THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

THE CORRUPTION AND ECONOMIC CRIMES DIVISION

AT ARUSHA - SUB REGISTRY

ECONOMIC CASE NO. 14 OF 2019

REPUBLIC

VERSUS

1. SIKONA LORIANI MUNGE

2. SAMWEL PAULO

3. EMANUEL MICHAEL NANYARO

05/12/2019 and 13/12/2019

JUDGMENT

BANZI, J.:

Sikona Loriani Munge, Samwel Paulo and Emanuel Michael Nanyaro hereinafter to be referred to as the first, second and third accused persons respectively, stand charged with the offence of unlawful possession of government trophy contrary to section 86 (1) (2) (b) of the Wildlife Conservation Act, No. 5 of 2009 (then the Wildlife Conservation Act) read together with paragraph 14 of the First Schedule to and sections 57 (1) and 60 (2) of the Economic and Organised Crime Control Act [Cap 200 R.E. 2002] (the EOCCA) as amended by sections 16 (a) and 13 (b) respectively of the Written Laws (Miscellaneous Amendments) Act, No. 3 of 2016.

It is alleged in the Information that, on 6thOctober, 2018 at Olduvai gate within Ngorongoro Conservation Area, in Ngorongoro District and

Arusha Region, the accused persons were found in possession of government trophies, to wit; two (2) elephant tusks which is equivalent to one killed elephant valued at USD 15,000 equivalent to Tshs.33,585,000/= the property of the Government of the United Republic of Tanzania without a permit from the Director of Wildlife.

To establish the case against the accused persons, the prosecution side led by Mr. Felix Kwetukia and Mr. Timotheo Mmari, learned State Attorneys called in five (5) witnesses to testify, namely, G.1991 D/C Mabrouk (PW1), H.210 PC Enock Richard (PW2), Inspector Jones Kija (PW3), Fredy Victor Ledidi (PW4) and G.4313 PC Edward (PW5). They also tendered five (5) exhibits, which were admitted, thus: Exhibit P1, handing over certificate; Exhibit P2, two elephant tusks, Exhibit P3, handing over certificate dated 06/10/2018; Exhibit P4, Trophy Valuation Certificate and Exhibit P5, Certificate of seizure. On the other hand, the first accused person (DW1), second accused person (DW2) and the third accused person (DW3) under the representation of learned Advocates Mr. Daud Lairumbe, Mr. Lecktony Ngeseyan and Mr. Daniel Lyimo respectively, testified under oath and DW1 tendered his student identity card, which was admitted as Exhibit D1.

The prosecution evidence is to the extent that, on 6th October, 2018, around 10:00pm, PW5 was with Park Rangers of Ngorongoro Conservation Area conducting patrol and reinforcing security at Olduvai gate. During the patrol, they saw lights coming towards the gate. At first, they thought it was the light from a motor vehicle but when getting closer, they realised it was from two motorcycles whereby each motorcycle was carrying three persons. Since it was within the conservation area, where no one is allowed to pass

through between 6:00pm and 6:00am, they decided to go towards them for questioning. Upon realising that it was the police, the two motorcycles turned back, and it was at that juncture when two of them fell from one motorcycle and the other one fell from another motorcycle. However, the remaining three persons managed to escape with their motorcycles.

Upon apprehension, they were searched in the sulphate bag they had and found with two elephant tusks. On inquiry, the accused persons introduced themselves and admitted not to have any permit over the tusks in question. Upon further interrogation, they revealed that, they got the tusks from the 1st accused person's father at Arash Village in Loliondo whereby, they were heading to Musoma road to meet with another person who is coming from Serengeti in order to take the tusks in question to Dar es Salaam to find buyers. The tusks in question were seized via Exhibit P5 and then the accused persons and the seized tusks were taken to Ngorongoro Police Post. On arrival there, PW5 handed over the tusks to exhibit keeper, PW2 via handing over certificate, Exhibit P3 whereby PW2 labelled them and stored in the exhibits room. The following morning, the police officers from Loliondo Police Station arrived and PW2 handed over the tusks to PW3 via Exhibit P1. Then the accused persons together with the tusks were taken to Loliondo Police Station. On arrival, the accused persons were locked-up while PW3 handed over the tusks to PW1 via Exhibit P1. On 10th October, 2018, PW1 handed over the tusks to PW4 via Exhibit P1. After being satisfying that they were elephant tusks, PW4 conducted valuation by equating to a value of an elephant which is USD 15,000 equivalent to Tshs.33,585,000/= at the exchange rate of Tshs.2,239/= prevailing over

