IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MKUYE, J.A., KENTE, J.A. And KIHWELO, J.A.)

CRIMINAL APPEAL NO. 547 OF 2021

JOVINA DAMIAN JAMES .....1ST APPELLANT

GU KAI.....2nd APPELLANT

VERSUS

THE REPUBLIC .....RESPONDENT

(Appeal from the decision of the High Court of Tanzania at Dar es Salaam)

(De-Mello, J.)

dated the 23rd day of August, 2021
in
Consolidated Criminal Appeal Nos. 226 & 261 of 2020

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JUDGMENT OF THE COURT

21st September & 27th October, 2022

KIHWELO, J.A.:

The appellants herein, Jovina Damian James, Gu Kai and two others who are not parties to this appeal, were jointly charged in the Resident Magistrates Court of Dar es Salaam at Kisutu in Economic Case No. 20 of 2016 with six counts. In the first count, all of them were charged with conspiracy to commit an offence, contrary to section 384 of the Penal Code, Cap. 16 R.E. 2002; now R.E. 2022 (the Penal Code), in the second count the two appellants were charged with forgery, contrary to section 333, 335(a) and 337 of the Penal Code, in the third count, the two appellants were

charged with uttering false document contrary to section 342 of the Penal Code, in the fourth count, the appellants were charged with obtaining registration by false pretence contrary to section 309 of Penal Code, in the fifth count, two others who are not parties to this appeal were charged with fraudulent evasion of tax contrary to section 47 of the Value Added Tax Act, Cap. 168 R.E. 2002 and in the sixth count, the appellants and others who are not parties to this appeal, were charged with occasioning loss to a specified authority contrary to paragraph 10 (1) of the First Schedule to and section 57 (1) and 60(2) of the Economic and Organized Crime Control Act, (Cap. 200 R.E. 2002; now R.E. 2022) (the EOCCA). Three of them were convicted and sentenced to a concurrent term of seven years imprisonment as well as to pay TZS. 1,776,693,465.00 as compensation to the Government while one of them was acquitted. Dissatisfied with the conviction and sentence, the appellants unsuccessfully appealed to the High Court. This appeal is against the judgment of the High Court.

It was alleged that, on 21st October, 2014 the appellants at Ilala District within the City and Region of Dar es Salaam fraudulently uttered a Customer Information Form to COMPULYNX (T) LTD purporting to show that CALCARE INTERNATIONAL CO. LTD whose Taxpayer Identification Number (TIN) is 121-652-870 had applied and thereby obtained an Electronic Fiscal

Device (EFD machine) with serial No. 03TZ4420000882 from Tanzania Revenue Authority (TRA), the act which between 21st October, 2014 and 30th March, 2016 caused TRA to suffer a pecuniary loss of TZS. 1,776,693,465.00.

To establish its case, the prosecution featured twelve witnesses: Kelvin Mmbando (PW1), WP 5145 D/SSGT Husna (PW2), F.1793 D/Cpl Ismail (PW3), Kanrad Tenga (PW4), Kabula Jeras Mwemezi (PW5), Huang Weining (PW6), Lim Hang Yung (PW7), Benjamin Mwakasonde (PW8), Aloyce Michael Mbepela (PW9), D.5784 D/Cpl Lukos (PW10), E.2634 D/Cpl. Masaka (PW11) and Joseph Gabriel Kondo (PW12). In addition to that, the prosecution tendered in evidence a host of documentary and physical exhibits, from exhibit P1 to exhibit P8 in order to prove the charge against the appellants.

On the part of the appellants, they gave their respective evidence on oath and did not produce any documentary or physical exhibit in defence. However, record bears out that, DW3 who was acquitted by the trial court produced one documentary exhibit a contract of employment between TIFO Global Mart (Tanzania) Limited and himself (exhibit D1). No witnesses were called by the appellants in defence other than themselves.

