

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

**MUSOMA SUB REGISTRY**

**AT MUSOMA**

**CRIMINAL APPEAL NO 137 OF 2021**

(Arising from Economic Crime Case no 40 of 2019 in the District Court of Tarime)

**MSETI S/O DANIEL MSETI .....APPELLANT**

***VERSUS***

**THE REPUBLIC ..... RESPONDENT**

**JUDGMENT**

13<sup>th</sup> September & 31<sup>st</sup> October 2022

**F. H. Mahimbali, J.**

The appellant was convicted being in 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 organised Crime Control act (Cap 200 R. E. 2022) as amended by the Written Laws (Miscellaneous Amendments) Act No 3 of 2016 and accordingly sentenced to 20 years imprisonment in jail.

In essence it was alleged that on the 18<sup>th</sup> July 2019 at Ngerengére Village within Tarime District in Mara Region the appellant was found in

unlawful possession of the said elephant tusks to wit: five pieces weighing 24.550 Kg, worth 170,700,000/= the property of the Government of the United Republic of Tanzania. The appellant denied the allegations levelled against him, thus necessitating the prosecution to call a total of ten witnesses and tendered 11 exhibits.

The defense side, the appellant had fended for himself and tendered one exhibit – D1 (Pf3).

According to the prosecution evidence via their ten witnesses, the summary of evidence can be put this way. That through intelligent information, PW2 had got information that the appellant who was at Silari had elephant tusks and was about to sell them and was thus looking for a prospective buyer. The PW2 informed his superiors: the RPC Tarime/Rorya and then the OC- CID Silari. Then, PW2 faked to be the buyer of the elephant tusks together with other police officers led by OC-CID one Mwamafula made communication with the appellant and planned to meet at Silari where they organised and met. Did discussion and agreed that one Kg. would be purchased at a price of 150,000/=.

Believing that he is going to sell the said cargo deal to PW2, the appellant then boarded the vehicle driven by PW2 and led them to Mti Mrabu. They thus went up to Ngérengrére village where they stopped.

The appellant then got off, took bodaboda (PW1) to Mti Mrabu village. He collected his cargo and returned with the bodaboda at the point he had left the PW2 and his team. No sooner had they arrived there when they were then arrested. Upon being searched he was found with five elephant tusks which were then seized. By that time the bodaboda rider had escaped leaving his motorcycle with Reg. No. T.MC 815 BQG Sanlg (P6 exhibit which was marked as N7). When search was done in the said sulphate bag, five elephant tusks were recovered (marked as N, N1, N2, N3, N4), which were admitted in the trial court as exhibit P2. The said search and seizure were witnessed by PW3, an independent witness. Still pictures were taken at the scene during the said search and seizure. The appellant was then arrested and taken to police station Sirali where exhibits were handed to PW8 who later handed the same to Pw5 the exhibit keeper who kept the same until its production in court on 21<sup>st</sup> October 2020. Just after three hours of his arrest, the appellant while at Sirali police station on the 19<sup>th</sup> July 2019 was interrogated by PW6 by way of caution and admitted to have committed the said offence of being in unlawful possession of the government trophies. When the said elephant tusks were sent to the Weight and Measurement Agency, they were weighed to be 24.55Kg (P11).

Whether what was arrested and seized was really government trophy as per law, PW4 – the Wildlife Officer duly certified the marked items N, N1, N2, N3 and N4 were upon examining them professionally established that they were elephant tusks and as per their nature they belonged to five different elephants. So, he certified so and admitted in Court as exhibit P2. Considering the value of one elephant is equivalent to 75,000 USD, the value of five elephants was equivalent to Tsh. 170,700,000/= as the exchange rate stood at 2,276 /= by then.

In his defense, the appellant admitted to have been arrested by police on the night of 18/7/2019 but on his way from farm. He thus disputed to have been arrested in connection with this charge but on personal grudges by one police officer he named Bahati as was accusing him of having some extra marital affairs with his wife. Therefore, this was a cooked case against him maliciously perpetuated by the said police officer Bahati of Silari Police station. That even the purported cautioned statement was not his but falsely obtained after having been exposed to high torture by the said Bahati and Deogratias police officers. He tendered D1 exhibit (PF3) in support of his claims that he was tortured.

