police Officer went with a letter. That he introduced himself as Rudovick (PW3) coming from the Criminal Investigation Unit, Muleba District. PW3 handed her a letter, which requested to weigh an exhibit he came with, it was an elephant tusk which was packed in a black nylon bag and tied up by a rubber tyre strip (Exhibit P2A, B and C) and had a tag fixed to it as the label of the exhibit.

PW6 received the exhibit, opened it and handed it over to one Officer Anyitike Tumaini (PW7) who weighed it, it was 1915grams. That the Officer Anyitike Tumaini (PW7) issued a Weights report and submitted to PW6. Then PW6 replied the letter which brought the exhibit and attached the Weights report. The said letter with reference WMA/BKB/PV/4/12 dated 03/05/2018 with attachment was admitted and marked Exhibit P6. After weighing the elephant tusk (Exhibit P2C) Officer Anyitike Tumaini (PW7) hand over the Exhibit P2A, B and C to PW3. PW6 identified the Exhibit P2A, B and C. PW6 did not witness the weighing exercise conducted by her officer (PW7), whom she entrusted to perform the task. The handing over between Anyitike (PW7) and Rudovick (PW3) was not by signing any document.

PW7 Anyitike Tumaini testified that on the 03/05/2018, around afternoon hours he was called by his boss Harrieth Lukindo (PW6) and PW7 went to her Office where he found her and another person whom she introduced to be a Police Officer Rudovick (PW3). PW6 informed PW7 that, the Police Officer had an exhibit, they want it to be weighed. PW6 handed over the exhibit to PW7, which was in a black nylon bag, tied up by a black rubber tyre strip and inside there was an elephant tusk Exhibit P2A, B and C collectively. PW7 took the exhibit and went to the workshop room where there is a weighing standard scale for weighing the exhibit. PW7 took the elephant tusk Exhibit P2C out of the black nylon bag (Exhibit P2B) and placed it on the weighing scale and its weight was 1915 grams. He removed the elephant tusk from the weighing scale and handed over to the PW3.

PW7 filled the weight of the exhibit in a form. After filling the form using the computer of the Personal Secretary of his boss (PW6), PW7 printed the said form and stamped the official stamp of Weights and Measures Agency Office and he submitted to his boss PW6. PW7 identified Exhibit P6 and Exhibit P2 A, B and C.

PW7 stated that he recorded his statement at the Police Station, on the same date 03/05/2018; it was recorded by a Police and not on 24/01/2020. That the said statement was not read over to him by the police officer. That there is no place for signing after receiving the exhibit from his boss at their Office also there is no register to record any exhibit for their action.

After close of the prosecution case, the court found on the basis of the evidence adduced by the prosecution, a prima facie



case was established against the 1<sup>st</sup> and 2<sup>nd</sup> accused persons and the said 1<sup>st</sup> and 2<sup>nd</sup> accused persons have a case to answer. The accused persons were called upon to defend themselves and they were the only defence witnesses.

DW1 Jason Pascal, in his defence evidence stated that on the 04/04/2018, around 4.00pm he took my young brother Antidius Pascal (DW2) and they went to see his children at Muleba to give them money for use. On the way, one of his friend Hamimu Twaha called him by phone and requested him to bring a 'gunia' of charcoal. Hamimu Twaha is a resident of Bwoga Hamlet, Kibanga Village. DW1 bought the charcoal from a person who sells charcoal then together with his brother after buying the charcoal bag they went to Muleba. They reached the house of Hamimu Twaha at 5.00pm in the evening he handed the charcoal to Hamimu. Hamimu showed them DW1 and DW2 his farm how people had cut his bananas plants, then they returned to Hamimu's house and entered his house. After 5 minutes, two people entered the house, one was dressed in plainclothes, one was in police uniform and was carrying a gun. The two people told DW1 and his fellows that they were under arrest and told to keep quiet. They have been handcuffed and they took them to a motor vehicle which was on the road.