For an easy appreciation of the reasons which led to the conviction of the appellants, the following background is essential. On 21st October, 2014 the first appellant presented herself to PW1 a technician working for COMPULYNX CO. LTD, a limited liability company which is an agent authorized by TRA to supply EFD machine, seeking to purchase and actually purchased EFD machine using a copy of TIN certificate for CALCARE INTERNATIONAL CO. LTD. PW1 issued the first appellant with invoice and receipt (exhibit P1) as evidence of the purchase of the EFD machine. Upon successful registration of the EFD machine online through the TRA website, PW1 had to train the first appellant on how to use the EFD machine bought which was done on 24th October, 2014. It occurred that, during the conversations between PW1 and the first appellant, the latter concealed the whereabouts of the offices of the company under whose name the EFD machine was bought.

Later on, having completed the purchase of the EFD machine, the appellants started using it in a manner not consistent with its registration and without lodging and paying VAT returns for almost two years. Apparently, TRA through PW5 sent remainder information to CALCARE INTERNATIONAL CO. LTD through letters (exhibit P3 and exhibit P4) reminding them about their tax liability, something which shocked them as

they did not register the alleged EFD machine. This came as a surprise to TRA officials as well, the result of which the wheels of justice were put into motion by launching an investigation and PW4 began by establishing whether the said EFD machine was being utilized by someone and if yes, who was in possession and use of the said machine. PW3 a police officer working with the cybercrime unit was able to trace the first appellant through her mobile number 0788 663553 and together with PW10, the police investigator of this matter, they apprehended the first appellant. PW2 recorded the cautioned statement of the first appellant (exhibit P2) on 26th March, 2016.

On the other hand, a manhunt was launched to look for the real culprits in the tax evasion, and, in the process a lot came to be unearthed whereby the second appellant was apprehended and put in custody and PW8 recorded his extra judicial statement (exhibit P7). In the course of the investigation the appellants were implicated with the offences of which they were later charged in court. Among the witnesses who testified along with the ones mentioned earlier were; PW6, the finance person from CALCARE INTERNATIONAL CO. LTD who tendered the genuine TIN certificate of the company as exhibit P6, PW7 who knew very well the owners of the two companies which were trading using the EFD machine which was the subject

of the charge before the trial court, PW9 and PW12 who purchased materials from TIFO GLOBAL MART (TANZANIA) COMPANY LIMITED and LOTAI STEEL TANZANIA COMPANY LIMITED and were issued with EFD receipts under the name of CALCARE INTERNATIONAL CO. LTD.

It was further unearthed that, through the appellants' unbecoming conduct, the TRA suffered a pecuniary loss of TZS. 1, 776, 693, 465.00.

On their defence, the appellants totally denied the accusation laid against them. The first appellant who testified as DW1 admitted buying the EFD machine and that she was given an invoice and receipt thereafter and that after that she took the EFD machine to the second appellant. In other words, the first appellant totally denied the charge laid against her.

On the other hand, the second appellant who testified as DW2, his evidence was to the effect that, he was requested by CALCARE INTERNATIONAL as part of the Kariakoo Chinese Association to process their EFD machine which he sent the first appellant to process and that all the necessary documents for processing the EFD machine were supplied by CALCARE INTERNATIONAL themselves and that on his part there was no foul play and he did not commit the alleged offence.

After a full trial the trial court was convinced that the prosecution had proved the charge against the appellants and another one not part to this appeal, beyond reasonable doubt save for the offence of conspiracy which was not proved. It convicted them as charged and sentenced them as hinted above.

In their quest for justice, the appellants lodged this appeal which was initially predicated on self-crafted two point joint memorandum of appeal lodged on 1st April, 2022. Later, on 30th August, 2022, the appellants filed a supplementary memorandum of appeal with a total of ninety-four (94) points of grievance which, nonetheless, for a reason that will shortly become apparent, we think that it will be unnecessary for us to reproduce all of them. For the sake of clarity and convenience, we have paraphrased the points of grievance as indicated below, while most of the points of grievance raised boil down to the question of evidence, in that the appellants are saying that the evidence on the prosecution case is too weak to ground a conviction. The paraphrased points of grievances are as follows:

1. *The trial court had no jurisdiction to entertain the case before it.*

2. *The appellant's conviction did not observe the mandatory provisions of the law.*
3. *That the trial of the appellants was full of illegality and irregularity.*
4. *That the prosecution did not prove the case beyond any reasonable doubt.*

At the hearing of the appeal before us, the appellants appeared in persons without legal representation, whereas Ms. Mwasiti Athuman Ally, learned Senior State Attorney, represented the respondent Republic.

