

IN THE RESIDENT MAGISTRATE COURT OF ARUSHA

AT ARUSHA

ECONOMIC CASE NO. 17 OF 2011

REPUBLIC

VERSUS

IDDY LAURENT WATAE AND OTHERS

JUDGMENT

BEFORE HON. H. A. MNGURUTA – RM

The three accused persons were charged with an offence of unlawful possession of government trophy contrary to sections 85 (1) ,86 (1) and (2) (b) of the wildlife conservation act, No. 5 of 2009 as read together with section 57 (1) and paragraph 14 (d) of the first schedule to the Economic and organized crime control Act (Cap 200 R. E 2002)

Prosecution states that accused person one Paul Iddy s/o Laurent Mtae, Fred s/o Musa were and Said s/o Hassani Kimiti on or about 11th day December 2011 at Marerani within Simanjiro District in Manyara region were found in possession of four pieces of Zebra meat valued at Tshs 7,680,000/= one Impala leg valued Tshs 624,000/= and one grant leg valued at Tshs 720,000/= making a total of Tshs 9,024,000/= the property of Tanzania government without a valid licence from authorized authority

The charge was read over to all accused person where as all of them pleaded not guilty.

The prosecution case was made up of four witnesses who are Naonawelu Mkali, Deonatus Makene, maneneo Myinga, Gilbert Babelo and Said K.S Mrangi. The prosecution also listed number of exhibits to be brought to the court these are certificate of Evaluation of trophy, Inventory and caution statement of all accused persons. However in order to fortify their case the prosecution via the witness of Deonatus Mkali tendered two Knives a bush knife and measurement scale as exhibits and they were admitted as exhibit P1.

Mr. Naonawelu Mkali who is here in after referred as "PW1" testify that he is an employee of TANAPA Ant- Poaching Unit, and that on 09/12/2011 he was in patrol with his fellow rengers at Mererani where he was informed that there were poachers hunting specified animal in the forest. They set a trap but the same did not work.

On 10/12/2011 around 13:00 hours, he said the informer told them that the suspect passed different gate and they were at the village called Songambebe selling meat. He together with his fellow went to the scene as per the descriptions of the informer. He said it was a house with a gate and they find a leader of the village one Mrangi and they were allowed to get in the house where they find a person who introduced himself as the owner of the house. He said further that they find three people Laurent and the two others; all of them were very busy cutting meat with an exercise book of the customers to be given the meat. They noted that the meat was of Zebra as they saw remaining of Zebra's skin set apart the experience they have, and that it was more than 100kg but there was no buyers.

He said further that he asked them if at all they have permit, Mr. Laurent said to them that "he had no Permit" he took them to their office together with the meat as exhibit.

When he was cross examined by 1st accused stated that he found him cutting meat and those they searched his house together with that of tenant but they did not get anything and insist that he found first accused with measuring scale and customer's exercise book. PW1 further stated that they get to know amount of meat be 100kg by approximation and that they did call 10 x10 before the search and that they involved not only 10 x10 but also Police officer from KIA.

When cross examined by the 2nd accused PW1 stated that the house of Laurent has many tenant but there were only three who were busy cutting meat. He was directed by people to 10 x10 and he called him before searching. When he was again cross examined by the 3rd accused PW1 stated that the meat was found at Laurent house and he was among three people he found on the scene. Upon re-examination PW1 state that the piece of Zebra skin they found was still fresh.

Deonatus Makene who is herein after referred as PW2 stated that he is employee of TANAPA with experience of 20 years. He testify that on 09/12/2011 around 16:00

hours he received information that certain people from Mererani entered the reserve area to conduct illegal hunting. He decided to go near Mereran together with his fellows to catch those people. They stay throughout the night at a way which is likely to be passed by the hunters but none was passed. And that on 10/12/2011 around 13:00 hours the informer called him just to inform that illegal hunters were already at Mererani with the meat. He together with his fellows went to Mererani where the informer directed them to the house of first accused. He further testify that around 17:00 hours they reached at the house of the first accused. He entered the 1st accused's house and found a meat hunger on the roof- truss and other meat was down the flysheet. PW2 further testify that he noted that the meat was product of wild – animal due to the nature of bones and smell of the meat. He again saw a measurement scale, a bush knife and two knives. He stated that three people were there. First accused, second accused and third accused (pointing them). He further testify the first accused was sited with food in front of him ready to eat. It was stiff- porridge with a roasted meat, a zebra's meat, he emphasized.

He again testify that the second accused was weighing piece of meat and the third accused was cutting meat into pieces.