DW1 testified that they were placed into the motor vehicle and taken to Muleba Police Station where the hand cuffs were removed, and placed at the reception for 15 minutes, then DW1 and DW2 were taken into a room and left Hamimu at the reception. The police officer told them that they are suspected to have

government trophies, DW1 denied the claims, because he does not know what is a government trophy and he did not see the government trophy in the room.

While under interrogation in the room, they have been handcuffed and placed upside down their heads were down and beaten from 6.30pm until 8.00pm. Then police officers removed DW1 and DW2 from where they hanged and placed in the lock – up. At 1.00 am at night same day. Police officers removed DW1 and DW2 from lock – up and returned them to the same room. That the police officers wanted them to confess the truth and DW1 stated that he did not know the government trophy they were talking about. That he saw the elephant tusk in court on the 05<sup>th</sup> August 2020

DW1 showed to the court black marks on his leg alleging they were scars he got from the Police beatings. That the Police brought a paper which DW1 and DW2 were told to sign but DW1 does not know how to read but knows his name. DW1 signed the paper at 1.00am and returned them to the lock-up. In the morning at 8.30am on 05/04/2018, they taken out of the lock-up and went to his house in the village where the Police Officer called the Village Chairman of DW1's village Fransico Mukubanye and his father Pascal Kabamu, as they wanted to search his house. The search was conducted in DW1's house and found nothing. DW1's Chairman and DW1's father signed a paper prepared by the Police.

Then they returned back to Muleba Police Station and arrived at 12.00 noon when DW1 recorded his statement which he could not read. He further testified that the motorcycle seized is his

property, he left at Kibanga Village, Bwoga Hamlet and saw it in the morning at the Muleba Police Station. That the registration is 956 make GSM.

On the 11/04/2018, DW1 was arraigned in District Court, Muleba for unlawful possession of government trophy. Then they were taken to Muleba Prison and later taken to the Bukoba Police Station where they stayed for 18 days in Police lock-up. DW1 was arraigned in the District Court of Bukoba on the 16/03/2020. DW1 prayed to the court to release and set him free because he was not found with the government trophy.

He also stated that, he does not have any proof to show he was treated the wounds inflicted on him by the police beatings also he does not know if his advocate did question PW1 and PW2 for aboutarresting him (DW1) at Hamimu's place without a probable reason. DW1 further stated that his advocate did not question the Police Officers PW1 and PW3 when they testified on the beatings as stated in his examination in chief.

In his defence, DW2 Antidius Pascal testified that on the 04/04/2018 at 3.00pm his brother Jason Pascal (1<sup>st</sup> accused) told him that at 4.00pm they will go and see the children of 1<sup>st</sup> accused person they were staying in Muleba. Then DW1 and DW2 commenced their trip to Muleba at 4.00pm from DW1's place by his motorcycle, its registration number is MC 956 ATY.

After leaving DW1's place, DW1 told DW2 that his friend called him and requested him to buy one bag of charcoal if he goes to Muleba. DW2 did not know when DW1 received the call from his friend. They went to Golodiani Kilomba who sells charcoal and

DW1 bought a sack of charcoal and paid shs 12,000/=. That DW2 and DW1 carried the sack of charcoal and fitted it on the motorcycle then left for Muleba. They reached Hamimu Twaha's house and DW1 parked the motorcycle outside the house and got off the motorcycle. Hamimu, received the sack of charcoal and sent his child to go and get money from a "kibanda" to pay the DW1 the money he bought the sack of charcoal. Then DW2, Hamimu and DW1 get inside Hamimu's house and Hamimu told them about how people cut down his banana plantations, he was complaining and he took DW1 and DW2 to see his farm. They checked his farm how it was destroyed, then they left the farm and went back to Hamimu's house and to wait for his child seated at the sitting room.