When the appellants were invited to address us on their grounds of appeal, they adopted the grounds in the supplementary memorandum of appeal lodged in court on 30th August, 2022 as well as the written submissions and urged us to allow the appeal. They further requested the respondent Republic to begin, then they would rejoin if need would arise. Ms. Ally, who presented the submissions for the respondent prefaced her submission by fully supporting the conviction. However, she did not support the sentence meted upon the appellants, which in her view was improper for the reasons we shall advance at a later stage of this judgment.

In response to the appeal, Ms. Ally pressed us to dismiss it for want of merit. She prefaced her submission by arguing that, the offence of forgery was not proved against all those who were charged. She contended that, out of the six counts, only two counts remain and that is, the fourth and the sixth count which the prosecution proved beyond any reasonable doubt. Illustrating, she submitted that the appellants registered the EFD machine with serial No. 03TZ4420000882 in the name of CALCARE INTERNATIONAL CO. LTD and the first appellant is the one who registered it on 21st October, 2014 and was attended by PW1 of COMPULYNX CO. LTD who issued her with invoice and receipt (exhibit P1) appearing at page 139 to 142 of the record of appeal and this was admitted by the first appellant in her cautioned statement, exhibit P2 at page 143 of the record of appeal.

In further elaboration, the learned Senior State Attorney submitted that, PW6, a finance person working with CALCARE INTERNATIONAL CO. LTD testified to the effect that, the alleged EFD machine was not used by their company for any of the transactions claimed by TRA but rather, it must have been someone else. The learned Senior State Attorney referred us to a letter from the company lawyers exhibit P4 at page 149 of the record of appeal.

Ms. Ally went on to submit further that, the fraudulent registration of the EFD machine by the appellants occasioned loss to TRA to the tune of TZS. 1, 776, 693, 465.00 and that, since this is an economic offence whose penalty is prescribed under section 60 (2) of the EOCCA, the penalty imposed was inappropriate and therefore, she prayed that we should enhance the sentence imposed in accordance with the law.

Arguing in reply to the complaint by the appellants that, the DPP's consent was problematic in that it wrongly referred to both section 12 (3) and (4) of the EOCCA instead of section 12 (4) only, the learned Senior State Attorney admittedly contended that, surely the DPP consent wrongly referred to both section 12 subsection (3) and (4) instead of referring to section 12 (4) only. However, the learned Senior State Attorney was quick to argue that, this anomaly was not fatal as it did not prejudice the appellants.

In response to the complaint by the appellants that, the interpreter was not present during the pronouncement of judgment, the learned Senior State Attorney submitted that, it is true that the interpreter was not present when the judgment was pronounced. She however, argued that, this was not a problem much as the counsel for the appellants were present and that

is why the appellants were able to enter mitigation and lodge an appeal before the High Court.

The learned Senior State Attorney also argued in response to the complaint by the appellants that, PW6 was affirmed while he has no religion that, the Oaths and Statutory Declaration Act, Cap 34 R.E. 2002 (Cap.34) in particular the proviso to section 4 permits any person who does not profess Christianity or does not have any religion to affirm and that the affirmation is sufficient.

As regards to the complaint by the appellants that, the trial court did not evaluate the evidence of the prosecution and that of the defence, the learned Senior State Attorney argued that, the trial court considered the evidence of both the prosecution and the defence and ultimately arrived to a fair decision in accordance with the law.

As regards to the complaint by the appellants in grounds 16 and 17 of the memorandum of appeal, the learned Senior State Attorney argued that, the second count that touched upon these grounds was not proved to the required standard hence these grounds have no merit.