Having digested the evidence of the whole case, the trial magistrate was satisfied that the prosecution case had been established beyond reasonable doubt as per strength of the prosecution case. She reached that finding upon satisfaction that what was seized was actually identified to be elephant tusks and lawfully seized from the appellant. On the other hand, she discredited the defense testimony as a mere after thought as the appellant had completely failed to challenge the prosecution testimony if really there was hatred relationship between him and some police officers on claims of extra marital affairs with some wives of police officers at Silari.

Upon conviction and sentence, the appellant was not amused by the said verdict of the trial court. Thus this appeal, based on the following ten grounds of appeal, namely:

- 1) That, the trial magistrate erred in law and fact to neglect the defense of the appellant which had watertight evidence for the reason that this matter in issue was planted against the appellant at Sirari police station by evil intent, when the appellant arrested was found with nothing in his possession. Appellant threatened and forced to be interrogated and signed caution statement at night time about 1:15 to 2:40 hrs by PW6 and other police men.*

- 2) *That, the trial magistrate erred in law and fact to believe that the said caution statement made before PW6 by force at night time amounted to confession by the appellant while the situation indicates that the said caution statement had not freely taken at the alleged night due to the fact that each evil intent was done and completed at that night time and it was not easy for appellant to have a chance to call his relative or lawyer or advocate. Thus for the interest of justice the requirement of justice of peace was necessary.*
- 3) *That the trial magistrate misdirected herself on point of law and fact when she failed to evaluate the entire evidence, make a critical analysis and scrutiny and hence reached at finding which was improper and lacked support from the records.*
- 4) *That, the trial magistrate erred in law and fact to consider hearsay evidence of PW1 and PW3 who were taught by police officer especially PW6 to adduce cooked and false evidence which is inadmissible and it is trite in law to rely and base on such evidence to convict the innocent appellant in this case.*
- 5) *That, the trial magistrate erred in law and fact to admit the evidence of (PW3) the said independent witness who alleged to have seen the incidence but actually had directed to sign the statement at night without having properly identified the said five elephant tusks at the alleged scene of crime and there were no any local leaders of the said village who were present and consulted to identify the said matter in issue and who may appear before the court to corroborate the evidence of PW3 that he is the person from their village and that*

*the alleged matter occurred in the same village in the material date and night. Thus, the appellant still doubting on the weakness of this prosecution evidence.*

- 6) That, the trial magistrate erred both in law and fact to consider false evidence adduced by PW1 and PW2 that the alleged five elephant tusks were carried by the appellant who was brought by cyclist of Ng'ereng'ere parking point while his evidence was not corroborated by other cyclists of the alleged parking point and the same. PW1 failed to produce his motorcycle card to prove that the said motorcycle (SUNLG-MC 815 BOQ) that was owned by him or it belongs to him by supporting document. Thus, this evidence is cooked one; PW1 did not raise an alarm to seek for help from the neighbours or villagers who their evidence was part and parcel in this case.*
- 7) That, the trial magistrate erred o point of law by basing on the incredible and unreliable witness of the prosecution side that are PW1, PW2, PW3, PW4, PW5, PW6, PW7, PW8, PW9 and PW10.*
- 8) That, the trial magistrate misdirected herself in her finding to hold that the appellant engaged in the commission of the alleged matter in issue and that he was properly identified and found in possession or carried the said five elephant tusks while this matter was not true.*
- 9) That, the trial magistrate failed to discover that, this case was made by using the shadow of an informer and the prosecution's witnesses as a tactics of misleading the trial court to reach in wrong judgment. Therefore evidence*

*adduced before the trial court by PW1 indicates that was the one who was called at Sirari Police Station to identify the appellant in police custody and be given the said motorcycle at police station as if he was the owner of it and ordered to write statement then released and reserved as prosecution witness for the interest of police.*

10) *That, the evidence adduced by the prosecution side was insufficient to prove its case beyond all reasonable doubts.*

During the hearing of the appeal, the appellant was unrepresented whereas for the Republic – respondent was dully represented by Mr. Frank Nchanilla, learned state attorney.