That after 10 minutes, while they were talking waiting for the money used to pay charcoal, two people, one had a gun entered the sitting room. One was dressed in police uniform and carried a gun, while the other one was wearing civilian clothes. They told them that they were under arrest and they should not talk. DW2, DW1 and Hamimu did not do anything and they were hand cuffed. That there were other two Officers outside. They were taken to the motor vehicle, the three of them and the four Officers together with the driver all got into the motor vehicle and drove to Muleba Police Station.

At the Muleba Police Station they were taken to reception and after a while DW2 was taken to a room and the Police Officers asked him if he knew what brought him to the Police Station, DW2 said no. The police officers told him that there are charges of being

in possession of elephant tusk. DW2 denied the charges and does not know them. DW2 was hand cuffed both hands, then they passed an iron bar and turned me upside down his head was down and beaten by the police officers on his legs from 7.00pm until 08.00pm to confess the charges before DW2 was taken back to lock up.

DW2 stated further that, sometime at midnight two Police Officers took DW2 to the same room he went before. The Police Officers wanted to him to admit and sign a paper they had which was unknown to DW2. DW2 eventually signed the paper at 1.00am at night after being beaten in intervals and forced to sign. Then the Police Officers removed the hand cuffs and took him back to the lock up.

On the 05/04/2018 at 8.30am, police officers took DW1 and DW2 out of the lock-up and went to search to the house of the DW1. The police requested for the Village Chairman Fransisco Mukubanya and DW1 and DW2's father Pascal Kabamba who witnessed the said search. Nothing was found in the house and the Village Chairman and police officers also signed the same document. Then the police officers and DW2 and DW1 got into the motor vehicle and returned to the Muleba Police Station.

DW2 saw the motorcycle which was left parked at Hamimu's house on the 05/04/2018 morning at the Police Station Muleba. In the morning, the 1<sup>st</sup> accused situation was not good, he had bruises in his legs. On the 11/04/2018, at 09.00am in the morning the DW2 and DW1 were arraigned in the District Court,

on one charge of unlawful possession of government trophy, it was read to them and they were taken to Muleba prison.

DW2 testified that he saw the items tendered before the court for the first time on 05/08/2020, that is the elephant tusks and the certificate of seizure which shows he signed it after being beaten and feared for his life. DW2 does not know where Hamimu is since he left him at the Police Station reception. DW2 prayed to the court that the charges against him are not true and pray to Hon. Judge to release and set him free.

DW2 stated that his advocate did not ask questions on his arrested at Hamimu's place and not on the road. Also, did not question PW1 on the Exhibit P1 being signed at night at the Muleba Police Station and not at the scene of crime. Also did not cross examine on being arrested and was told the reason for his arrest at the Muleba Police Station. DW2 does not have a PF3 or proof that he was beaten twice that night because he requested for it and they refused to give him. That the police stated they arrested them at 7.00pm. DW2 stated that normally at 7.00pm, there are many motorcycles and motor vehicles along the road. That there is no witness who came to testify that the 1<sup>st</sup> and 2<sup>nd</sup> accused person signed the Exhibit P1 at the scene of crime.

Having thoroughly gone through the evidence both oral and documentary adduced by both parties, I find it pertinent to draw up the issues for determination in this case. **First issue** is whether the Exhibit P2A, B and C and Exhibit P3 were seized from the two accused person after being arrested. **Second**, is whether or not

the chain of custody was broken. **Third**, is whether the defence case raised any reasonable doubt against the prosecution case.

Starting with the first issue whether the Exhibit P2A, B and C and Exhibit P3 were seized from the two accused persons after being arrested. It is the evidence of PW1 and PW2 that the Exhibit P2A, B and C collectively and Exhibit P3 were found in the possession of 1<sup>st</sup> and 2<sup>nd</sup> accused persons. To support this PW1 tendered the certificate of seizure Exhibit P1, which was admitted and marked Exhibit P1 which shows that items seized immediately after the arrest of 1<sup>st</sup> and 2<sup>nd</sup> accused persons, it was filled by listing the items seized, signed by the officer executing search, witnesses to the search and both accused persons wrote their names and signed it. In the case of **Song Lei vs. the DPP, and the DPP vs. Xiao Shaodan and Two Others**, Consolidated Criminal Appeal Nos. 16'A' of 2016 & 16 of 2017, CAT at Mbeya (Unreported), the Court of Appeal held that;