He asked who was the owner of the meat and the first accused replied that it was his and that he had a permit to hunt, but he could not show him the permit.

He asked for a leader of a place 10 x 10 one Said Mrangi who came and explained to him that he want to search the house. However, he said, before that he told the 10 x 10 that he found the meat which seems to be a Zebra meat. He said upon paying a look on the parts of the body they noted that four Zebras were hunted. He conducted a search at the first accused's house where as out of Seven rooms every room was found with amount of Zebra meat, all together making 100kg. He further testify that in one of the room he found a bag used to keep a gun. Again there was another house near the 7 (Seven) rooms he searched the area and found two legs of Impala and a horn of grant gazelle which he took them as exhibits and took accused person for interrogation.

PW2 further testified that on 12/10/2011 he took first accused back to his house so that he may show the weapon he used for hunting. He called 10x10 and accused entered in one of the room which was closed on the date of searching where he

came out with a weapons 30 – 06 (Rifle), the permit book and a photocopy of a membership card of traditional hunters, all of which were handled over to him (PW2) and he took the accused back to Arusha. He finally prayed to tender as exhibit one bush knife, weapon cover two knives and one measurement scale with its stones, which were admitted as P1.

When cross examined by first accused PW2 stated that the house of the first accused had the tenants who said he is the one who gave them meat. He again stated that he had emergence search warrant and he had authority to search the house in the presence if one independent witness. When he cross examined by second accused PW2 said that he cannot remember if he signed the search warrant. Upon cross examination by third accused PW2 insisted that it was third accused who was cutting meat and that 10 x10 cell leader saw him in the scene. PW2 further insisted that 3rd accused and give the statement but he was the one who took accused statement.

Gilbert Bobelo here in after refereed as PW3 stated that he is working with ant Poaching unit Arusha as game warden, with an experience of 6 years. He testify that on 10/12/2011 he was in his office Arusha where his fellow who were in patrol came with accused persons together with exhibits and he was asked to identify the said trophy. He noted that there was a meat of four Zebra's, one Impala and one grant. He noted four legs of Zebra and four hands of Zebra. He further stated that he noted two legs of Impala and two hands as well as two legs of grant which means there was one Impala and one grant, he later evaluated the meat. He prayed to tender certificate of evaluation of the trophy as exhibit and the same admitted as P2.

When he was cross examined by 1st accused PW3 said that he did not measure the meat and it was from his experience he noted that it was Zebra's meat. He insisted that he received meat and evaluation was done out of one animal parse. When he was crossed by 3rd accused PW3 said he was not at the scene and that he was told that the meat was found with first accused whom he knows no his name.

Said K.S Mrangi here in after referred as PW4 stated that he is a resident of Mererani, Simanjiro in Manyara region, and he is 10 x10 cell leader of

Songambebe since 2002. He know his residents very well including Mr. Iddy the first accused who is a resident at his street.

He testify that on 11/12/2011 he was at a place called Kijiweni, he was called at home be informed that there were some guests who were in need of him. As he reached there he found one resident and a Police officer, who told him that he was needed at Mr. Iddy's house. He went there, people were many and Mr. Iddy was under arrest. A police Officer introduced himself to him saying that they wanted to search a house as Iddy was suspected of owning weapon and possessing government trophy. He inquired ID'S from them and searched them and they had nothing. He further testify that the house of the accused is in rectangular shape. They conducted search on the house owned by the accused where they find a rifle bag. The rest of the rooms owned by his wives were also searched and outside the 7th room find meat in the canvas, but no weapon was found. He further testify that he was not in the position to know kind of meat, and that there was no any skin near the meat to enable its identification. The meat was taken after preparation of document of what was found. He did sign the document.

When he was cross examined by the first accused, PW4 stated that the reengers had no search warrant and that he did saw the meat and it was like cow meat. He stated that by approximation it was 100kg and that nothing else was found. He said that he did signed the search and accused also sign the search which was hand written.

When he was cross examined by second accused and the third one, PW4 state that he knows no any of them. He further stated in re- examination that there was no measurement scales, and that he did not see the second and the third accused at the scene. Upon cross examination by the court PW4 further stated that only the 1st accused was taken together with the meet.

After the closure of the prosecution case and upon finding and pass through the prosecution case, the evidence adduced established a prima facie case and therefore accused persons have a case to answer as per section 231 of CPA [Cap 20 R. E 2002]

At this juncture the defence case was opened. The three accused person enjoyed no representation and they intended to call no witness.

