IN THE DISTRICT COURT OF SERENGETI DISTRICT

AT MUGUMU

ECONOMIC CASE NO. 126/2010

REPUBLIC

VERSUS

MHERE MKORI & TWO OTHERS

JUDGMENT OF THE COURT

13/03/2013 & 12/07/2013

BEFORE: KISWAGA F.S. (RM)

In this case the accused, **Muhere s/o Mkori, Ghati s/o Wambura and Nyamhanga s/o Mkori** who are referred to in this case as 1st, 2nd and 3rd accuseds respectively are 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 17th day of May, 2010 at about 17:00hrs at Mto Borogonja area in Serengeti National Park 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, one panga, one machete, one bow, eight arrows and six 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 accuseds on

the same date, time and place as per first count were found in unlawful possession of 2 pieces of the dry meat of Impala valued Tshs. 300,000/= the property of Tanzania Government.

When the charge was read over to them both pleaded not guilty. During Preliminary Hearing all accuseds admitted their names and addresses. During hearing, Prosecution called three witnesses Malelo Ekingo (PW1), Emily Msamu(PW2) and Athuman Kitenana (PW3).

Prosecution evidence can be summarized as follows: On 17/05/2010 at 17:00pm the Park Rangers Malelo Ekingo (PW1), Emily Masamu (PW2), Said Jumanne and Hussein Kumeho were on patrol in the area of Borogonja which is within SENAPA. While on such patrol they heard a voice of people talking. They surrounded such bush saw three people seated under the tree. They made an ambush and successfully arrested all three people. They found them possessing weapons and govt. trophies. PW1 and PW3 stated further that they found them having one knife, one anga, one machete one bow, eight arrows and six snares. They also said that they found them possessing govt. trophies two pieces of the dry meat of Impala. They said they asked their names one said called Mhere Mkori, the other said called Ghati Wambura and Nyamhanga Mkori. PW1 and PW2 further stated that they asked them about permit but no one had it. They further said they then took all of them with all exhibits they found with themto Kleins Ranger Post and on the following day they took them to Mugumu Police Station. PW1 tendered as exhibits weapons 1 knife, 1 panga, one machete one bow, 8 arows and 6 animal trapping wires as the ones they found with the accuseds when they were arrested. This court admitted all weapons as exhibits and marked collectively as "exhibit P2".

PW3 was Athuman Kitenana, Game Warden of Ikorongo/Grumet Game Reserve. PW3 said that he possesses Basic Certificate and Certificate in Wildlife Management he obtained on 2001/2002 and 2004/2005 at Pasiansi Wildlife College/Mwanza and Mweka Wildlife College-Moshi respectively. He said that on 19/05/2010 was called at Mugumu Police Station to identify govt. trophies. He said when reached there was shown two pieces of the dry meat of the wilde animal and he identified were of an Impala of the value Tshs. 300,000/=. He said that he did so in the present of the police investigator D/SSgt Yona and one suspect called 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 "exh. P2" as per **s. 86 of the Wildlife Conservation Act No 5/2009**. Thereafter the prosecution prayed to close their case and the same was closed.

There is no doubt about the authenticity of such 1 panga, 1 machete, 1 knife, 1 bow, 8 arrows and 6 animal trapping wires that are local weapons. The issues before me in this case is *firstly whether the accuseds entered unlawful in the senapa, secondly whether they were unlawful found possessing weapons within senapa and lastly, whether they were unlawful found possessing govt. trophy.*

Examining prosecution evidence is that PW1 and PW2 arrested all three accuseds who were hidden in the bush under the tree while possessing weapons and govt. trophies on 17/05/2010 at 17:00pm in the areas of Borogonja within senapa. They said they found them having local weapons 1 panga,1 machete, 1 knife, 1 bow, 8 arrows and 6 animal trapping wires which were all tendered and admitted as "exhibit P2". They also said that they arrested accuseds possessing 2 pieces of the dry meat of Impala. They then took them with all exhibits they found with them to mugumu police station. Game Warden PW3 said was called to police and identified 2 pieces of the dry meat of Impala and valued them as shown in "exh.P2". This evidence of prosecution witnesses is so direct. I am inclined to believe the evidence of PW1 and PW2 that arrested the accuseds in the bush whilst possessing weapons and parts of wild animals which are the govt. trophies. These are credible and reliable witnesses. Looking into PW1, PW2 and PW3's demeanor when they were in the dock testifying I am of no doubt 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 both accuseds were found in the senapa possessing weapons and govt. trophy. The accuseds by their absence missed the opportunity to prove in their defence that they were therein lawful. The accuseds also failed to prove to the court that the weapons they were found possessing were not intended to be used for hunting, killing, wounding or capturing of an animal. Also the govt. trophy found from the accuseds 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 2 pieces of the dry meat of Impala. Accuseds by their absence failed to prove too that they 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 the accuseds **Muhere s/o Mkori, Ghati s/o Wambura and Nyamhanga s/o Mkori** I accordingly find the said **Muhere s/o Mkori, Ghati s/o Wambura and Nyamhanga s/o Mkori** guilty of all offences as charged and I duly convict them forthwith.

F. S. Kiswaga
RM
12/07/2013