The appellant who was unrepresented, on his part prayed that his grounds of appeal be adopted and digested by the court and be part of his submission and thus consider his appeal and set him free. He then invited the Republic to respond.

On his part, Mr. Frank Nchanilla for the Republic resisted the appeal. With the first ground of appeal that the trial magistrate failed to consider his defense and that he was threatened prior to his recording of cautioned statement, he considered this ground as baseless. As per page 6 of the typed judgment, the trial magistrate weighed his defense against that of the prosecution, and was satisfied that the prosecution's case was stronger and convicting. He elaborated that, in digest to the



ten prosecution witnesses and 10 prosecution exhibits, the prosecution evidence was incriminatingly water tight. As far as the cautioned statement is concerned, the testimony of PW6 is relevant as per what transpired in pages 56-59 of the typed proceedings. It is clear how the cautioned statement was recorded. During the admission of the said exhibit P8, the appellant had denied its admission as he repudiated it. Thus, as per law, inquiry was conducted (see pages 60-66 of the typed proceedings). At last, at page 69 of the typed proceedings the trial court after the inquiry proceedings, overruled the objection and the exhibit was dully admitted. As that issue was legally resolved, the appellant cannot now raise the same thing which was legally dealt with. Therefore, this ground of appeal is baseless and is bound to fail. Relying in the case of **Nyerere Nyague vs Republic**, Criminal Appeal No 67 of 2010, CAT at Arusha, (pages 6 – 7), he said that it has laid down the procedure how to deal with a repudiated confession evidence. That was fully complied with in this case by the trial magistrate. Thus, the said cautioned statement was properly taken from the appellant as per law. The appellant is now precluded from challenging it.

As regards to the second ground of appeal, the appellant is challenging the cautioned statement being recorded at night time, thus

was deprived of his right of calling relatives or lawyer. Mr. Nchanila considered the validity of the cautioned statement was dully dealt with in his submission on ground number one of appeal. However, as regards the fact that the timing of recording cautioned statement is concerned, he is of the view that section 50 and 58 of CPA are clear that recording of it is supposed to be done within four hours from the time of apprehension. As he was arrested at night, he was supposed to be recorded his statement within four hours. As per pages 63-64 of the typed proceedings (inquiry proceedings), on his defense evidence had not raised an issue how the appellant was prejudiced by that recording at night. What is gathered from PW1's testimony in inquiry proceedings (page 62 of the typed proceedings), exhibits that the appellant had no any relative/friend/lawyer to call as witness of the said recording. Therefore, he was not prejudiced in anyhow.

On the third ground of appeal, the appellant's grief is failure of the trial magistrate to evaluate the whole of prosecution's evidence thus, arrived at a wrong conclusion/finding. He considered this ground of appeal as too general. However, as to his reading of the trial court's judgment (Balyaruha) he credited the trial magistrate for having analysed the whole case properly and how she reached that conclusion.

It is clear that the trial magistrate did an excellent job. On this, he concluded that, the trial court's judgment was fair and justified. As the said judgment has fully complied with section 312 of CPA, Cap 20 R. E. 2022, this ground of appeal is equally baseless, he emphasised Mr. Frank Nchanilla, and thus prayed this appeal be dismissed.

On the fourth ground of appeal, the appellant alleges that there was consideration of hearsay evidence (PW1 and PW3 and PW6), Mr. Nchanilla differed with this, as being baseless. He has not seen how the evidence of PW1 is hearsay as per his testimony he being a bodaboda rider. It is him who had carried the appellant from Ngérengré bus stand point to Mti Mrabu village and back to Ngérengré village as bodaboda rider. At the scene, he had managed to escape leaving the appellant there. So, his testimony is purely direct evidence on the aspect of arrest of the appellant. PW3's evidence is traced from page 42 – 43. He is an independent witness. He is neighbour to the appellant. He witnessed search of the scene. He wondered why then PW3 is not credible witness on allegation of hearsay evidence. The testimony of PW6 is the recording officer of the appellant's cautioned statement. One can hardly doubt it that he was a hearsay witness.

