

IN THE DISTRICT COURT OF SERENGETI DISTRICT

AT MUGUMU

ECONOMIC CASE NO. 09/2010

REPUBLIC

VERSUS

CHARLES MWITA

JUDGMENT OF THE COURT

15/06/2011 & 20/05/2013

BEFORE: KISWAGA F.S. (RM)

In this case the accused, **Charles Mwita** is charged with three counts namely unlawful entering into the National Park contrary to **section 21(1) and (2) and section 29(1) of the National Parks Act [Cap 282 R.E. 2002]**, unlawful possession of weapons in the National Park contrary to **section 24(1)(b) and (2) of the same law** and, last count is unlawful possession of Government Trophies contrary to **section 70(1) and (2)(c)(iii) of the Wildlife Conservation Act [Cap 283 R.E. 2002]** read together with **paragraph 14(d) of the first schedule to and section 57(1), 60(2) of the Economic and Organized Crime Control Act [Cap 200 R.E. 2002]**.

The particulars of the offence in respect of all three counts is that on 7th day of May, 2010 at about 18:00hrs at Itaro areas in Serengeti National Park within Serengeti District, Mara Region the accused was found to have entered therein without the permission of the Director previously sought and obtained in the first count and, in the second count, the accused was also on the same date, time and place found in unlawful possession of weapons to wit; one knife, one spear and four animal trapping wires without a permit and failed to satisfy an authorized officer that the same was intended to be used for the purpose other than hunting, killing, wounding or capturing of an animal. And the last count is that the accused on the same date, time and place as per first count was found in unlawful possession of one dry piece of meat wildebeest valued Tshs. 400,000/= and one dry piece of meat of zebra valued Tshs. 740,000/= all making total Tshs. 1,140,000/= the property of Tanzania Government.

When the charge was read over to him he pleaded not guilty in all counts. During Preliminary Hearing the accused admitted his name, address, personal particulars, date of arrest, arrested by park rangers, taken at Kuka Ranger Post and later to mugumu olice station. To prove their case prosecution called three witnesses Loitare Saitabahu (PW1), Matondo Masunga (PW2) and Investigator of Police No. F.1887 D/C Andrew (PW3).

Prosecution evidence can be summarized as follows: On 05/10/2010 at 18:00pm the Park Rangers Loitare Saitabahu (PW1), Matondo Masunga (PW2), Steven Sabai, Paschal Nyangwa, Mzee Ndakama and Sai Mhurukuki were on patrol in the areas of Warangi which is within SENAPA. While on such patrol they saw people coming from the bush running. They chased them but successfully arrested one person accused person. They took him back to the bush where they started running. PW1 and PW2 said that accused was found having on that bush one knife, one spear and four animal trapping wires. They further told the court that accused was found also possessing two pieces of the dried meat one was of zebra and the other was dried meat of wildebeest. They said when they asked him a permit he hadn't. They said such person introduce himself by name of Charles Mwita resident of Bonchugu village. PW1 and PW2 further stated that they then took the accused with all exhibits weapons and govt. trophies were found having in the bush to Lobo Ranger Post and on the following day they took him to Mugumu Police Station with all exhibits.

PW3 was Police No. F1887 D/C Andrew, Investigator of the police case file. He said that on 09/05/2010 at 07:30pm he was assigned by the OCCID the police case file No.MUG/IR/1157/2010 for investigation. He went through the file and found that the accused was Charles Mwita, offences were three namely unlawful entry in the national park, unlawful possession of weapons in the national park and unlawful possession of govt. trophies. The complainant was one Loitare Saitabahu. He said further that he went in the exhibit room and inspected the exhibits one knife, one spear and four animal trapping wires, one piece of the dry meat of zebra nd one piece of the dry meat of wildebeest. He said on the same date he interrogated the accused but denied allegations.

PW3 testified further that on the same date called Game Warden Athuman Kitenana to identify and value the govt. trophies alleged to be found with the accused when arrested. He said the Game Warden identified one piece of the dry meat of zebra and another piece of the dry meat of wildebeest. He said Game Warden then issued certificate of govt. trophy and gave it to him. PW3 prayed to tender such exhibit and the same was admitted and marked "exhibit

P2" as per **s. 86 of the Wildlife Conservation Act [Cap 283 R.E 202]**. PW3 also tendered an inventory form of the claimed property. The same was admitted as exhibit and marked "exh. P3".

