

IN THE DISTRICT COURT OF SERENGETI DISTRICT

AT MUGUMU

ECONOMIC CASE NO. 10/2010

REPUBLIC

VERSUS

ITEMBE RHOBI

JUDGMENT OF THE COURT

24/04/2013 & 05/09/2013

BEFORE: KISWAGA F.S. (RM)

In this case the accused, **Itembe s/o Rho** charged with three counts namely unlawful entering into the Game Reserve contrary to **section 10(1) (a) and (b) and (2) of the Wildlife Conservation Act [Cap 283 R.E. 2002]**, unlawful possession of weapons in the Game Reserve contrary to **section 11(1) 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 6th day of September, 2010 at about 20:00hrs at Muchuri Hills area in the Ikorongo/Grumet Game Reserve within Serengeti District, Mara Region the accuseds were 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 accuseds were also on the same date, time and place found in unlawful possession of weapons to wit: one knife and one torch 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 were found in unlawful possession of one head of Thomson Gazelle valued at Tshs. 240,000/= the property of Tanzania Government.

When the charge was read over to them they pleaded not guilty. On preliminary hearing the accused admitted his name and address and personal particulars only. To prove their case prosecution called three witnesses Maguye Manyarange (PW1), Athuman Kitenana (PW2) and Police Investigator No. F728 D/SSgt. Raphael.

Prosecution evidence can be summarized as follows: On 06/09/2010 at 20:00pm the Game Rangers Maguye Manyarange (PW1), Rashid Madunda and Fabian Haruni were on patrol in the areas of Muchuri which is within Ikorongo/Grumeti Game Reserve. While on such patrol they saw torch lights. They made follow up and successfully arrested one person he said the accused charged in this case. PW1 stated he caught such person possessing one killed Thomson Gazelle, one knife and the torch. They asked his name and introduced by name of Rhobi Itembe resident of Nyichoka village. They also asked him if they have any permit, but replied to have no any permit. PW1 further stated that they then took accused with weapons and govt. trophies in the morning they found with him to Mugumu Police Station. PW1 tendered the weapons one knife and one torch where the same were admitted as exhibit P2 collectively.

PW3 was Police No. F6875 D/C. Nelson, Investigator of the police case file. He said that on 05/01/2011 evening he was assigned by the OCCID the police case file No.MUG/IR/52/2011 for investigation. He went through the file and found that the accused was Idd Zakaria Kuni, offences were three namely unlawful entry in the Ikorongo/Grumet Game Reserve, unlawful possession of weapons in the Ikorongo/Grumet Game Reserve and unlawful possession of govt. trophies. The complainant was one Rocket Nyangesa. He said further that he went in the exhibit room and inspected the exhibits one panga, one knife, four animal trapping wires, one head of warthog and 2 pieces of the fresh meat of waterbuck. He said on the same date he interrogated the accused but denied allegations. The said weapons were admitted as exhibits and marked as "exh. P2" collectively.

PW2 was Athuman Kitenana, Game Warden of Ikorongo/Grumet Game Reserve by 2010. PW3 said that he possesses a Basic Certificate and Certificate in Wildlife Management that he obtained on 1999/2002 and 2004/2005 respectively at Mweka Wildlife College-Moshi. He said that on 07/09/2010 in the morning while was at forti Ikoma was telephoned by D/C Raphael to go at mugumu police station to identify and value the govt. trophies. He responded a call and went at mugumu police station. When reached there I met with D/C

Raphael where he identified one fresh carcass of the wild animal Thomson Gazelle and valued it Tshs. 240,000/=. He did so in the present of Investigator D/C Raphael and one suspect called Rhobi Itembe. PW3 said further that he then took certificate of govt. trophy filled his name, title, courses attended, govt. trophies he has identified and valued them, signed and stamped on behalf of the manager Ikorongo/Grumet Game Reserve. He said he then issued it and gave it to the investigator of the case. PW3 prayed to tender such exhibit and the same was admitted and marked "exhibit P3".