DW1, one Paulo Iddy Laurent testify that he remember on 09/12/2011 around 15:00 hours he was having Lunch in his sitting room. Someone knocked the door, when he replied three people with weapons entered therein pointing him the said weapon. One of them asked him if he was Iddy, when replied on affirmative they put him under arrest where the two out of three who he later noted them to be game wardens (rangers) went outside the house and one was with him. They wanted him to give a weapon he used for hunting basing on the information they received from their informer. He refused the allegation but they bit him up. After a while he saw 10 x10 cell leader, they searched his house as well as his tenant's house but they find nothing. He further testify that he was taken to a place which he later noted it was ant poaching unit offices Njiro, Arusha. He insisted that on the way one of them that it is believed that his weapon was used in illegal hunting at Naberera. He said that he was tortured and they were told to do un natural offence they were all severely tortured to the extent that he admitted he has a weapon, where he was taken back to Mererani so as to give them the said weapon.

When he was cross examined by state Attorney he agree that the signature in the paper was his but he did not give any statement and that the content of the document is not true. What happened is just that he was forced to sign as a result of many in human acts.

DW2, one Fred Musa testify that in 2011 he took his child to school the same is near the house of the 1st accused. He heard noises at the house of the first accused; suddenly he was arrested by two people who put him in vehicle full of charcoal. Many people were also in there, some gave the people who arrested them money and being released. Him and the two others were taken to certain offices which he later come to note that they were Ant Poaching zunit offices. They remained three, the 1st the second and 3rd accused. They were locked up and required to undress clothes. Around 10:00 hours he was forced to touch a certain meat and a photo was taken. He agree to do that as he was tortured.

When he cross examined by state Attorney DW2 stated that he came to know the first accused when this case was filed and that he was never charged with any offence.

DW3, one Saidi Hassani state and testify that he remember on 09/12/2011 he was from mining place, he had a game stone and was looking for broker so as to sale the same. He went to the house of a broker only to find that the broker was in the bathroom. So he waited for him in his Veranda.

After 15 minutes two people came and asked him if he know the house of one Iddy. He said no and he was arrested, bitten and put in the Vehicle full of other people. He thought he was kidnapped. Some of the people dropped on the way but he was together with some other people taken to Ant poaching Unit Arusha. He was bitten and forced to show weapon and vehicle. He deny to have none. He was asked to undress and one of the person used log to bit him in his joints, to the extent of become unconscious till the next day when he regain conscious. He was forced to go out and touch certain meat while the photo was taken. He was in addition forced to say that he saw meat at the house of first accused and that he is responsible for poaching. He was then brought to this court.

When he cross examined by state Attorney DW3 stated that he was arrested at the Verander of his broker one Mlokole and that he happen not to know the first accused before this case.

The testimony of DW3 marked the end of defence case.

The main issue to be determined by this court is whether the three accused person are guilty of unlawful possession of government trophy.

At this juncture I will analyze the evidence given by four prosecution witnesses and where necessary, I will interlink in the course of this analysis. PW1, one Naonawelu Mkali testify that on 09/12/2011 he was with one Deonatus Makene, William Lugobi and Manano Myiunga working together when they were informed that there were poachers and they together prepared the trape. On the same line of testimony PW2 one Deonatus Makane testify that he received information from informer and they decided to go to Mereani to catch those people. This therefore. Explains that there is no dispute that PW1 and PW2 in all circumstances they were working hand in hand and therefore it should be in the contemplation of any prudent person that the two will not differ in their testimony.

Nevertheless the two distinguished each other in their testimony despite the fact that they were working together hand in hand. For instance PW1 testify that on 10/11/2011 when they get into the 1st accused house they found three accused persons very busy cutting the meat. While PW2 testify that on that date, 10/12/2011 when they entered the first accused house, the first accused was sited with the food in front of him, stiff porridge with roasted meat of Zebra, and that the second accused was weighing pieces of meat while the third accused was cutting the meat into pieces.

In addition to that, the PW1 while giving his testimony he said that when they get in the house of 1st accused on the aforementioned material date he asked them if at all they have a permit and that Mr. Laurent said "he had no permit" PW2 on his side stated that the reply was by one Mr. Laurent, first accused that "he had a permit to hunt"

Again PW1 while he was cross examined by 1st accused he said that they searched the house of first accused as well as tenants house but they did not get anything PW2 explaining about the search of 10/12/2011 said that they searched the 1st accused's house and that out of seven rooms every room was found with amount of Zebra meat all together making a total of 100kg. This is again very distinctive to what was states by PW4 who stated that on the search, the upshot was that, outside the 7th room, they found meat on the canvas weighed by approximation 100kg. PW1 also told the court that apart from experience, he get to know it was Zebra meat due availability of the remaining of Zebra skin. This position was not at all established by neither PW2 nor PW4.