He concluded on this that the evidence of PW1, PW3 and PW6 is oral and direct evidence which is clear and relevant in the incrimination of the appellant.

On the fifth ground of appeal, he argued that it greatly resembles with ground no 4 of the appeal. He elaborated that the appellant is trying to challenge the testimony of PW3 as not being an independent witness. There is no law that stipulates an independent witness must be a local leader. In the circumstances of this case where the appellant was spotted/arrested along the road, as per law there was no that compulsion of tracing the local leader unless it was a search to dwelling house. This is as per section 106 (1) of the Wildlife conservation Act of 2009. Therefore, the presence of PW3 at the scene, added value to the arrest and seizure process. As who is an independent witness, the law is, a witness who is neutral and not necessarily a local leader.

Turning to the sixth ground of appeal, that the of testimony PW1 and PW2 was not corroborated by anyone and that there was no tendering of documentary evidence on ownership of motorcycle, he considered this ground of appeal as baseless. Since the said Motorcycle was not under contest of ownership, it was not important to tender evidence for the ownership of the said motorcycle. In respect of other

bodaboda riders not being called as witness of the case, he explained that the law is (under section 143 of TEA), the number of witnesses is irrelevant. What matters from the witnesses, is reliability and credibility of witnesses. So far as per proceedings of the case, the called witnesses did it all. There was no any doubt unresolved to call other witnessed, submitted Mr. Frank Nchanila.

He clarified that in the case of **Goodluck Kyando vs Republic** [2006] TLR 363, a good precedent was set that there must be credence to witnesses, unless there are good reasons of doing so. With this ground of appeal, he considered it as baseless.

On the seventh ground of appeal, the appellant does not state why the evidence of testimonies of PW1 – PW10 is incredible and unreliable. He considered it as baseless ground relying on what was submitted in ground no 6 be adopted here as well.

Submissions in ground 8 of the appeal, he considered it being also very general and unreliable. The trial court relying on evidence of PW1 – PW10 and exhibit P1-10, ruled that the prosecution's case was water tight. Therefore, the appellant's ground of appeal lacks merits.

On the ninth ground of appeal, he equally countered it. It is true that the evidence of this case starts with the informer. As per investigation of this case, it needed intelligence technique to capture the accused person. That PW1 was used to black mail the appellant, Mr. Nchanila rebutted it. This is because the available evidence of PW1 is clear on that. He had no any knowledge of it. He considered this ground of appeal as more intangible to challenge the trial court's convict.

With the last ground of appeal, basing on response to the rest of grounds of appeal, Mr. Frank Nchanilla firmly believes that, the prosecution's case was well proved beyond reasonable doubt as the available evidence proved all its case beyond reasonable doubt. Thus, this appeal be dismissed.

In his rejoinder submission, the appellant reiterated that his appeal be allowed as the evidence of the trial court should find him as innocent adding that there was no proof that the said trophies are elephant tusks as alleged.

I have carefully digested the grounds of appeal by the appellant and the respondent's submission as far as this appeal is concerned. I have equally carefully scanned the lower court's decisions evidence and proceedings thereof. I am satisfied that this is the case that

investigation did excellent job from arrest, search, seizure, handling of exhibit and delivery of its evidence before the trial court. Equally, the trial magistrate did excellent job in handling the case, reception of evidence and analysis of the evidence presented before it and finally reached a proper verdict.