that day. He then filled in valuation certificate, Exhibit P4 and handed over back the tusks to PW1 who stored the same until the day he came to testified before this Court.

In their defence, the accused persons refuted to have been found in possession of the elephant tusks in question. Save for the first accused person who admitted to have been arrested on 6th October, 2018, the second and third accused persons denied to have been arrested on 6th October, 2018. It was the defence of the first accused person (DW1) that, on 6th October, 2018 he left home, Arash Village to Arusha where he was studying at Mount Meru Tour Guides and International Languages School. On his way back along the Loliondo - Arusha road, he saw a motor vehicle make Toyota Harrier; he sought for and was given a lift. It was his story that, inside that vehicle, there were five people whom he did not know and does not remember them. He insisted to have been arrested while he was in the said motor vehicle with those five persons and not in a motorcycle as stated by prosecutions witnesses. He also denied to have been arrested by PW5 in possession of the alleged tusks which he claimed to see them for the first time when they were produced before this court. It was also his testimony that, he met and saw the second and third accused persons for the first time on 19th October, 2018 at the District Court of Ngorongoro.

On the other hand, it was the evidence of the second accused person (DW2) that, he was arrested on 10th October, 2018 around 9:00pm at Olduvai gate in a motorcycle while on his way to Arusha for the funeral of his uncle. Upon the arrest, he was taken to Ngorongoro Police Post together with driver of the motorcycle where he was locked in. He further claimed to

have met the first and third accused persons for the first time on 19th October, 2018 at Ngorongoro District Court. He defended himself that his signature on Exhibits P1, P2 and P3 was appended by force after he was beaten up while at lock up in Loliondo Police Station. According to his testimony, he claimed to see tusks in question for the first time when they were produced before this Court.

On his side, the third accused claimed that, on 7th October, 2018 he boarded a motorcycle from Wasso Loliondo to Karatu. On the way, they were arrested by three persons and taken to Ngorongoro Police Post and upon arrival, he was locked in. He further claimed that, his signature on Exhibits P1 and P5 was appended by force after being beaten up by police. He also admitted to have signed Exhibit P3 without reading its contents. He also claimed to meet and see the first and second accused persons for the first time on 19th October, 2018 at the District Court of Ngorongoro. As far as the elephant tusks are concerned, he claimed to have seen them for the first time when they were produced before this Court. All accused persons insisted on their innocence and thus prayed for their acquittal.

In a nutshell, that was the evidence of the prosecution and defence side. On 5th December, 2019, the counsel for the parties were ordered to file their final written submissions by 10th December, 2019. Nevertheless, save for the prosecution side who complied with the order, no final submission was filed by the side of defence.

In his final submission, Mr. Kwetukia, learned State Attorney was affirmative that a case against the accused persons was sufficiently proved

and that makes them guilty as charged. He reached at this firm conclusion after he had analysed the evidence on record and elements of the offence charged which are; *one*, possession; *two*, government trophy and *three* absence of a permit from the Director of Wildlife. He also pointed out principles of the law in wildlife offences such as section 100 of the Wildlife Conservation Act which imposes a duty to the person charged to prove that possession of government trophy is with lawful permit.