In relation to the complaint by the appellants that, they were not addressed in terms of section 231 (1) of the CPA, the learned Senior State

Attorney contended that, admittedly it is true that the trial court did not address the appellants in terms of section 231 (1) of the CPA. However, she argued, that, the appellants were given an opportunity to defend and they actually defended themselves under oath with the aid of their respective advocates, one Mr. Emanuel and Ms. Juliana and on the final day of their defence, the appellants were asked if they had any other witnesses and they replied that they had no any other witnesses. Ms. Ally submitted that in the circumstances, the omission was inconsequential as it did not occasion any injustice and the appellants were able to defend themselves anyway.

Submitting in reply to the complaint by the appellants that, they were not allowed to appear before the High Court Judge, the learned Senior State Attorney argued that, parties agreed to proceed by way of written submissions and referred us to pages 199 to 201. She then, finally rounded off her submission by arguing that, since the prosecution proved the case beyond reasonable doubt, this appeal has no merit and the sentence against the appellants has to be enhanced.

In their brief rejoinder submissions, the appellants did not have anything useful to add but they reiterated their earlier submissions and

repeatedly submitted that, the appeal should be allowed and they should be released forthwith.

It is now our duty to determine the appeal by considering the competing arguments made by the appellants and the respondent Republic. We are not losing sight of the fact that this is a second appeal and as a general rule we may not interfere with the concurrent findings of facts by the two courts below. Concurrently, both the trial and the first appellate courts considered the evidence of the twelve prosecution witnesses and found them to be reliable witnesses on whose evidence the conviction was grounded, therefore, according to the above general rule, we may not fault that finding. However, there is an exception to that rule, and that is when the finding has been reached in misapprehension of facts or wrong interpretation of a principle of law. In **Jafari Mohamed v. Republic,** Criminal Appeal No. 112 of 2006 (unreported), we said the following in relation to our limited powers on appeal against matters of fact:

> *"An appellate court, like this one, will only interfere with such concurrent findings of fact only if it is satisfied that "they are on the face of it unreasonable or perverse" leading to a miscarriage of justice, or there have been a misapprehension of evidence or a violation of some principle of law: see, for instance,* ***Peters v Sunday Post***

Ltd. *[1958] E.A. 424:* ***Daniel Nguru and Four Others v. Republic,*** *Criminal Appeal No. 178 of 2004 (unreported)"*

We wish also, to state that, it is now settled and clear that as a matter of general principle this Court will only look into matters which came up in the lower courts and were decided, not on matters which were neither raised nor decided by either the trial court or the High Court on appeal. There is a considerable body of case law in this area. See, for instance, **Hassan Bundala @ Swaga v. Republic**, Criminal Appeal No. 386 of 2015, **Nyerere Nyague v. Republic**, Criminal Appeal No. 67 of 2010, **Julius Josephat v. Republic**, Criminal Appeal No. 3 of 2017 (all unreported).

It is noteworthy that, the mandate of this Court is, in terms of sections 4(1) and 6(7)(a) of the Appellate Jurisdiction Act, Cap 141 R.E. 2022, (AJA) read together with Rule 72(2) of the Tanzania Court of Appeal Rules, 2009, limited to matters raised and adjudicated by the High Court and subordinate courts with extended jurisdiction only. The logic is simple, we cannot therefore, completely render a decision on any issue which was never decided by the High Court. See, **Jafari Mohamed v. Republic**, Criminal Appeal No. 112 of 2006 and **Richard Mgaya @Sikubali Mgaya v. Republic**, Criminal Appeal No. 335 of 2008 (both unreported).

We hasten to remark that, on the basis of the above, it will not be possible and practical to deliberate on all the ninety-four (94) grounds of grievance raised as most of them are factual and new, not decided by the High Court and also couple of them touches upon the issue of evidence generally. However, as a matter of law and practice, we will deliberate on new grounds which touch upon matters of law.

We will first deliberate on the issue of jurisdiction of the trial court to determine the matter. Our starting point will be the complaint by the appellants that, the DPP's consent was problematic in that it wrongly referred to both section 12 (3) and (4) of the EOCCA, instead of section 12 (4) and therefore, the trial was a nullity. On the other hand, the learned Senior State Attorney argued that, this anomaly was not fatal as it did not prejudice the appellants.