*“having signed the certificate of seizure which is in our considered view valid, he acknowledged that the horns were actually found in his motor vehicle”*

Also, Section 38 (3) of the Criminal Procedure Act, CAP 20 R.E 2019 provides that, *“where anything is seized in pursuance of the powers conferred by subsection (1) the officer seizing the thing shall issue a receipt acknowledging the seizure of that thing....”*

In the case at hand, the existence of the signatures of the 1<sup>st</sup> and 2<sup>nd</sup> accused persons in the certificate of seizure Exhibit P1, it acknowledges that the items listed in the said certificate of seizure Exhibit P2A, B, C and Exhibit P3 were found in their possession

as the owners of the said items and the argument that the accused persons saw the Exhibit P2A, B and C here in the court and to have signed the Exhibit P1 at the police station after being beaten is an afterthought.

However, in the case of **David Athanas@ Makasi Joseph Masima@ Shando Vs the Republic**, Criminal Appeal No. 168 of 2017, CAT at Dodoma(unreported), the Court of Appeal stated that; *"..... the certificate of seizure ought to have been signed at the place where the search was conducted and in the presence of an independent witness. ...considering that there was no independent witness present as required by law, the said certificate cannot be accorded weight"*

In the prosecution evidence it has been evidenced the arrested officers were hiding in the forest as adduced by PW2 where they met and arrested the two accused persons there at the road in the forest. The place is regarded as not easy to find an independent witness to witness the seizure. Therefore, in the circumstances of this case it was difficult to get an independent witness during the arrest, filling certificate of seizure and its execution thereon. Considering the circumstances of the case it is apparent that the search and seizure had been conducted in the forest, all witnesses to the arrest, search and seizure are wildlife officers and the police officers, who signed Exhibit P1 and 1<sup>st</sup> and 2<sup>nd</sup> accused persons signed the same.

**Secondly**, is whether or not the chain of custody was broken. It is clear from the prosecution evidence that, Exhibit P2A, B and C and Exhibit P3 were seized by PW1 at the scene of crime on



04/04/2018 who labelled the same according to the requirement of PGO No. 229 Paragraph 8 which provides that;

*"The investigating officer shall attach an Exhibit Label (P.F. 145) to each exhibit when it comes into his possession. The method of attaching labels differs with each type of exhibit. In general, the label shall be attached so that there is no interference with any portion of the exhibit which requires examination."*

PW1 took the said exhibits to PW4 the Exhibits Keeper, who kept them in his custody until they were tendered before the court. However, in different times PW3, PW5, PW6 and PW7 dealt with the Exhibit P2A, B and C according to their involvement in this case. It is evidenced that there is no any documentary exhibit tendered in court to show the chronological documentation to establish the chain of custody of the said exhibits. The most accurate method of establishing the chain of custody is on the documentation as explained in **Paulo Maduka & Others vs. The Republic**, Criminal Appeal No. 110 of 2007. However, documentation will not be the requirement in dealing with exhibits. An exhibit will not fail the test merely because there was no documentation. Other factors have to be looked into depending on the prevailing circumstances in particular case as expounded in the case of **Chacha Jeremiah Murimi and 3 Others vs Republic**, Criminal Appeal No. 515 of 2015, CAT at Mwanza (Unreported).