Further, it was his submission that, the evidence of PW5 was direct as he was the one who arrested the accused persons in possession of two elephant tusks. After the arrest, the accused persons were asked if they had permit to possess the tusks but they had none. The tusks in question were seized from the accused persons through Exhibit P5 which was filled in and signed at the crime scene. According to him the evidence of PW5 proved without shadow of a doubt that the accused persons were found in unlawful possession of government trophy. He cited the cases of **Simon Ndikulyaka v. Republic**, Criminal Appeal No. 231 of 2014, CAT (unreported) and **Moses Charles Deo v. Republic,** [1987] TLR 134 to support his argument on the issue of possession. He added that, the evidence of PW4 and Exhibit P4 is a clear proof that, the two tusks are elephant tusks and therefore, government trophy. On the last element, he submitted that the accused persons failed to account on how they came into possession of the said trophy but instead, they made general and evasive denials and claimed to have been forced to sign Exhibits P1, P3 and P5 after being tortured. To expound further on his point, he submitted that, PW1, PW2, PW3 and PW5 were not cross examined on the issue of torture, hence raising the same during the defence amounts

to an afterthought. He cited the case of **Hamisi Mohamed v. Republic**, Criminal Appeal No. 297 of 2011 CAT (unreported) to emphasise his point on failure to cross examine tantamount to an acceptance of such evidence.

Mr. Kwetukia further challenged the defence of *alibi* as introduced in the testimonies of the second and third accused persons. His contention was on non-compliance with section 42 of the EOCCA. He added that, the prosecution witnesses were not cross examined on the *alibi* which weakened such defence. In that regard, he urged the Court to accord no weight to the said defence. Furthermore, he insisted that, the prosecution witnesses were credible and if there is any discrepancy in their evidence, the Court should consider the decision of the Court of Appeal in the case of **Marmo Slaa @ Hofu and Three Others v. Republic**, Criminal Appeal No. 246 of 2011 (unreported). Finally, it was his prayer that the Court should enter a finding that the accused persons are guilty and therefore convict them accordingly.

Having considered the evidence on record and the submission by the counsel for the prosecution, the main issue before the Court for determination is whether the prosecution has proved the case against the accused person beyond reasonable doubt.

It is vital to underscore that, according to section 3 (2) (a) of the Evidence Act [Cap. 6 R.E. 2002], in criminal matters, a fact is said to be proved when the court is satisfied by the prosecution beyond reasonable doubt that such fact exists. See also the case of **Nathaniel Alphonce Mapunda & Benjamini Alphonce Mapunda v. Republic** [2006] TLR 395. That is to say, the guilt of the accused person must be established

beyond reasonable doubt. Generally, and always, such duty lies with the prosecution except where any statute expressly provides otherwise. One of such exceptions is section 100 (3) (a) of the Wildlife Conservation Act. The provisions of this section are very clear that, the accused has the duty to prove that the possession of government trophy is lawful.

However, it is also a settled principle of law that, when the burden of proof shifts to the accused person, the standard of proof is not as higher as that of the prosecution. This was clearly stated by the Court of Appeal of Tanzania in the case of **Said Hemed v. Republic,** [1987] TLR 117 thus:

> *"In criminal cases the standard of proof is beyond reasonable doubt. Where the onus shifts to the accused it is on a balance or probabilities."*

In the light of the principles underscored above, and considering the ingredients of offence charged, it is the duty of the prosecution to prove beyond reasonable doubt that the trophy in question is the government trophy and the accused persons were found in possession of the said government trophy. Likewise, it is the duty of the accused person to prove on balance of probabilities that, the possession of the said trophy was lawful; that is, with the permit of the Director of Wildlife.

As highlighted above, there is one main issue to be determined by this Court, that is, whether the prosecution has proved the case beyond reasonable doubt. However, the determination of this issue rests on other two other specific issues, namely, **one**, *whether the two elephant tusks were*

seized from the accused persons and **two**, *whether the chain of custody was unbroken*.