Thereafter the prosecution prayed to close their case and the same was closed. After having gone through the prosecution evidence and the exhibits tendered I had opinion that the Republic has established their case against accused. I therefore found the *accused have a prima facie case*. Since the accused jumped bail I therefore set a date for judgment.

The issues before me in this case is *firstly whether the accused entered unlawful in the senapa, secondly whether he was found unlawful possessing weapons within senapa and lastly, whether he was found unlawful possessing govt. trophy*. Examining the prosecution evidence of Loitare Saitabahu (PW1) the Park Ranger is supported by the evidence of Matondo Masunga (PW2), the Park Ranger too. Their evidence is that on 07/05/2010 at 18:00hrs they were in patrol with their colleagues in the areas of Warangi with their other co-Park Rangers they saw people coming from the bush running. They chased them in short distance and successful arrested one the accused person in this case. They said others escaped. They then took him back to the place where he was. They also found him having one knife, one spear and four animal trapping wires and govt. trophies one piece of the dry meat of zebra and another piece of the dry meat of wildebeest. They asked him if he has any permit but he hadn't. They then took the accused with such pieces of dry meat of zebra and wildebeest, one knife, one spear and four animal trapping wires to Police Station of Mugumu. Also PW3 tendered certificate of govt. trophy issued by Game Warden, the same was admitted by this court and admitted as "exhibit P2" and an inventory form was also admitted by the court and marked "exhibit P3".

I am the one who heard the evidence of prosecution witnesses. While taking their evidence I found credence on what they were telling the court. Their evidence is so straight and direct. PW1 and PW2 arrested accused who emerged from the bush running. They found him having one knife, one spear and four animal trapping wires, one piece of the dry meat of wildebeest and another piece of the dry meat of zebra. They took him to Lobo Ranger Post and on the following day they took him with exhibits to Mugumu Police Station. PW3 also tendered certificate of govt. trophy issued by the game warden which was admitted and marked "exhibit P2". Since I am the one who heard their evidence I am so convinced that these are credible and reliable witnesses. The

way I looked at them when they were in the dock testifying I have no doubt that they were talking nothing but only truth.

Section 21(1)(2) of the National Parks Act(supra) provides that any person who enters the National Park without an authority commits an offence and the punishment is provided under **s. 29(1) of the same law. Section 24(1) (b) of the same law** provides that any person who is found possessing any weapon in the National Park and he fails to satisfy the Trustees or any authorised officer that it was intended to be used for a purpose other than the hunting, killing, wounding or capturing of an animal; that person is said to commit an offence and the punishment is described under subsection 2 of section 24 of the same law. Also **section 70(1) and (2) of the Wildlife Conservations Act [Cap 283 R.E. 2002]** read together with **paragraph 14(d) of the first schedule to and section 57(1), 60(2) of the Economic and Organized Crime Control Act [Cap 200 R.E. 2002]** provides that any person who is found having or possessing any govt. trophy commits an offence and the punishment is provided in the same provision.

Basing on the credibility of PW1 and PW2 this court is clearly satisfied that accused was found in the senapa possessing weapons and govt. trophies. Accused by their absence missed the opportunity to prove his defence that he was therein lawful. The accused also failed to prove to the court that the weapons he was found possessing were not intended to be used for hunting, killing, wounding or capturing of an animal. Also the govt. trophy found from the accused possessing it at the scene which were later identified and valued by the Game Warden as exhibit P2 proves, creates no doubt to this court, were one piece of the dry meat of wildebeest and one piece of the dry meat of zebra. Accused failed to prove too that he possessed lawfully.

On the basis of the findings of fact and the applicable law, I am satisfied beyond reasonable doubt that the prosecution has proved its case against accused **Charles s/o Mwita**. I accordingly find the said **Charles s/o Mwita** guilty of all offences as charged and I duly convict him forthwith.


F. S. Kiswaga
RM
20/05/2013