In the case of **Chacha Jeremiah Murimi and 3 Others Vs Republic**, (*supra*), the Court of Appeal explained that;

*"In establishing chain of custody, we are convinced that the most accurate method is on the documentation as stated in **Paulo Maduka & Others vs. Republic**, Criminal Appeal No. 110 of 2007 and followed in **Makoye Samwel @ Kashinje and Kashindye Bundala**, Criminal Appeal No. 32 of 2014 cases (both unreported). However, documentation will not be the only requirement in dealing with exhibits. An exhibit will not fail the test merely because there was no documentation. Other factors have to be looked depending on the prevailing circumstances in particular case. For instance, in cases relating to items which cannot change hands easily and therefore not easy to tamper with, the principle laid down in **Paulo Maduka** (supra) would be relaxed."*

The above position by the Court of Appeal was echoed in the case of **Zainabu d/o Nassoro @ Zena Vs. Republic**, Criminal Appeal No. 348 of 2015 (unreported) that the underlying rationale for ascertaining a chain of custody is *"to show to a reasonable possibility that the item that is finally in court as evidence, has not been tampered with along its way to the court"*.

Also, in the case of **Abuhi Omari Abdallah and Others Vs. Republic**, Criminal Appeal No. 28 of 2010, CAT at DSM (unreported), the Court of Appeal, stated that,

*"The absence of the evidence of Kenyela, Linus, the undisclosed cleaners, tester and the post office man, totally destroyed the essential chain of custody of the said pellets..."*

In the case at hand the prosecution paraded all seven (7) credible witnesses who at one point handled the Exhibit P2A, B and C which cannot easily be tampered, altered, swapped and the three (3) credible witnesses who dealt with the motorcycle Exhibit P3. There is adequate paper trail as well as oral evidence of the chain of custody. The importance of the integrity of the chain of custody of exhibits is assurance of their reliability. Therefore, chain of custody of Exhibit P2A, B and C was not broken from the time they were seized from the accused persons to the same being tendered before the court. Hence it is my considered view that the chain of custody was not broken.

Coming to the last issue is whether the defence case raised any reasonable doubt against the prosecution case. In the evidence of PW1, PW2, PW3, PW4, PW5 and PW7 there are several omissions in their statements recorded at the Police Station as there are facts which the witnesses did not state in their written statement. Having carefully assessed the said omissions by the witnesses mentioned above, I found the omissions were minor since what would be the omission by one witness has been covered and corroborated by other witnesses. In the case of **Goodluck Kyando Vs R (2006) TLR 363**, the Court of Appeal held that;

*“Every witness is entitled to credence and must be believed and his testimony accepted unless there are good and cogent reasons for not believing a witness.”*

The good reasons for not believing a witness include the fact that the witness has given improbable or implausible evidence, or

the evidence has been materially contradicted by another witness or witnesses. As pointed earlier in the second issue all seven prosecution witnesses are credible witnesses, there is no reasonable ground not to believe their evidence.

In the case at hand the omissions did not cause contradictions to the evidence of the witnesses rather the evidence became more detailed than the statements recorded at the Police Station. Even if the said evidence had inconsistencies as compared to the witnesses' statements did not go to the root of the case to prejudice the accused persons or cause the prosecution case to flop, refer the case of **Said Ally Ismail Vs. R**, Criminal Appeal No. 241 of 2008, CAT at Mtwara (unreported), where the Court of Appeal held that;

*"It is not every discrepancy in the prosecution case that will cause the prosecution case to flop. It is only where the gist of the evidence is contradictory then the prosecution will be dismantled"*

It is clear from the evidence of DW1 and DW2 that, the 1<sup>st</sup> and 2<sup>nd</sup> accused persons were not at the scene of the crime and were not arrested at the place and time alleged by the prosecution. It is the evidence of prosecution through PW1 and PW2 that the accused persons were arrested at Kibanga Village Buoga area at 7.00pm in the forest along the road from Mbunda to Kibanga. While in the evidence of defence through DW1 and DW2 state that on the material date the 1<sup>st</sup> and 2<sup>nd</sup> accused person were arrested at Hamimu's house at 5.00 pm. From these evidences of both sides this court regards the evidence of the defence witnesses raises the defence of alibi rather than raise reasonable doubt. As held in the

case of **Hamisi Bakari Lambani vs Republic**, Criminal Appeal No. 108 of 2012, CAT at Mtwara (Unreported), the Court of Appeal expounded that;