Before determining the first issue, it is important to determine if Exhibit P2 is the elephant tusk and thus government trophy. PW4 is the wildlife officer working at Ngorongoro District Council on the post of District Game Officer. He has ten years working experience on wildlife. Among his duties are to identify and conduct valuation on Government trophies. According to his testimony on record, on 10th October, 2018 he went to Loliondo Police Station responding to a call by D/C Edwin. Upon arrival, PW1 handed him over Exhibit P2. PW4 further testified that, the two tusks were elephant's tusks. That conclusion was inferred on the basis that, the tusks in question have curve shape, longer in size than any horns of other animals and they have open space from the base to the middle part. That open space is for attaching to the jaw. It was also the evidence of PW4 that after satisfying they were elephant tusks; he went on to evaluate them basing on the value of the elephant prescribed in the Regulations which is USD 15,000 equivalent to Tshs.33,585,000/=, because the two tusks are equal to one elephant killed.

Nevertheless, there are discrepancies in PW4's testimony and Exhibit P4 in respect of the weight of the tusks in question. At first, PW4 stated that one tusk had 31.9 kg and the second one had 39.1 kg. But later after admission of Exhibit P4 he stated that, the first tusk had 3.1 kg and the second tusk had 3.9 kg with a total weight of 7 kg. On the other hand, in Exhibit P4 it is shown the tusks weighed 8 kg. It is a settled principle that, not every discrepancy in the prosecution's case will cause the prosecution

case to flop but it is only where the gist of the evidence is contradictory then the prosecution case will be dismantled. Refer to the case of **Said Ally Ismail v. Republic**, Criminal Appeal No. 249 of 2008 CAT (unreported). In another case of **Marmo Slaa @ Hofu and Three Others v. Republic** (supra) it was stated that;

> *"...in all trials, normal discrepancies are bound to occur in the testimonies of witnesses, due to normal errors of observations such errors in memory due to lapse of time...* ***Minor contradictions, inconsistencies, embellishments, or improvements, on trivial matters which do not affect the case of the prosecution should not be made a ground on which the evidence can be rejected."*** (Emphasis is mine).

In his testimony, PW4 admitted that he made error in adding up the weight of the two tusks and recorded 8kg in Exhibit P4 instead of 7kg. I have carefully considered these contradictions on PW4's testimony and Exhibit P4 in respect of the weight of the tusks in questions. In the considered view of this Court, these contradictions do not go to the root of the matter because the valuation was not made basing on the weight of the tusks but on the value of one killed elephant.

It is therefore the considered view of this court that, basing on the descriptions stated by PW4 there is no doubt that Exhibit P2 are two elephant tusks whose value is Tshs.33,585,000/=. In that regard, Exhibit P2 is a trophy in accordance with section 3 of the Wildlife Conservation Act. Besides, there was no evidence from the defence to prove otherwise considering the

fact that, they had a duty under section 100 (3) (d) of the Wildlife Conservation Act to prove that, tusks in question are not government trophy.

Coming to the first issue, the prosecution evidence shows that, on 6th October, 2018, around 10:00pm, PW5 with Park Rangers of Ngorongoro Conservation Area were conducting patrol and reinforcing security at Olduvai gate. During the patrol, they saw lights coming towards the gate. At first, they thought it was the light from the motor vehicle but when getting closer, they realised it was from two motorcycles whereby each motorcycle was carrying three persons. Since it was within the conservation area where no one is allowed to pass through between 6:00pm and 6:00am, they decided to go towards them for questioning. Upon realising that it was the police, the persons on the motorcycles decided to turn back and it was at that juncture that two of them fell from one motorcycle and the other one fell from another motorcycle. However, the other three managed to escape with their motorcycles.