Then the question immediate one can ask himself is that how is it possible for these two brothers who worked hand in hand to have seen two different things in a single performance? Is it possible for a person to articulate two different was at a spot, this is with regard to a question of permit as stated by PW1 and PW2. Actually this does not work in the mind of any prudent person and of course it is not possible.

Again, can the testimony that PW1, PW2 and PW4 did conduct a search in the house all together and have different findings hold water? PW4 stated that they found a meat in the canvas in one of the room, while PW2 state that they found in

every room out of 7 rooms a piece of meat and PW1 on his side said they find nothing in the mind of any prudent person? Of course it is not possible upon conduct a search together the expectation was similar findings and that would be expected.

Then one can also ask himself why PW1 saw the remains of Zebra skin but the same was not seen by PW2 and PW4 while they were working together. And why didn't they take and present it as exhibit, since it is difficult by considering circumstances, though possible, to preserve meat and submit it was an exhibit before the court but I believe it was possible for skin, Zebra's skin.

All these testimonies grant a benefit of doubt to the accused persons in their case and therefore violate the doctrine of prove beyond reasonable doubt which require prosecution to prove their case beyond reasonable doubt, the same be requirement of section 3 (2) a of the evidence act [Cap 6 R. E 2002]

In addition to that, PW1 stated while cross examined by first accused that he did find in the house of first accused some items like pieces of gazelle legs and horns. This contention was also given by PW2 and insist that he took those items as exhibits. Then if those items were taken as exhibits why they were not adduced as exhibits. It is not that this court is attempting to select kinds of exhibit to be used by prosecution to prove their case but due to the nature of this case and circumstances, those were important pieces of exhibits to prove guiltiness of the accused and this being the position it attracts to question that, if it was possible to take pieces of legs and horns of Impala and gazelle as exhibits why was it difficult for Zebra skin?

In evaluating this evidence, this court is mindful that PW1 and PW2 stated in their testimony that they did conduct a search on 10/12/2011 and that 10 x10 cell leader who is PW4 was called before but PW4 testify that he was called on 11/12/2011 and the search was conducted on that date. This also raises doubt as to the credibility of these prosecution witnesses as well as their evidence.

Another percent angle to touch is the testimony of PW4 with regard to second and third accused. The PW1 and PW2 explained that they found second and third accused together before and during the search of which PW4 was included, but PW4 denied and insist not to have seen the second and third accused in the scene.

The premise this court remind itself on the requirement of section 3 (2) (a) of the evidence Act (Supra) which require criminal case be proved beyond reasonable doubt. And the cross of proving the same is burdened on the prosecution. The court of Appeal of Tanzania in **Criminal Appeal No. 154 of 2005 between Ahmad Omari Ramadhan V. The Republic** was of the view of that:-

“In criminal case the burden of proof is on the prosecution to prove the case against the appellant beyond reasonable doubt. The burden never shifts”

Having put enough consideration on the above provision of the law and the view of their Majesty justices of Appeal in the above cited case the testimonies of the witnesses in this case holds no water, in terms of both credibility and reliability.

Nevertheless, I find no scintilla of evidence out of those submitted to prove the offence charged. The prove which was given by the prosecution is not a water – tight prove enough to held three accused persons guilty of the offence charged.

Basing on above analysis, it is clear that prosecution side has not discharged their duty to the required standards accused persons are hereby found not guilty to the charged leveled against them, they are forth with acquitted under section 235 of Criminal Procedure Act Cap 20 R.E 2002.

Order accordingly

Sgd H. A Mnguruta – RM
03/03/2014

Order as to items seized which have not been used as exhibit

- Prosecution side should handle to accused person; anything taken that has not been used as exhibit. One of them being a weapon which was described before one of the witness to be with the needed permit. The said weapon to be handled to 1st accused person.

Order accordingly

Sgd H. A Mnguruta – RM
03/03/2014

Date: 03/3/2014

Coram: H. A Mnguruta – RM

Prosecution: Twide

Accused: All present

Interpreter: Sarah

It is for judgment I am ready

1st accused I am ready

2nd accused I am ready

3rd accused I am ready

Court: judgment delivered in presence of both parties

R/A Explained

Sgd H. A Mnguruta – RM
03/03/2014

I certify that [signature] is a true
and correct copy of the original
[signature]
11/8/14