*“the law requires that person who intends to rely on the defence of alibi to give notice of that intention before the hearing of the case, S. 194(4) of the Criminal Procedure Act, Cap 20). If the said notice cannot be given at that early stage, the said person is under obligation, then, to furnish prosecution with the particulars of the alibi at any time before the prosecution closes its case S.194 (5) Cap 20. Should the accused person raise the alibi much later, later than what is required under subsections (4) and (5) above, as was the case herein, the court may, in its discretion, accord no weight of any kind to the defence s.194 (6). “*

Section 194 of the CPA is in pari materia with section 42 of the Economic and Organised Crime Control Act [CAP 200 R.E. 2002]. The above decision is in accord with section 42 of Cap 200 R.E 2002. Therefore, it is my assessment that the 1<sup>st</sup> and 2<sup>nd</sup> accused persons raised the defence of alibi at the defence stage and failed to comply with Section 42(1), (2) and (3) of CAP 200, that if the 1<sup>st</sup> and 2<sup>nd</sup> accused persons intended to rely upon an alibi in their defence they were mandatorily required to indicate to the court the particulars of the alibi during preliminary hearing, if not furnish the prosecution with the particulars of the alibi they intended to rely on as a defence at any time before the close of the prosecution case. Failure to observe the provisions as mentioned, the court may accord no weight of any kind to the defence. This

court does not accord any kind of weight to the defence adduced by the 1<sup>st</sup> and 2<sup>nd</sup> accused persons.

Taking into consideration the defence of DW1 and DW2 that they do not know how Exhibit P3 was taken from Hamimu's house to the Muleba Police Station, and that they both saw the Exhibit P2A, B and C for the first time here in court on 05/08/2020. Another fact raised that they have been tortured and forced to sign the Exhibit P1 at the Police Station. During prosecution case the Defence failed to cross examine about these facts. These facts surfaced for the first during the defence case. In the case of **Athumani Rashid v. Republic**, Criminal Appeal No. 264 of 2016, CAT at Tanga (unreported), the Court of Appeal underscored the position held in the case of **Damian Ruhele vs. Republic**, Criminal Appeal No. 501 of 2007 (unreported) that;

*"It is trite law that failure to cross-examine a witness on an important matter ordinarily implies the acceptance of the truth of the witness."*

In the case of **Martin Masara vs. The Republic**, Criminal Appeal No. 428 of 2016, CAT at Sumbawanga (unreported), held that,

*"No cross - examination was done when PW1 testified. It is trite law in this jurisdiction founded upon prudence that failure to cross-examine on a vital point, ordinarily implies the acceptance of the truth of the witness evidence; and any alarm to the contrary is taken as an afterthought if raised thereafter".*

This same position was observed in the case of **Nyerere Nyague vs. Republic**, Criminal Appeal No. 67 of 2010, CAT at Arusha (unreported), that;

*“As a matter of principle, a party who fails to cross-examine a witness on a certain matter and will be estopped from asking the trial court to disbelieve what the witness said.”*

The DW1 and DW2 did not cross-examine on the matters they relied upon in the defence. They did not cross-examine on being arrested at Hamimu's place and not as testified by PW1 and PW2, how the Exhibit P3 was taken from Hamimu's house to the Muleba Police Station, that they both had never seen the Exhibit P2A, B and C before the 05/08/2020 in court and they had been tortured and forced to sign the certificate of seizure Exhibit P1 at the Police Station and not at the scene of crime as stated by the prosecution witnesses.


It is my considered view that failure to cross-examine on these important matters adduced by prosecution witnesses, “safely vouches to the acceptance of truthfulness of a witness” held in the case of **Song Lei vs the DPP, and the DPP vs Xiao Shaodan and Two Others**, Consolidated Criminal Appeal Nos. 16'A' of 2016 and 16 of 2017, CAT at Mbeya (Unreported). The defence in this present case accepted the said truthfulness of the prosecution witnesses' evidence. The evidence advanced by DW1 and DW2 is purely an afterthought. After having said that I find the defence evidence does not raise a reasonable doubt against the prosecution case.

