

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

EC. CRIMINAL CASE NO. 19/2013

**REPUBLIC
VS**

ZENGO GABISIACCUSED

JUDGMENT

BEFORE: C. M. TENGWA, -RM.

The accused person one **Zengo s/o Gabisi** is arraigned of unlawful possession of government trophy contrary to section 86(1) and (2)(b) of the **Wildlife Conservation Act No.5 of 2009** read together with paragraph 14(d) of the First schedule to and sections 57 and 60(2) of the **Economic and Organized Crime Control Act Cap 200 RE 2002.**

It was alleged by the prosecution side that on the 10th day of October 2013 at Muze village within Mlele District in Katavi Region the accused person the accused person was found in unlawful possession of a skin of a leopard, valued Tshs 5,250,000/=, a skin of a civet cat valued Tshs 300,000/= and as skin of badger valued Tshs 450,000/= all making a total value of Tshs 6,000,000/= the properties of the United Republic of Tanzania.

The prosecution hearing was opened by PW1 **one Joseph Mhina** who described himself as a park ranger stationed at Katavi National Park. On the 10th day of October 2013 he was patrolling at Muze area. They got tipped by their informer that there was a person who possessing a gun and was using the same in poaching activities.

They went to the accused house knocked the door and introduced themselves.

The accused opened the door. They asked him to produce the gun that he was possessing but denied to have it. They asked him further whether he had any government trophy that he was possessing illegally. The accused entered inside and retrieved a skin of honey badger and a civet cat. They decided to search into the toilet and found a skin of a leopard skin wrapped in a sulphate bag.

They interrogated the accused and admitted the property to be his. The accused denied having any permit that authorized him to possess the alleged trophies. After search, they decided to arrest the accused person and took him where the van was. The certificate of seizure was filled too. At last the accused was taken to the police station for further legal action.

Thereafter came **PW2 one G. 8136 DC Masuka** who described himself as a police officer. On the 10th day of October 2013 he was at Muze area at the house of the accused person. They went there after they had been tipped that the accused was involving in poaching activities. They arrived at the house of the accused person who opened the door. The accused was asked to let them search into his house. The accused agreed his house to be searched. Their focus was on the gun which the accused was suspected to have.

The accused denied to possess the same. They decided to search into the accused person. There was no item that the accused retrieved from his own volition. The house of the son of the accused was searched and a skin of badger and a civet cat was retrieved. A skin of a leopard was retrieved from the toilet. The accused denied having any knowledge over the skin of a leopard. He prepared and filled a seizure note at 02:20hrs. He prayed to tender a seizure note and the court admitted the same as exhibit Tan 1. The accused person was finally taken to the Mpanda Police Station.

Thereafter came **PW3 one Alexander Gerald** who described himself as a game warden in the Mpanda District. One of his duties included that of evaluating government trophies. On the 18th day of October 2013 he was in the office. Then a police officer came with government trophies for evaluation. The trophies in question were a skin of a leopard that valued USD 3500.00, a skin of a Civet Cat that valued USD 200.00 and a skin of badger that valued USD 300.

The values of all trophies were USD 4000.00 which were equivalent to Tshs 6,000,000/= . Thereafter he endorsed the findings on a certificate of evaluation of trophy. He prayed to tender a certificate of evaluation of trophy and the court admitted the same as exhibit **Tan 2.**

The prosecution hearing was concluded by **PW4 one G. 4232 PC Moturi** who described himself as a police officer. He testified in court that on the 11th day of October 2013 he was handed a case file for

investigation. The accused person was accused of being in unlawful possession of government trophies.

He was similarly handed exhibits that he was supposed to deliver to the department of natural resources for identification. On the same date the accused was interrogated and taken to the court. The exhibits consisted of different skins of wild animals which were badger, leopard and civet cat. He prayed to tender them as exhibit and the court admitted the same as exhibit **Tan 3**.

The testimony of PW4 marked the end of prosecution hearing and the court found a prima facie case being made against the accused person. The court explained all the rights of the accused person including that of giving evidence and tendering exhibit.

DW1 one Zengo Gabisi who gave his defence by denying having any knowledge of the exhibits tendered in court. He challenged that if the same where his why he kept them in the toilet.

As the charge sheet manifests the accused person is arraigned of being in unlawful possession of government trophy. There is no doubt that the accused house was searched and nothing was retrieved. According to PW1, the accused person surrendered the skins of badger and civet cat from his own volition while the skin of the leopard was retrieved from the toilet. Similarly the accused person admitted the trophies to be his.

The contrary appeared from the testimony of PW2 who alleged the skins of a badger and civet cat to have been retrieved from the house of the son of the accused person. He denied the same two have been retrieved by the accused person. As such, there is material difference between the testimony of the PW1 and PW2 over the place and who retrieved the two skins.

From time of immemorial to the present discrepancy has always been an indication of falsehood if the same goes to the root of accusations. It has appeared to this court that the noted discrepancy touches the root of accusation as the place where the skins were found is of importance. The court can only determine the alleged possession by examining the knowledge and the control of the accused person over the alleged properties. The evidence of PW1 tries to impute both knowledge and control of the two skins over the accused person.

But the evidence of PW2 denies any knowledge or control over the two skins. This court found the discrepancy over the skins of the badger and civet cat manifesting nothing but falsehood. Both sides conceded over the retrieval of leopard skin from the house of the accused person. But for one to be pinned with the offence the prosecution side has to prove that the accused person exercised a certain control over the skin of a leopard or had knowledge of its presence. As it was testified, the skin was found in the toilet.

It is not clear whether the toilet had a lock which would have denied access to other person except the accused person. The prosecution side was obliged to prove that the toilet could have not been accessed without the consent of the accused person to deny the possibility of planting exhibits. Other evidences were still needed to link or connect the accused person with the offence.

This court, therefore, finds the accusations against the accused person not being proved beyond reasonable doubts. As a result it finds the accused person not guilty of the offence and acquits him under section 235 of the **Criminal Procedures Act Cap 20 RE 2002**.

Sgd.

C.M. Tengwa RM

28/02/2014

Order (1) The exhibits tendered in court (skin of a leopard, badger and civet cats) shall be continued to be in custody of the Katavi National Park.

Sgd.

C.M. Tengwa RM

28/02/2014

Delivered on the 28th day of February 2014 in the presence of the accused person and the prosecutor.

Sgd.

C.M. Tengwa RM

28/02/2014

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

Sgd.

C.M. Tengwa RM

28/02/2014