

**THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT COURT OF MAGISTRATE OF  
MOROGORO**

**AT MOROGORO`**

**ECONOMIC CASE NO. 18 OF 2012**

**THE REPUBLIC**

**Versus**

**SELEMANI S/O ALLY @ MAGANGA & OTHERS**

Date of last order : 16/04/2015  
Date of Judgment : 22/04/2015

**JUDGMENT**

The accused persons in this case Selemani Ally Magaga and Rehani Magani are jointly together charged with the offence of unlawfully possession of Government trophies c/s 86 (1) (2) (b) and (3) of Wildlife Conservation Act No.5 of 2009 (Cap.283) read together with paragraph 14 (d) of the first schedule to and section 57(1) of Economic and Organized Crime Control Act Control Act Cap.200 R.E. 2002.

Particulars of the offence is that Selemani s/o Ally and Rehani s/o Magani on 3<sup>rd</sup> September, 2012 at Mkuta area within the Mvomero in Morogoro Region were found in possession of Government Trophies to wit fifty lug of Bafflement valued at Tshs.2,945,000/= the property of the Government of United Republic of Tanzania without permit or licence.

The accused person pleaded not guilty to the charge. To prove their case the prosecution side called three witnesses and 2<sup>nd</sup> accused adduced his defence and call two witness. The accused person has jumped bail and the case proceed u/s 226(1) of the Criminal Procedure Act.

PW1 in this case was Chistopher Mwamba he told this court that he is the Park Ranger working at National Park Mikumi. His responsibility is to secure security of all the properties company.

He remembered on 2<sup>nd</sup> September,2012 they received information that the 1<sup>st</sup> accused person was selling meal at Mkuta

area. They were give the telephone number of that person. They were told that he was sahanga buffalo menu.

On 3<sup>rd</sup> September 2012 at 1.00 am they telephone to the first accused and inform him that they were customers and already reached at Mkata. That they want to buy the meat. He went and sent them to the area he kept that meat. Before reached there he went and woke-up the 2<sup>nd</sup> accused and told him to give him panga and also to escort him to that house. At that house they found the leg of buffalo they asked the price and said shs.150,000/= for arm and 180,000/= for the leg. They agreed to took the arm for the price of shs.150,000/=. The they told then to sent in the car. From there they put him under the custody. After that the accused persons started to shout and many people went with Pangas went to sent then. They manage to move with then to TANAPA offices. They interrogated them they admit it was buffalo meat and they had no any permit. They said that they get that meat within the game reserve of Mikumi.

They asked then if they had any gun but they denied. They asked them if they had no gun how they manage to kill that animal, they said they were together with Doto who is the Park Ranger of Mikumi and another person who is known as Mengi they were taken to the police station where on the next day the 1<sup>st</sup> accused sent then to the area where they hunt the said animal. It was within their game reserve. At the scene they found utumbo and blood The police went and arrest the Park Ranger and all were charged with this offence. In cross examination with the 2<sup>nd</sup> accused he said 1<sup>st</sup> accused went and woke up him.

PW2. Was James Shayo he told this court that he is working as a park ranger for twenty five years now at Mikumi National Park. He know the accused person since 3<sup>rd</sup> September 2012 when they went to arrest him. He remembered on 2<sup>nd</sup> September 2012 they received information from good samaritanis that there were the persons who used to sell meal at Mkata village which they used

to found in their National Park. They communicate with that person whom they were informed when going there.

When reached there they informed him that they need meat. That person is the 1<sup>st</sup> accused person. They bargain the price of shs.150,000/=. He told then he went to took another person who will help him to carry that meat. He went and woke the 2<sup>nd</sup> accused who went therewith a panga. They carry that meat to the motor vehicle. That meat was of the animal who is called Buffalo. They identify that was buffalo meat because of the skin. Then they arrest the accused person. After arrest them the accused persons started to shout. Many people (villages) went to the scene want to assault them. They manage to move and sent the accused persons to police station with their meat. Then the accused person sent them to the area where the said buffalo was slaughtered it was within the game reserve. They found the blood and utumbo. Then the accused person were charged with this offence.

PW3 was Iddi Ndabagaye who told this court that he is working with Morogoro District council as a game officer.

He remembered on 4<sup>th</sup> November, 2012 he was at his office. He saw the police officer from Dona. The went there with the government trophy he meat which they discovered it was the buffalo meat. He went to their office for purpose of examing that meat he discovered it was buffalo meat and prepared the evaluation report which was tendered in court as exhibit PI.

PW.4 was No. F 4140 D/Cpl Marco who told this court that he is working as Police offices stationed at Dona Police Post.

On 3<sup>rd</sup> September, 2012 he was at Police and he was handed police case file to investigate it. He read the file and found investigate it. He read the file and found it involved four suspects and also there were exhibit a leg of buffalo. Then he prepared on inventory and sent to the magistrate signed it Then he prepare a charge sheet and all the accused persons were

charged with this offence. He produced before the court the inventory. Sketch map and pictures which showed the area of the scene and 'utumbo' and two accused with a leg of buffalo went and the court admit it as inventory as exhibit P2, sketch map as exhibit P3 and pictures as exhibit P4.