In the case of **Christian s/o Kaale and Rwekiza s/o Bernard V Republic [1992] TLR 302**, the court held that “an *accused ought to be convicted on the strength of the prosecution case.*”

In this regard I am opinion that the prosecution case proved beyond reasonable doubt against the 1<sup>st</sup> and 2<sup>nd</sup> accused persons in this case.

In the upshot, I am settled the cumulative evidence of the prosecution has proved beyond a reasonable doubt the offence against the 1<sup>st</sup> and 2<sup>nd</sup> accused persons and are found guilty for unlawful possession of government trophy to wit one elephant tusks under section 86(1) and (2) (b) of the Wildlife Conservation Act No. 5 of 2009 read together with Paragraph 14 of the First Schedule to, and section 57(1) and 60(2) of the Economic and Organized Crime Control Act [Cap 200 R.E. 2019] as amended. I therefore convict the 1<sup>st</sup> and 2<sup>nd</sup> accused persons for the offence as charged in this case.



  
**L. L. MASHAKA**  
**JUDGE**  
**18/08/2020**



## **SENTENCE**

The 1<sup>st</sup> and 2<sup>nd</sup> accused persons were found guilty and convicted for unlawful possession of government trophy to wit one of elephant tusk under section 86(1) and (2) (b) of the Wildlife Conservation Act No. 5 of 2009 read together with Paragraph 14 of the First Schedule to, and section 57(1) and 60(2) of the Economic and Organized Crime Control Act [CAP 200 R.E. 2019] as amended.

Before sentencing, on previous record of conviction learned State Attorney Mahona submitted that both 1<sup>st</sup> and 2<sup>nd</sup> accused persons have no criminal record. They are first offenders. However, learned State Attorney prayed to the court to hand out a heavy sentence to the 1<sup>st</sup> and 2<sup>nd</sup> accused persons because they killed one elephant who attracts tourism and have deprived of the Government revenue. That this court should not show clemency to the accused persons due to old age or sickness or taking care of a big family, it should not be an excuse to be lenient. That the accused persons should have known the consequences and a harsh sentence to be handed over to the 1<sup>st</sup> and 2<sup>nd</sup> accused persons.

Learned State Attorney for the Republic prayed to the court to order forfeiture of the one elephant tusk Exhibit P2A, B, C and motorcycle Exhibit P3 under section 111 (1)(a),(d)and (3) of the Wildlife Conservation Act No. 5 of 2009.

In mitigation learned Counsel Mbekomize for the accused persons prayed for a lenient sentence for both accused persons that the 1<sup>st</sup> and 2<sup>nd</sup> accused are first offenders and have no criminal record.

That both 1<sup>st</sup> and 2<sup>nd</sup> accused persons are remorseful of what they did, still young and can still participate and contribute to the development of the nation

In Allocutus, the 1<sup>st</sup> accused prayed to the court for lenient sentence. The second accused prayed for a lenient sentence because he has a family, 6 children and being father and head of family his absence will affect greatly his family.

I heard the prayer by learned State Attorney for Republic that a stiff punishment be imposed on the accused persons who illegally killed one elephant our national heritage, our wildlife and a source of revenue through tourism. I have also heard the mitigation by learned Counsel for the accused persons and allocutus by both accused persons.

I have considered the mitigation factors advanced and I am guided by the relevant legislations that is the Wildlife Conservation Act No. 5 of 2009 and the Economic and Organized Crime Control Act [CAP 200 R.E 2019] on the punishment provided for the offence committed under section 86(1) of Act No. 5 of 2009 by the 1<sup>st</sup> and 2<sup>nd</sup> accused persons.