Upon apprehension, they were searched in the sulphate bag they nad and found with two elephant tusks. On inquiry, accused persons introduced themselves and admitted not to have any permit over the tusks in question. Upon further interrogation, they revealed that, they got the tusks from the 1st accused person's father at Arash Village in Loliondo whereby, they were heading to Musoma road to meet with another person who is coming from Serengeti in order to take the tusks in question to Dar es Salaam to find purchasers. The tusks in question, were seized via exhibit P5 and then the accused persons and the seized tusks were taken to Ngorongoro Police Post. On the same date around 11:00pm, PW2 after being called, he went to the

said Police post and found the accused persons and he was received exhibit P2 from PW5. The handing over was through exhibit P3 which after being filled it was also signed by the accused persons. Apart from that, when PW3 arrived at Ngorongoro Police post in the morning hours of 7th October, 2018, he was handed over the accused persons and exhibit P2. The accused persons also signed the handing over certificate before they were transferred to Loliondo Police Station.

From the evidence above, it is clear that the accused persons were arrested by PW5 and his colleagues at the crime scene on the night of 6th October, 2018 after their attempt to escape flopped. PW5 identified the accused persons at the dock as the ones he arrested with the tusks in question on 6th October, 2018 by pointing at each accused according to their names. Apart from that, PW2 also identified all accused persons as the ones he saw on 6th October, 2018 at Ngorongoro Police Post when he was handed over Exhibit P2 in their presence. He also touched one after another. In addition, PW3 managed to identify accused persons at the dock by pointing at each accused and confirmed that they are the ones he took from Ngorongoro Police Post to Loliondo Police Station on 7th October, 2018 together with Exhibit P2. This evidence of PW2, PW3 and PW5 in respect of identification of the accused persons as the ones arrested on 6th October, 2018 and transferred to Loliondo on 7th October, 2018 did not receive a backlash for the defence.

In that view, the defence of the first accused that he was arrested on 6th October, 2018 within a motor vehicle with nothing after he was given a favour of a lift to Arusha is unjustified. The first accused in his defence, he

did not dispute his signature appended to the certificate of seizure. Apart from that, PW5 was not cross-examined on this matter of the first accused signing in exhibit P5. Moreover, looking closely at their defence, the second and third accused persons attempted to introduce and rely on the defence of *alibi* because they claimed not to be at the crime scene on 6th October, 2018. However, in their defence, they did not explain their whereabouts on the night of 6th October, 2018. This in itself waters down their *alibi* for flawing the procedure under section 42 (1) and (2) of the EOCCA which reads as follows;

> *"(1) Where a* ***person charged*** *with an economic offence* ***intends to rely upon an alibi*** *in his defence,* ***he shall first indicate to the Court the particulars of the alibi at the preliminary hearing****.*
>
> *(2) Where an accused person does not raise the defence of alibi at the preliminary hearing,* ***he shall furnish the prosecution with the particulars of the alibi he intends to rely upon as a defence at any time before the case for the prosecution is closed****."* (Emphasis supplied).

What I gathered from the extract above is that, the second and third accused persons ought to have notified the Court their intention to rely on *alibi* as their defence during the preliminary hearing. But they did not do so. They also failed to furnish the prosecutions with the particulars of their *alibi* before the closure of prosecution case as required by subsection (2) above. Worse enough, in their testimonies, they did not disclose their whereabouts on the date of the arrest. This alone is a clear indication that, their so-called

alibi is nothing but an afterthought. Unlike the first accused, in their defence, the second and third accused claimed to sign the certificate of seizure after being forced following the beatings. However, during his testimony, PW5 clearly stated how the accused persons signed the certificate of seizure by appending their handwritten signatures and thumb prints. But questions pertaining to the beating and forced to sign exhibit P5 were not asked on cross examination to the author, PW5. In other words, the defence did not cross-examine PW5 in this aspect. This connotes that, they were comfortable with the contents of testimony of PW5 in respect of signing the certificate of seizure. It is a settled principle that, failure to cross-examine a witness on a relevant matter ordinarily connotes acceptance of veracity of the testimony. This was stated in the case of **Issa Hassan Uki v. Republic**, Criminal Appeal No. 129 of 2017 CAT (unreported). In another case of **Cyprian A. Kibogoyo v. Republic**, Criminal Appeal No. 88 of 1992 CAT (unreported) it was held that;

> *"As a matter of principle, a party who fails to cross-examine a witness on a certain matter is deemed to have accepted that matter and will be estopped from asking the trial court to disbelieve what the witness said."*