The argument by the appellant that the appellant's evidence raised a reasonable doubt is wanting. This is because, digesting the defense evidence, hardly can it be considered to have any meaningful defense. That the prosecution evidence is fabricated and tilted with ill motive against the appellant on allegation that he is in extra marital status with some wives of police men is unestablished. It is a mere flimsy statement. That there was use of force in procuring exhibit PE8 by PW6 has not been vivid. It having been passed the admissibility test, I have not seen any sound argument by the appellant to discredit it. For it to have been taken at night, there is no law that prohibits such a recording as the law prescribes recording of the accused person's statement within four hours after his apprehension. As he was arrested at 23.50hrs of 18/7/2019 and the recording of it was done at 01.15hrs of 19/7/2019, it was done within time frame and did not exceed the set time of four hours.

With the evaluation of the evidence, the judgment of the trial court is self-explanatory. I reproduce what the trial magistrate analysed the case for clarity:

*The body of evidence presented by the prosecution side was to the effect that on 18/07/2019 while PW2 was working on the special Task Force at Mugumu he was informed by his that there was someone at Sirari area who was looking for a purchaser of elephant tusks. Acting on such information, after communicating with RPC – Tarime/Rorwa and OC-CID-Sirari, one ASP Mwamafupa, he and other police officers posed like buyers, with the help of his informer they met with the seller at Sirari area. The seller told him that he had five pieces of elephant tusks which he was selling for Tshs. 150,000/= per kilogram which PW2 agree to pay, then seller told him that the said elephant tusks which he was selling for Tshs 150,000/= per kilogram which PW2 agreed to pay the seller told him that the said elephant tusks were hidden at Mti Mrabu village, sirari and so PW2 took the seller on his car up to Ng'ereng'ere village from where the seller took a bodaboda to Mti Mrabu village. According to PW1 bodaboda, in the night of the material day, while at new Bus Stand at Ng'ereng'ere village he was hired by a passenger to Mti Mrabu village, on arrival there the passenger told him to stop at certain place then the passenger disembarked from the motorcycle and told him to wait for him while he went away and about 15 minutes later the passenger returned with a sulphate bag and boarded the motorcycle back to Ng'ereng'ere village. PW1 continued that, on arrival at Ng'ereng'ere Primary school*



*the passenger told him to stop where there was a parked black car, so he did and suddenly he heard voice ordering them to kneel down as they were under arrest, PW1 jumped from his motorcycle and ran away.*

*According to PW2 testimony, when the seller returned from Mti Mrabu village with a bodaboda he hired they put him under arrest with his exhibit, whereas the bodaboda (PW1) managed to escape leaving his motorcycle behind. Thereafter, PW2 interrogated the seller who told him that he carried five pieces of elephant tusks in his sulphate bag, so they opened the said sulphate bag in front of an independent witness (Pw3) and inside found five pieces of elephant tusks of different sizes of which the seller said that he had no any valid permit authorizing him to possess. Thereafter, PW2 marked and labelled the five pieces of elephant tusks, thus, N, N1, N2, N3 and N4 (exhibit P2) and then labelled the two sulphate bags used to carry the said elephant tusks, as N5 and N6 (exhibit P3) and the motorcycle with registration No MC 815 BQG make SANLG was labelled N7 (Exhibit P4). Also at the time of the arrest the seller was found with two mobile phone TECNO black in colour (Exhibit P5), after seizing the said exhibits, PW2 filed a certificate of seizure (Exhibit P1) indicating exhibit found and seized from the accused person during the arrest, the certificate of seized was witnessed and signed by PW3 an independent witness who was approached by the police officers at his house around 23:00 hours in the material night and went with them to the crime scene where he witnessed the search and seizure of the said exhibits, the accused person also signed the certificate of seizure. Thereafter PW2 directed one F. 7623 DC Twalib to take still picture of all the*

*exhibits and the accused person and then PW2 took and hand over the accused person and all of his exhibits to PW8 at Sirari Police Station using the chain of Custody form (Exhibit P6).*

