

IN THE DISTRICT COURT OF SERENGETI DISTRICT

AT MUGUMU

ECONOMIC CASE NO. 103/2012

REPUBLIC

VERSUS

JOHN MARWA TUNGERA

JUDGMENT OF THE COURT

22/05/2014

BEFORE: KISWAGA F.S. (RM)

In this case the accused, **John s/o Marwa @ Tungera** 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]** as amended by the **Written Laws (Miscellaneous Amendments) Act No. 11 of 2003**, 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 86(1) and (2) of the Wildlife Conservation Act No. 5 of 2009** 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 05th day of October, 2012 at about 17:00hrs at grumet areas which is within Serengeti National Park 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; two knives and one animal trapping wire 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 4 pieces of the dried meat of wildebeest and one fresh skin of wildebeest valued Tshs. 975,000/= and one dried skin of zebra valued Tshs. 1,800,000/= the property of Tanzania Government.

When the charge was read over to him he pleaded not guilty. On preliminary hearing accused admitted his name and address, arrested by park rangers, taken to police station and then charged in this court. To prove their case prosecution called two witnesses Lazaro Jeremia Beneth (PW1) and Antony Msumi (PW2).

Prosecution evidence can be summarized as follows: On 5/10/2012 at 17:00pm the Park Rangers Lazaro Jeremia Beneth (PW1), Antony Msumi (PW2) and Julius Seng'eta were on patrol in the areas of Grumet which is within SENAPA. While on such patrol they saw a person hidden in the bush. They surrounded him and successfully arrested him. They found him having two knives and one snare. PW1 and PW2 stated further that they also caught him possessing four pieces of the dried meat of wildebeest, one fresh skin of wildebeest and one dried skin of zebra. They asked his name and he said he is called John Marwa Tungera. They also asked him if he has any permit, he replied to have no any permit. They further said that they took him with all exhibits they found with him direct to Mugumu Police Station where they opened Police Case File No.MUG/IR/2759/2012. PW2 tendered the weapons to wit: two knives and one snare where the same were admitted as exhibit P2.

Thereafter the prosecution prayed to close their case and the same was closed. Since accused jumped bail immediately after prosecution had closed its case I therefore fixed a date for judgment in his absentia.

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

Lazaro Jeremia Beneth (PW1) the Park Ranger is supported by the evidence of Antony Msumi (PW2), the Park Ranger too. Their evidence is that on 5/10/2012 at 17:00hrs they were in patrol with their colleagues in the area of grumet with their other co-Park Rangers they arrested accused who was hidden in the bush. When they arrested him they found him having two knives and one snare. They also caught him possessing four pieces of the dried meat of wildebeest, one dried skin of wildebeest and one dried skin of zebra. They asked him if he has any permit but he hadn't. They then took him with all exhibits he was found with direct to Police Station of Mugumu with their exhibits. PW2 tendered in court weapon one machete which the same were admitted as "exhibit P2.

Park Rangers are the security guards of wild animals entrusted by the government to perform such duties. Their main duty is to ensure safety of wild animals against the poachers. Looking into their evidence it's very straight in such away it gives me no doubt that they arrested the accused in the National Park of Serengeti. These two witnesses managed to arrest the accused who was found within senapa hidden in the area of grumet whilst possessing two knives and one snare. On the basis of the foregoing evaluation of evidence, I find that the PW1 and PW2, who gave a detailed account of what transpired in the scene, were a credible and reliable witness.

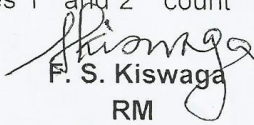
Coming to third issue, the Republic failed to prove whether the said govt. trophy alleged to be found with the accused were the govt. trophy as shown in the charge sheet and as stated by PW1 and PW2. They failed to give a detailed account as to how they knew that the govt. trophy found with the accused were pieces of meat of wildebeest, skin of wildebeest, skin of zebra or some other wild animal. A mere statement that such four pieces of the dried meat and skins of a wild animal were that of wildebeest and the other skin was that of zebra without giving explanation as to how they knew such pieces of meats and skins belonged to such animal or calling the game/park warden to identify and value such animal; I am having stammer to believe the story. Moreover nor certificate of govt. trophy were tendered. Having these doubts in my mind as regards to third count, benefits of doubt, *de jure*, goes to the accused.

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.

Basing on the credibility of PW1 and PW2 this court is clearly satisfied that the accused was found in the senapa possessing weapons. The accused failed to prove 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 **John Marwa Tungera** in the 1st and 2nd count. I accordingly find the said **John Marwa Tungera** guilty of two offences 1st and 2nd count as charged and I duly convict him forthwith.


F. S. Kiswaga

RM

22/05/2014