See also the unreported decisions of the Court of Appeal of Tanzania in the cases of **Nyerere Nyague v. Republic**, Criminal Appeal No. 67 of 2010, **Niyonzima Augustine v. Republic**, Criminal Appeal No. 483 of 2015 and **Damian Ruhele v. Republic**, Criminal Appeal No. 501 of 2007. Since PW5 stated that the accused persons signed the certificate of seizure on 6th October, 2018 and he was not cross-examined on that aspect, it is the

considered view of the court that, all accused persons signed Exhibit P5 to acknowledge that, Exhibit P2 were actually found in their possession. In the cases of **Song Lei v. The DPP**, and **The DPP v. Xiao Shaodan and Two Others**, Consolidated Criminal Appeal Nos. l6 'A' of 2016 and 16 of 2017 (unreported), the Court of Appeal stated 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."*

Basing on the position of the law above, it is clear that the certificate of seizure, Exhibit P5 is valid, and it proves that the search and seizure was conducted by PW5 on 6th October, 2018 at Olduvai gate where the accused persons were arrested and witnessed by other officers who were in patrol. Also, the fact that the first accused person was the one who carried the Exhibit P2 does not exculpate the second and third accused persons because were together and had knowledge of possession of Exhibit P2. Basing on the means of transport they used, Exhibit P2 could not have been carried all accused persons who were in two motorcycles. Besides, the accused persons were caught in two motorcycles while passing through conservation area in the night where nobody is allowed to pass through from 6:00pm to 6:00am. The two motorcycles were driven side by side to the extent of confusing PW5 and his colleagues to think that it was the lights from a motor vehicle. All these imply that the accused persons were in the same journey and hence had knowledge on the tusks carried by the first accused person. Thus, it is the considered view of this court that, accused persons were all found in

possession of elephant tusks, Exhibit P2. Hence, the first specific issue is answered in affirmative.

Now reverting to the second issue whether chain of custody is unbroken, it is settled that, in cases involving movement of exhibits from one point to another, the evidence concerning chain of custody is of utmost importance. As a matter of principle, it is well settled that as far as the issue of chain of custody is concerned, it is crucial to follow carefully the handling of what was seized from the accused, is the same which was finally tendered in court. There is a mammoth of authorities giving guidance on chain of custody including the landmark case of **Paulo Maduka and Four Others v. Republic**, Criminal Appeal No. 110 of 2007, CAT (unreported). This case insisted on the proper documentation of the paper trail from the time of seizure up to the stage the exhibit is tendered in court as evidence. Among other things, it was held that;

> *"...the chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis and disposition of evidence, be it physical or electronic. The idea behind recording the chain of custody is to establish that the alleged evidence is in fact related to the alleged crime-rather than, for instance, having been planted fraudulently to make someone guilty. The chain of custody requires that from the moment the evidence is collected, its very transfer from one person to another must be documented and that it be provable that nobody else could have assessed it."*

However, in the case of **Chacha Jeremiah Murimi and Three Others v. Republic**, Criminal Appeal No.551 of 2015, CAT (unreported), it was held and I quote;

> *"In establishing chain of custody, we are convinced that the most accurate method is on documentation as stated in Paulo Maduka and Others vs. R., Criminal Appeal No. 110 of 2007 and followed by 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 at depending on the prevailing circumstances in every 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.****"* (Emphasis supplied).

Yet, in another case of **Issa Hassan Uki v. Republic** (*supra*), the Court of Appeal after discussing the chain of custody in items that could change hands easily and those which could not went on and held that;

> *"In the instant case, the items under scrutiny are elephant tusks.* ***We are of the considered view that elephant tusks cannot change hands easily and therefore not easy to temper with****. In cases relating to chain of custody, it is important to distinguish items which change hands easily in*

which the principle in Paulo Maduka and followed in Makoye Samwel @ Kashinje and Kashindye Bundala would apply. In cases relating to items which cannot change hands easily and therefore not easy to temper with, the principle laid down in the above case can be relaxed." (Emphasis supplied).