PW3 was Police Investigator No. F728 D/SSgt. Raphael. He testified that on 07/09/2010 at 07:00am he was assigned Police Case File No. MUG/IR/2483/2010 for further investigations. He said that complainant was Rashid Madunda and the accused was Rhobi Itembe. He said that he went in the exhibits room and examines one knife one torch and one fresh carcass of Thomson Gazelle. He further said that he then 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 carcass of Thomson Gazelle. 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 P3" as per **s. 86 of the Wildlife Conservation Act [Cap 283 R.E 202]**.

Thereafter the prosecution prayed to close their case and the same was closed. I found accused have a prima facie case. He testified without calling any other witness. Rhobi Itembe stated on his defence that on September 2010 while taking back home his cattle from grazing was arrested by Game Rangers. He said that Game Rangers did not understand his story that he was coming from grazing cattle and nothing else. He said he then handled his cattle to the neighbors. He was taken to their camp and on the following day to Mugumu Police Station. he said he was surprised being charged in this court with one knife, one torch and one died Thomson Gazelle.

There is no doubt about the authenticity of weapons one knife and one torch exhibit P2. The issues before me in this case is *firstly whether the accuseds entered unlawful in the Game Reserve, secondly whether they were unlawful found possessing weapons within Game Reserve and lastly, whether they were unlawful found possessing govt. trophy.*

The issues before me in this case is *firstly whether the accused entered unlawful in the game reserve, secondly whether he was found unlawful*

possessing weapons within game reserve and lastly, whether he was found unlawful possessing govt. trophy. Examining the prosecution evidence of Maguye Manyarange (PW1). Their evidence is that on 06/09/2010 at 20:00hrs they were in patrol with their colleagues in the areas of Muchuri with their other co-Game Rangers they saw a person hidden in the bush. They made an ambush but successfully arrested one person the accused in the present case at hand. PW1 stated further in their evidence that he found accused having one knife, one torch and once killed Thomson gazelle. They asked him if he has any permit but he hadn't. They then took the accused with all exhibits they found with him to Police Station of Mugumu. PW1 tendered in court one knife and one torch. The same was admitted and marked "exhibit P2" collectively. Also PW2 tendered certificate of govt. trophy issued by Game Warden, the same was admitted by this court and admitted as "exhibit P3" on the first date when the accused was brought to court.

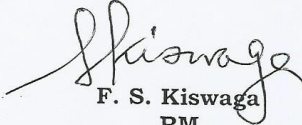
I am the one who heard the evidence of prosecution witnesses. While taking their evidence I found credence on what they were telling the court. Their evidence is so straight and direct. PW1 and PW2 while on patrol in the areas of Muchuri in the game reserve saw a person hidden in the bush. They made an ambush and successfully arrested the accused. They caught him having one knife, one torch and one killed Thomson gazelle. They then took him with exhibits to Mugumu Police Station. PW2 also tendered certificate of govt. trophy issued by the game warden which was admitted and marked "exhibit P3". Since I am the one who heard their evidence I am so convinced that these are credible and reliable witnesses. PW1 arrested accused in the area of Muchuri while possessing weapons and govt. trophies. 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 10(1) (a) and (b) and (2) of the Wildlife Conservation Act (supra) provides that any person who enters the Game Reserve without an authority commits an offence and the punishment is provided under **section 11(1) and (2) of the same law of the same law** provides that any person who is found possessing any weapon in the Game Reserve and he fails to satisfy the Trustees or any authorized 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 same law.

Basing on the credibility of PW1 this court is clearly satisfied that the accused was found in the areas of Muchuri possessing weapons and govt. trophy. The

accused failed to prove in 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.

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 the accused **Itembe s/o Rhobi**. I accordingly find the said **Itembe s/o Rhobi** guilty of 1st and 2nd count as charged and I duly convict him for such two counts forthwith.


F. S. Kiswaga
RM
05/09/2013