It is true that jurisdiction to try economic offences is vested in the High Court in terms of section 3 of the EOCCA. However, subordinate courts may be conferred with jurisdiction to try such offences by a consent of the DPP issued under section 26 (1) of the EOCCA and a certificate of transfer issued in terms of section 12 (3) for the offences triable by the High Court and

section 12 (4) for a person(s) who is tried for both economic and non-economic offences.

We have anxiously considered the rival submission on this issue and we think that, the learned Senior State Attorney was undeniably right. Undoubtedly, the certificate issued by the Director of Public Prosecutions conferring jurisdiction to the subordinate court wrongly cited both section 12 (3) and (4) of the EOCCA instead of merely citing section 12 (4) of the EOCCA. However, as rightly argued by the learned Senior State Attorney this anomaly is not fatal as it did not occasion any injustice on the part of the appellants. We entirely agree with her argument that, since section 12 (4) of the EOCCA was properly cited the citation of subsection (3) is inconsequential. In our view, the situation would have been different if the certificate was cited section 12 (3) of the EOCCA omitting section 12 (4) of the EOCCA in which case the trial court would have lacked jurisdiction to entertain the case before it. We therefore, find that this ground has no merit.

Next, we will consider the issue on whether failure to address the appellants in terms of section 231 (1) of the CPA was fatal and occasioned any failure of justice on the part of the appellants and whether that is curable under section 388 (1) of the CPA. At the outset, we hasten to state that this

issue should not detain us much. We agree with the learned Senior State Attorney that the trial court did not address the appellants in terms of section 231 (1) of the CPA. This is conspicuously clear at page 129 of the record of appeal. But as rightly argued by the learned Senior State Attorney, the appellants who were dully represented by learned counsel were given an opportunity to defend and they actually defended themselves under oath with the aid of their respective advocates and on 10th June, 2020 when the defence case was closed both advocates addressed the court to the effect that they will have no more witnesses other than the appellants themselves. In other words, the appellants elected to defend themselves under oath and did not wish to call any other witness which is the gist of section 231 (1) of the CPA.

In our considered opinion, failure to address the appellants in terms of section 231 (1) of the CPA in the circumstances of this case, did not occasion any failure of justice and is curable under section 388 (1) of the CPA. We are saying so because, records of proceedings bear out that, the appellants exercised their rights spelt out under section 231 (1) (a) and (b) of the CPA and that is why they testified under oath and their respective advocates informed the court that the appellants will not have any other witnesses. This ground of appeal too should fail.

Another issue worth our deliberation is whether failure to state the provision of the law under which the appellant was convicted contrary to the requirement of section 312 (2) of the CPA which obliges the trial court to state the provision under which the accused is convicted, occasioned any injustice on the part of the appellant as complained and whether that is curable under section 388 (1) of the CPA. Our reading of the record quite obviously indicates that, the trial court stated at page 185 of the record of appeal that, the appellants are hereby found guilty as they are charged in the counts of the offences and the court convict them forthwith as they are charged.

In our considered opinion, this did not occasion any failure of justice on the part of the appellants for the reasons we shall explain shortly. The appellants in the instant case were well aware from the particulars of the offence the nature of the offence they stood charged and its gravity, but more so the trial magistrate at the time of conviction stated clearly that they are convicted as charged. We do not find that the appellants were ostensibly prejudiced by the failure to state the law. We are decidedly of the view that this omission did not occasion any injustice on the part of the appellants as such it is curable under section 388 (1) of the CPA. Fortunately, this Court has in numerous occasions taken this position when faced with similar

scenario. See, for instance, **Hassani Saidi Twalib v. Republic**, Criminal Appeal No. 95 of 2019 and **Emmanuel Phabian v. Republic**, Criminal Appeal No. 259 of 2017 (both unreported). It goes without saying that, this ground of appeal has no merit.