Section 86(2)(b) of Act No. 5 of 2009 provides that;

***"(2)a person who contravenes any of the provisions of this section commits an offence and shall be liable on conviction-***

***(a) .....***

***(b) Where the trophy which is the subject matter of the charge or any part of such trophy is part of an animal specified in Part I of the***

*First Schedule to this Act, and the value of the trophy exceeds one hundred thousand shillings, to a fine of sum of not less than ten times the value of the trophy or imprisonment for a term of not less than twenty years but not exceeding thirty years or to both”.*

While Section 60 (2) of the Economic and Organized Crime Control Act [CAP 200 R.E 2019] provides that:-

*“Notwithstanding provision of a different penalty under any other law and subject to subsection (7), a person convicted of corruption or economic offence shall be liable to imprisonment for a term of not less than twenty years but not exceeding thirty years, or to both such imprisonment and any other penal measure provided for under this Act;*

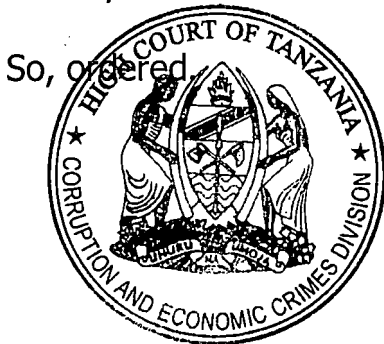
*Provided that, where the law imposes penal measures greater than those provided by this Act, the Court shall impose such sentence”.*

Bearing in mind that one elephant was illegally killed by the accused persons, and in consideration the accused persons are first offenders, I hereby sentence the 1<sup>st</sup> and 2<sup>nd</sup> accused persons to pay a fine of TZS 337, 800,000/- or serve 20 (twenty) years imprisonment.

The court has considered the time the 1<sup>st</sup> and 2<sup>nd</sup> accused persons have spent in remand since they were arrested on the 16/03/2020 until today. They have been in remand under the custody of either the Police at the Police Station and the Prisons. The accused persons remained and were presumed innocent until proven guilty as it was well articulated in the case of **VUYO JACK Vs THE DPP**, Criminal Appeal No. 334 of 2016, CAT at Mbeya (unreported), where the Court of Appeal held that;

*"On the aspect of sentencing we have this to say; since the appellant was at the time of arrest not yet convicted, bearing in mind a legal maxim that an accused person is presumed innocent before conviction, he could not be subjected to serve any sentence. The time spent by the appellant behind the bars before being found guilty, convicted and sentenced, would have been a mitigation factor in imposing the sentence....."*

The 1<sup>st</sup> and 2<sup>nd</sup> accused persons were found guilty, convicted and sentenced. I accordingly order that the time spent in remand behind bars before this conviction is taken by the Prisons Service as time already served towards the sentence.



**L. L. Mashaka**  
**Judge**  
**18/08/2020**

Right of appeal fully explained to the 1<sup>st</sup> and 2<sup>nd</sup> accused persons and the Republic.

**L. L. Mashaka**  
**Judge**  
**18/08/2020**

**COURT:**

Sentence was read and delivered in the presence of Ms. Suzan Masule, State Attorney, Ms. Veronica Moshi, State Attorney, Mr. Juma Mahona, State Attorney representing the Republic, 1<sup>st</sup> and 2<sup>nd</sup> accused persons and learned Counsel Remidius Mbekomize representing the 1<sup>st</sup>

and 2<sup>nd</sup> accused persons in open court today the 18<sup>th</sup> day of August 2020.

**Sgd: L.L. Mashaka**  
**Judge**  
**18/08/2020**

**Order:**

1. The one elephant tusk (Exhibit P2 A, B and C) and the motorcycle with registration no. MC 956 ATY make GSM (Exhibit P3) are forfeited to the Government and to be disposed of under section 111(1) (a) (d) and (3) of the Wildlife Conservation Act, No. 5 of 2009.



**Sgd: L.L. Mashaka**  
**Judge**  
**18/08/2020**