This was the end of prosecution case in his defence the 2<sup>nd</sup> accused person told this court that on the day of this incident he saw the first accused to his house and woke up when he was sleeping in his house he to go and help him to carry the meat and sent in the motor vehicle. He did not know if that was the buffalo or not. His wife was present when the 1<sup>st</sup> accused went and woke up him.

In cross examination with the prosecutor he said that meat was belonged to the 1<sup>st</sup> accused person.

DW2 was Joseph Zacharia who told that he know the 2<sup>nd</sup> accused person he is his neighbour. He did not remembered the date on

the day of this incident he hired his motorcycle and the accused person sent him to Mlali to attend his sick mother they moved at 11.00am and return at 7.00pm. Then he return home.

DW.3 was the wife of the 2<sup>nd</sup> accused told this court that she know the 2<sup>nd</sup> accused was his husband. On the day the 2<sup>nd</sup> accused arrested they were sleeping. They heard their door was knocked by 1<sup>st</sup> accused person who told the 2<sup>nd</sup> accused to go with a panga. The 2<sup>nd</sup> accused went with the panga. After a shot time he saw their neighbour went and if the 2<sup>nd</sup> accused was there. Then the villagers gathered and they did not know where 1<sup>st</sup> and 2<sup>nd</sup> accused person were sent.

This is the end of whole evidence.

After this court going through the evidence on records the main issue to be discussed is whether the both accused person in the dock were found in possession of buffalo meat as the accused persons were charged.

The prosecution side to prove their case the bring PW1 and PW.2 who are Principle witnesses in this case. In their evidence state that after the information that the 1<sup>st</sup> accused used sell the Buffalo meat without any permit they communicate wit him and sent the meat to then the he went to woke up the 2<sup>nd</sup> accused in this case to help him to carry it . The said meat was in court as exhibit. No dispute that the 1<sup>st</sup> accused person sent PW1 and PW2 to the area where he kill that animal which was within the game reserve. Again PW3 who is the game officer also proved beyond a reasonable doubt that it was a buffalo meat and evaluated the value to be 2,945,000/=.

The remaining issue to be discussed is whether both accused were found in possession of that meat. According to the evidence received Both PW.1 and PW2 explained clearly that the information they get was of the 1<sup>st</sup> accused. And when they went to the scene they meet with 1<sup>st</sup> accused person. But when reached the 1<sup>st</sup> accused went to woke up the 2<sup>nd</sup> accused who

helped him to carry that meat. But the prosecution side did not put clear that meat was taken from each accused house because the prosecution witnesses proved themselves that even to bargain the price was between them and the 1<sup>st</sup> accused person it mean that meat was belonged to the 1<sup>st</sup> accused only.

The 2<sup>nd</sup> accused person in his defence explained the prosecution witnesses explain that he was sleeping to his house and 1<sup>st</sup> accused went to woke up asked for help. He bring even the witnesses to that effect. For this court found that the 2<sup>nd</sup> accused person was innocent but the 1<sup>st</sup> accused went to asked for help.

The laws is very clear that a person cannot convicted for the act of the other person. The 1<sup>st</sup> accused person received his right of defence on his own.

meat as he was charged as it was held in the case of Jonas Nkize V.R. (1992) TLR 213.

From the above discussion I hereby by found the 1<sup>st</sup> accused person is guilty as he was charged and convict him accordingly. Also found the 2<sup>nd</sup> accused person is not guilty and I hereby acquit him accordingly.

Sgd: M. Hamduni – RM

23/4/2015

**Previous records for the 1<sup>st</sup> accused person:**

No previous conviction I pray for harsh punishment to be a lesson to the accused person.

**1<sup>st</sup> Accused mitigation:**

Nil.

**SENTENCE FOR THE 1<sup>ST</sup> ACCUSED PERSON:**

This court considered the prosecution pray and sentence him to pay a fine 29,045,000/= (ten value) or fifteen years imprisonment.

Sgd: M. Hamduni – RM  
23/4/2015

**COURT:**

The sentence start when the 1<sup>st</sup> accused person arrest.

Sgd: M. Hamduni – RM  
23/4/2015

Right of Appeal Explained.

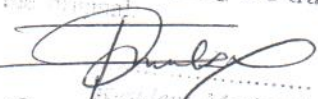
Sgd: M. Hamduni – RM  
23/4/2015

**COURT**

Judgment delivered in open court at presence 2<sup>nd</sup> accused ordered in the absence of the 1<sup>st</sup> accused.

Sgd: M. Hamduni – RM  
23/4/2015

I hereby certify that the foregoing is a true and correct copy of the original.

  
28/09/2015  
President Magistrate