There is yet, another complaint which was raised by the appellants in relation to PW6's testimony. The appellants complained that PW6 was affirmed while he doesn't profess any religion, but the learned Senior State Attorney in her reply argued that, the oath taken by PW6 was in line with the law and cited section 4 of Cap 34. We have taken into consideration the submission by the learned Senior State Attorney and we find considerable merit in her submission. For clarity, we wish to recite the provision of section 4 of Cap 34:

> *"4. Subject to any provision to the contrary contained in any written law, an oath shall be made by-*
>
> *(a) N/A*
> *(b) N/A*
>
> ***Provided that, where any person who is required to make an oath** professes any faith other than the Christian faith or objects to being sworn, stating as the ground of such objection, **either that he has no religious belief** or that the making of an oath is contrary to his religious belief,*

such a person shall be permitted to make his solemn affirmation instead of making an oath and such affirmation shall be of the same effect as if he had made an oath."

We have emboldened the relevant parts of the above provision to underscore the submission by the learned Senior State Attorney who rightly submitted that the above law permits any person who does not profess Christianity or does not have any religion to affirm and that the affirmation is sufficient for testifying before the court of law and for that matter, the testimony of PW6 who said that he has no religion was in accordance with the law. We therefore find that this complaint has no merit too.

The other complaint by the appellants is that Exhibit P6 which was produced in court and tendered by PW6 was irregularly admitted in evidence. We hasten to state that this issue need not detain us. It is conspicuously clear that, exhibit P6 was produced in evidence on 8th November, 2019 by PW6 and that after its admission, it was not read over in court so as to enable the appellants understand its contents contrary to the requirement of the law. This position of the law is settled and clear and there are numerous decisions of this Court and if we can cite just one, **Robinson Mwanjisi v. Republic** [2002] TLR 218. Consequently, we

hereby expunge exhibit P6 from the record. However, we wish to state that, even if exhibit P6 is expunged from the record, the oral account of PW6 remains intact on record as to what he testified on account of the EFD machine that the appellants registered in the name of the CALCARE INTERNATIONAL and used inconsistence with the TRA requirements and therefore occasioned loss to it.

We will also deliberate on the complaint that the first appellate court did not consider that the trial Magistrate did not sign at the end of the evidence of each witness and this vitiated the trial. Clearly, the law requires a judge to append a signature at the end of testimonies of every witness. The rationale of signing of proceedings by a judge after recording evidence of each witness renders assurance as to authenticity of the proceedings. There is a considerable body of case law on this. See, for instance **Yohana Mussa Makubi and Abuubakar Ntundu v. Republic**, Criminal Appeal No. 556 of 2015 (unreported).

In our considered opinion, this issue equally should not detain us for the simple reason that, a cursory perusal of the records of appeal in this matter reveals that, the trial Magistrate at the end of testimonies of every witness and after giving the subsequent order signed the proceedings which

in our view suffices and renders assurance as to authenticity of the proceedings. In the circumstances, this ground has no merit.

Lastly, we will also deliberate on the complaint that the trial and the first appellate courts did not analyze and evaluate the evidence of the prosecution and that of the defence before arriving at the conclusion it did. Our examination of the record of proceedings bear out that, the two courts below analyzed and evaluated the evidence of both the prosecution and the defence and finally came to the conclusions that the prosecution proved its case to the hilt. In their respective defences at the trial the appellants stated that they never gave a cautioned statement (exhibit P2) and extra-judicial statement (exhibit P7) respectively. But, as earlier stated, the above statements were produced and admitted in evidence without objection by the defence. The appellants are precluded from questioning their admissibility at this stage, see for instance, **Vicent Ilomo v. Republic**, Criminal Appeal No. 337 of 2017 (unreported). This ground of complaint therefore has no merit.

It is instructive to note that it is the duty of the prosecution to prove the case beyond reasonable doubt. In the case under our consideration there was ample evidence from the prosecution witnesses that the appellants registered the EFD machine which was utilized in a manner not consistent

with the TRA authorization and thereby occasioning loss to it, to the tune of the amount stated above.

