

**IN THE DISTRICT COURT OF MPANDA  
AT MPANDA**

**EC. CRIMINAL CASE NO. 10/2015  
REPUBLIC**

**VS**

**LINUS SUMUNI SELES.....ACCUSED**

**JUDGMENT**

**BEFORE: C. M. TENGWA, -RM.**

On the 18<sup>th</sup> day of February 2015 the accused person was found at Katuma River. While at Katuma River the accused person was found with a knife and an axe. The park ranger alleged him to have killed and possessed 21kg of hippopotamus meat. As a result, they arraigned him of unlawful possession contrary to sections 86(1) and (2)(b) of the **Wildlife Conservation Act No. 5 of 2009** read together with paragraph 14(d) of the 1<sup>st</sup> schedule and section 57(1) and 60(2) of the **Economic and Organized Crime Control Act Cap 200 RE 2002.**

The accused person denied the allegations and a total number of four witnesses appeared and testified in court. Likewise, a certificate of valuation of government trophy, a blood stained knife, inventory form and a seizure note were tendered and admitted as prosecution exhibits. PW3 one Alexander Gerald appeared and confirmed in this court the meat that was brought to him was a leg of hippopotamus weighing 21 kilograms.

The most important question to be asked and given an answer is whether the accused person was in the possession of the said 21kilogram of hippopotamus meat. It is very unfortunate to note that the **Wildlife Conservation Act No 5 of 2009** has not subscribed the meaning and the circumstance in which a person is said to posses. It only incriminates those who posse government trophies without the permit of the Director of Wildlife.

The remarkable subscription of the meaning and circumstances of possession was subscribed in **Moses Charles Deo v Rep 1987 TLR 134 in which** the Court defined possession in the following words:-

**for a person to be found to have had possession, actual or constructive, of goods it must be proved either that he was aware of their presence and that he exercised control over them, or that the goods came, albeit in his absence, at his invitation and arrangement;**

As it is clearly pointed out in the above quoted paragraph one is said to possess a property if he exercise some control over the goods or he is aware of it's presence. It has appeared from the testimonies of prosecution witnesses that PW1 and 2 were at the scene of the crime. They alleged to have found the accused person with a knife and axe. The said knife was stained with blood which the two witnesses alleged to have been of hippopotamus. The accused person did not cross examine them on that substantial question.

He appeared to have spoken on the alleged blood when he got cross examined by the state attorney. He replied that the blood that stained his knife was probably his as he was beaten. I have strongly doubted the assertion of the accused person as he never cross examined the two eye witness over the alleged beatings. According to PW1 they heard a gunshot went to the area and took cover. After a while two persons came one with a muzzle gun and another with a knife and axe and started chopping the dead hippopotamus.

The accused person did not dispute the fact of being found with a knife stained with blood. It was the assertion of PW1 and PW2 that the person accompanied by the accused person took on his heel after their arrival. The area pointed by the prosecution witness was the same area testified by the accused person. I don't have any reason to disbelieve the evidence of PW1 and PW2. They were consisted and firm throughout the trial.

There was nothing said or asked by the accused person which shaken their credibility. All these satisfied this court that the accused person possessed the same. After having satisfied that the accused was in possession of 21kg of hippopotamus meat, the next question is whether he possessed it legally. It is of importance to note that wild animals fall in the categories of properties whose possession requires the permit of the Director of Wildlife.

There is nowhere the accused person testified to possess a permit of the director of wildlife. His failure to possess the permit gauges him with the offence under section 86 of the **Wildlife Conservation Act No. 5 of the 2009**. This court, therefore, finds the accusations against the accused person being proven beyond reasonable doubt. It finds him guilty and convicts him under section 235 of the **Criminal Procedures Act Cap 20 RE 2009**.

**Sgd.**  
**C.M. Tengwa RM**  
**22/01/2016**

#### Record of Previous Convictions

State Attorney: There is no any record of previous conviction. Offences relating to unlawful possession of government trophies are rampant in Katavi Region. Elephants have been killed every day. They are therefore in danger being depleted. If the poachers will succeed in their mission, the economy of the country will be at a death row. The intervention of the court is needed by a way of inflicting stiff sentence.

#### Mitigation

I pray for a lesser sentence as I have a family that depends on me. If I will be imprisoned my family will miserably suffer. I pray for forgiveness.

## **Sentencing**

The accused person has asked this court to forgive him for having a family that depends on him. On the other hand the prosecution side has prayed for a stiff as a means of deterring the further commission of the offence. At this juncture the court has to strike a balance. It is of equal importance to note that the accused person is a first offender. The purpose of punishment has always been that of rehabilitating the offenders. This court, therefore, sentences the accused person to serve a sentence of twenty (20) years in prison.

**Sgd.**  
**C.M. Tengwa RM**  
**29/01/2016**

Delivered on the 29<sup>th</sup> day of January 2016 in the presence of the accused person and the State Attorney.

**Sgd.**  
**C.M. Tengwa RM**  
**29/01/2016**

Right to appeal is available to the aggrieved party and is hereby explained.

**Sgd.**  
**C.M. Tengwa RM**  
**29/01/2016**