It is apparent from the extract above that, for exhibits which cannot change hands easily like elephant tusks, oral testimony on handling the exhibit suffices to establish the chain of custody. On the other hand, for exhibits that change hands quickly, such as narcotic drugs and the like, the most accurate method to establish chain of custody is documentation. However, depending on particular circumstances of each case, even in the latter type of exhibits, unbroken chain of custody established through oral testimony is sufficient to establish the chain of custody. (See the case of **Charo Said Kimilu and Another v. Republic**, Criminal Appeal No. 111 of 2015 CAT (unreported).

In the matter at hand, the items in question are elephant tusks, which according to the case of **Issa Hassan Uki** cannot change hands easily and therefore not easy to temper with. In that view, even oral testimony on handling the exhibit would suffice to establish the chain of custody. But this is not the case in the matter at hand as there is chronological documentation showing the seizure, transfer and custody of exhibit P2 until it was finally brought before this court.

It is on record that, after seizure by PW5 on 6th October, 2018 through Exhibit P5, the two tusks were handed over to PW2 on the same date

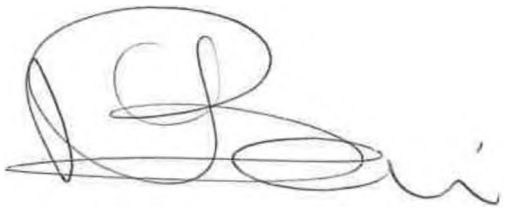
through Exhibit P3 in the presence of all accused persons who signed it. PW2 labelled them by writing investigation register number, names of the accused person and date of the arrested and then stored the same until 7th October, 2018 when he handed over to PW3 via exhibit P1. PW3 took the tusks in question together with accused person to Loliondo Police Station and handed over the same to the PW1 on 8th October, 2018 via Exhibit P1. PW1 stored them until 10th October, 2018 when he handed over to PW4 for identification and valuation. It was on the same date when PW4 after completing the valuation process, handed back the tusks to PW1 via exhibit P1 whereby, PW1 stored the same until he brought them before this court on 3rd December, 2019.

It is the considered view of this Court that, in the case at hand the chain of custody has been established through prosecution evidence from the time the elephant tusks were seized from the accused persons until they were brought before this court. This has been established through Exhibits P5, P3 and P1 together with the testimonies of PW5, PW2, PW3, PW1 and PW4. Although there was contradiction in Exhibit P1 in respect of the date of arrest which on one part shows 6th October, 2018 while in other parts shows 7th and 10th October, 2018, but such contradiction does not go to the root of the matter because Exhibit P1 is about handing over of exhibit and not the date of arrest. Besides, all witnesses clarified that it was a mere error and maintained the date of arrest was 6th October, 2018. In that regard, there is no any missing or possibility of tampering with Exhibit P2 as evidence is very clear how it changed hands from one person to another and how it

remained in the custody of PW1 who tender the same to the court. Thus, the second specific issue is also affirmatively answered.

Therefore, since both issues were answered in the affirmative, and considering the fact that the accused persons did not adduce any evidence to prove the possession of the government trophy was lawful as required under section 100 (3) (a) of the Wildlife Conservation Act, apparently, the prosecutions have managed to prove the case against the accused persons beyond reasonable doubt. Thus, the main issue is positively answered.

In the upshot, I find the accused persons, Sikona Loriani Munge, Samwel Paulo and Emanuel Michael Nanyaro guilty and I hereby convict them with the offence of unlawful possession of government trophy; contrary to section 86 (1) (2) (b) of the Wildlife Conservation Act, No. 5 of 2009 read together with Paragraph 14 of the 1st Schedule to and sections 57 (1) and 60 (2) of the Economic and Organised Crime Control Act [Cap. 200 R. E. 2002] as amended.



I. K. BANZI
JUDGE
13/12/2019