It is also a peremptory principle of law that an accused person has no duty to prove his innocence. However, this does not mean that he can tell any story of his imagination even when it is incapable of appealing to sense. See, **Vicent Ilomo** (supra). For instance, we cannot figure out the second appellant's version of his defence that the EFD machine in question was registered for CALCARE INTERNATIONAL upon their instructions while PW6 the finance officer of CALCARE INTERNATIONAL testified that the said EFD machine did not belong to that company and was never used by their company for business transaction. This line of defence is fanciful so to speak and incomprehensible. Equally, the first appellant's defence that she was merely sent by the second appellant while she concealed the whereabouts of the offices of CALCARE INTERNATIONAL when asked by PW1, is fanciful. We are fortified in this view by our earlier decision in the case of **Chandrankat Joshubhai Patel v. Republic**, Criminal Appeal No. 13 of 1998 (unreported) in which we held that:

> *"remote possibility in favour of the accused person cannot be allowed to benefit him. Fanciful possibilities are limitless and it would be disastrous for the administration of criminal*

justice if they were permitted to displace solid evidence or dislodge irresistible inferences."

Before we take leave, let us now deliberate on the validity of the sentence imposed. Ms. Ally's submission on this issue is based on the position of the law under section 60 (2) of the EOCCA which requires that, a person convicted with an offence which is provided under the EOCCA and other written law, unless the penalty in that other law is greater than that which is imposed under the EOCCA, the latter will prevail. The learned Senior State was undeniably right to submit that, the trial court wrongly imposed the sentence of seven (7) years for the offence of occasioning loss to a specified authority contrary to paragraph 10 (1) of the First Schedule to and section 60 (2) of the EOCCA. For clarity, section 60 (2) of the EOCCA provides as follows:

> *"Notwithstanding provision of a different penalty under any other law and subject to subsection (7), a person convicted of a 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."

Clearly, the provision cited above is unambiguous, and in our considered opinion, the learned Senior State Attorney was undeniably right in her submission, since the appellants were found guilty and convicted of an economic offence in the sixth count they were liable for a greater penalty than the one imposed by the trial court. We, on our part, think the trial court, wrongly resorted to the milder sentence of seven years while the minimum sentence for that count under the provision of section 60 (2) of the EOCCA is twenty years. We thus invoke our powers under section 4 (2) of the AJA, and quash the sentence in the sixth count. We substitute in lieu therefor, a sentence of twenty years imprisonment for the sixth count. For avoidance of doubt, this sentence will run concurrently with the previously meted sentences in other counts and the order in relation to payment of TZS. 1,776,693,465 remains as it is.

Be that as it may be, we are, on the strength of the evidence on record, satisfied that the case for the prosecution was proved beyond reasonable doubt. In similar vein, we have found that save for the sentence as indicated

above, no justification for interfering with the concurrent finding by the two courts below.

We find the appeal devoid of merit and accordingly, we dismiss it.

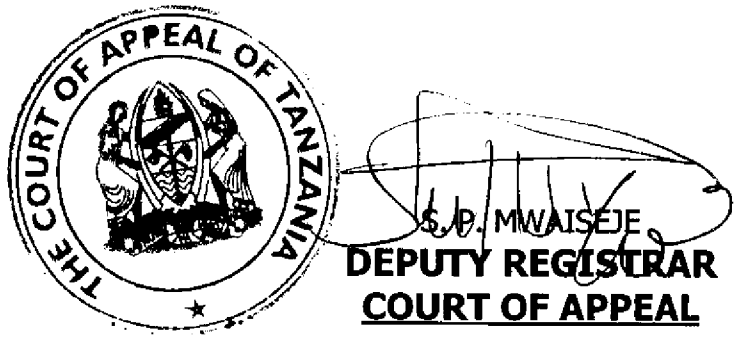
DATED at **DAR ES SALAAM** this 19th day of October, 2022.

R. K. MKUYE
JUSTICE OF APPEAL

P. M. KENTE
JUSTICE OF APPEAL

P. F. KIHWELO
JUSTICE OF APPEAL

The Judgment delivered this 27th day of October, 2022 in the presence of the appellants appeared in person – unrepresented and Ms. Kija Elias learned State Attorneys for the Respondent/Republic, is hereby certified as a true copy of the original.



S. P. MWAISEJE
DEPUTY REGISTRAR
COURT OF APPEAL