*According PW8 testimony, in the night of 19/07/2021 while on duty at CRO office at Sirari Police Station he received the accused person and his exhibits, namely, five pieces of elephant tusks were kept in two sulphate bags labelled with numbers and a motorcycle make SANLG, both were brought in by PW2. Thereafter, PW8 remanded the accused person in the police custody and fled chain of custody and he hand over the exhibits room. After receiving the said exhibits, PW5 registered them in (Exhibit P6) and filed it showing the handling and movements of exhibits from one person to another. PW5 narrated the chain of custody in and out and tendered them to this court and back to the exhibits room.*

*In the night of 19/07/2019, PW6 was instructed to interrogate the accused person who was at Sirari Police Custody so he took the accused person to the interrogation room where he introduced himself and cautioned and warned and also explained to the accused person his right. Thereafter, PW6 started the interrogation from about 01:15hours which was about three hours after the accused person was arrested and ended the interrogation at about 02:40 hours, in the night. PW6 stated that during the said interrogation, he recorded the accused person's caution statement (Exhibit p8) which was then signed by the accused person using his thumbprint and handwritten signature after the accused person read it.*

*According to PW10 testimony on 19/07/2019 while on duty at Sirari police Station he was assigned a Police Case File No SIR/IR/1131/2019 for the offence of Unlawful Possession of Government Trophy to investigate. Thereafter, after reading witnesses' statement, PW10 took the accused person who was in police custody together with five pieces of elephant tusks which were kept in police exhibits room and went to Sirari Weight and Measures Agency at Sirari Border for weighing and measuring the weight of the said elephant tusks, and after the said measurement they were found to be 24.550 kilograms. Thereafter, PW10 took the elephant tusks back to the Sirari Police Station Exhibit Room.*

*According to PW9 who is a weighing officer, on 19/07/2019 he received five pieces of elephant tusks which were within a sulphate bag and he weighed them using Government Digital scale, he weighed five elephant tusks labelled N N1 N2 N3 and N4 together and they weighed 24,550 grams which is equivalent to 24.55 kilograms. Thereafter, he prepared a report dated 19/07/2019, Exhibit P11 to show the weight he found in the said exhibit. PW9 filled the chain of Custody, Exhibit P6 showing that he received and returned the elephant tusks to PW10. Thereafter, on 22/07/2019 PW10 again took five pieces of elephant, Exhibit P2 from the exhibit room and hand them over to PW4 for identification and valuation.*

*According to PW4 who is the wildlife officer, on 22/07/2019 he was called at Sirari Police Station for identification and valuation of five elephant tusks, he met PW10 and then signed the chain of custody Form, Exhibit*

*P6 and took the tusks in question and started the identification process by looking at the tusks physical appearance and after making further professional tests, he was assured that the tusks in question were elephant tusks from the different elephants. Thereafter he valued the five pieces of elephant tusks, Exhibit P2 multiply by USD 15,000/= which was the value of one elephant, he got USD 75,000/= for all five elephants, and thereafter exchange rate at 22/07/2019 and he got Tshs. 2,276/= which was the exchange rate at 22/07/2019 and he got Tshs. 170,700,000/= as the total value of five elephants, and thereafter he filing Trophy Valuation Certificate (Exhibit P7) indicating his findings.*

*According to PW7 on 30/09/2019 while at his office Forensic Bureau at Dar es Salaam he received an envelope containing a letter and six photographs from OC-CID Sirari Police Station requesting him to do forensic examination on the genuineness of those photographs. He continued that, examination he discovered that those photographs were genuine and thereafter he prepared a report with ref. no 76/2019 (Exhibit P9) and sent it to OC-CID Sirari together with the six picture he examined which he labelled, thus FB 3-1; FB 3-2 FB 3-3 FB 3-4 FB 3-5 and FB3-6 (exhibit P10).*

*In his defence, the Accused person stated that he is in prison because of the intrigue between him and one Bahati a police officer of Sirari Police Station, as the accused person used to drink at the said officer grocery called Rock City where he friended the said officer's wife*

*called Mama John. He continued that on 16/07/2017 Mama John asked him to accompany her at Mabata bar to look for a barmaid and while there she talked with one maid about job offer but the said maid refused the offer. Thereafter, mama John left the accused person drinking at that bar and later on the accused person went to Rock City bar and while there, the said Bahati called his wife behind his grocery and he heard the wife (Mama John) crying. The accused person was later told that Bahati's wife was beaten and said Bahati was also looking for him and so he left and went to Gwitiryo. He continued that, on 18/07/2019 he went to Ng'ereng'ere bus stand and later on he returned to his farm, after he was informed that his crops was destroyed by cows. He continued that while on his way home he was arrested by the police officers, one Bahati and Deogratius who beat said officer took him to Sirari Police Station where he was also beaten in number of times. He added that he was beaten and forced to give his testimony and later on he was given PF3 (Exhibit D1) and treated. The Accused person stated that he is surprised that he was charged with an economic case on allegation that he was found in possession of elephant tusks which he is unaware of.*

With this analysis of evidence, I wonder if the appellant has any sound argument. The same is hereby dismissed as being devoid of any merit.

On the allegation that PW6's testimony is hearsay, it is unfounded. PW6 is the recording officer of the appellant's cautioned statement (PE8

exhibit). Therefore, tendering of the recorded statement does not make the recording officer as hearsay witness. He is a competent witness as per law. What is tendered in court is direct evidence as it is himself who recorded it from the appellant. Equally, the testimony of PW1 and PW3 cannot be hearsay evidence. I say so because, PW1 is bodaboda rider. He was just hired by the appellant himself from Ngérenge village point to Mti Mrabu village. PW3 is an independent witness who witnessed the said search. In any way, he cannot be a hearsay witness.

With ground five on independent witness (PW3). That PW3 was not local leader, my understanding of the law is, there is no law that restricts an independent witness must be a local leader. In the circumstances of this case where the appellant was spotted/arrested along the road, as per law there was no that compulsion of tracing the local leader unless it was a search to dwelling house. This is as per section 106 (1) of the Wildlife conservation Act of 2009. Therefore, the presence of PW3 at the scene, I agree that it added value to the arrest and seizure process. As who is an independent witness, the law is, a witness who is neutral and not necessarily a local leader.

Turning to the sixth ground of appeal, that the testimony PW1 and PW2 was not corroborated by anyone and that there was no tendering

of documentary evidence on ownership of motorcycle, I find this ground of appeal as baseless. Since the said Motorcycle was not under contest of ownership, it was not important to tender evidence for the ownership of the said motorcycle. In respect of other boda boda riders not being called as witness of the case, as submitted, the law is (under section 143 of TEA), the number of witnesses is irrelevant. What matters from the witnesses is reliability and credibility of witnesses. So far as per proceedings of this case, the called witnesses did it all. In the case of **Goodluck Kyando vs Republic** [2006] TLR 303, I agree that a good precedent was set that there must be credence to witnesses, unless there are good reasons of not doing so.

On the seventh ground of appeal, the appellant has not clarified why the evidence/ testimonies of PW1 – PW10 is incredible and unreliable. Otherwise, it is baseless ground and it is dismissed.

With the right ground, the trial court was right in relying on evidence of PW1 – PW10 and exhibits P1-10, as finally they proved the prosecution's case on water tight. Therefore, the appellant's ground of appeal also lacks merits.

On the ninth ground of appeal, it is true that the evidence of this case starts with informer. As per investigation of this case, it needed

intelligence techniques to capture the doer. That PW1 was used to blackmail the appellant, as per evidence in this case, is unfounded. This is because the available evidence of PW1 is clear on that. He had no any knowledge of it. Therefore, this ground of appeal is baseless to challenge the trial court's verdict.

With the last ground of appeal, basing on the considerations of the above findings, it is my firm position that the prosecution's case was well proved and beyond reasonable doubt as per available evidence in record.

All this said and done, appeal is dismissed as it is devoid of merit. Conviction and sentence meted out are hereby upheld and confirmed.

It is so ordered.

DATED at MUSOMA this 31<sup>st</sup> day of October, 2022.



F. H. Mahimbali  
Judge