

**IN THE RESIDENT MAGISTRATE COURT OF KATAVI
AT MPANDA**

EC. CRIMINAL CASE NO. 28/2015

REPUBLIC

VS

HARUNA EXAVERY... ..ACCUSED

JUDGMENT

BEFORE: C. M. TENGWA, -RM.

On the 24th day of November 2015 the compound of the accused person was searched into and a tusk and tails of elephants valued at Tshs twenty sixty millions (Tshs 60,000,000/=) was found. The accused person was arrested and taken to the police station and finally to the court where he was arraigned 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 1st schedule and section 57(1) and 60(2) of the **Economic and Organized Crime Control Act Cap 200 RE 2002.**

It has appeared from the testimonies of both sides that the house of the accused person was subjected into thorough search on the fatefully date. Nothing was found in the house despite the alleged search. The searchers turned to the surrounding environments and found a sulphate bag containing a tusk of an elephant and two tails of elephants buried into the ground.

The accused person disputed the tusk to be his and alleged the prosecution witnesses to have planted the same into his compound. The question to be asked and given an answer is whether the accused person was in possession of the said elephant tusk and the two tails of elephants. It is very unfortunate to note even the **Wildlife Conservation Act No. 5 of 2009** has subscribed nothing to the meaning or circumstances of possession.

A comprehensive subscription was provided in **Moses Charles Deo v Rep 1987 TLR 134** in which the Court held as follows:-

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 if he exercise some control over the goods or he is aware of their presence. It has appeared from the prosecution witnesses that the tusk of an elephant was found buried under the fence which was about three meters from the house of the accused person. According to the prosecution witnesses, the accused person was the one who led them into his compound after he had led them where his muzzle gun was.

After the retrieval of the muzzle gun the park rangers got interested to search into the compound of the accused person and asked the accused person to lead the way. The search was therefore a product of the retrieval of the muzzle gun not the initiative of the prosecution witnesses. That is to say if the accused person would have not been arrested interrogated and disclosed where the gun was his compound would have not known and searched.

If the residence of the accused person was unknown to the park rangers and police officer how could they plant a stuff? It is of importance to note that when the accused person was leading the park rangers and the police to the residence of a person who was the custodian of his muzzle gun, he was accompanied by his ten cell leader. Similarly, when the compound of the accused person was searched the ten cell leader was there.

The absence of the knowledge to the prosecution witnesses over the gun and residence of the accused person converts the possibility of planting the exhibit into a nightmare.

Moreover, the said tusk and two tails of elephants were found buried in the ground. The mode in which the property is found stored or kept usually manifests the knowledge or control of the keeper over the stuff. In The Court in **Abdul Salum Mnuye & Another v. Republic (1990) TLR 131** the court held that:-

His only complaint is that he was not the owner of the tusks. That is a non issue in this case. **If the first appellant had been found with tusks in his shamba in law he is deemed to have possessed them unless he can show either that he had authority for keeping them there or that he did not know of the presence of the tusks in his shamba. Neither of this has been shown. The manner the tusks were hidden clearly proves to his knowledge that the tusks were illegally hidden in his shamba.** (Bold is mine)

The guidance pointed out by the above quoted case projects that one can only succeed if he manages to show that he was not aware of the presence of the item in question or the manner in which the item in question was kept does not show that he hidden them illegally. The question to be asked and given an answer is whether the circumstance in which the two elephant's tusks were found imputes any knowledge of its presence to the accused person.

The evidence shows that the tusk and the tails were found wrapped into a bag and buried below the fence. It was the accused person who triggered the police to search his house after he had showed them where his muzzle gun was hidden. On the basis of the above reasons the court finds the accused person properly linked and connected with the possession of the elephant tusk. After having satisfied that the accused person was found possessing the same, the next question whether he had any permit. Upon my keen examination of the entire evidence there was nowhere the accused person alleged to have any permit.

This was repugnant to the law as the possession of the same required a permit of the director of wildlife as provided under section 86 of the **Wildlife Conservation Act No 5 of 2009**. This court therefore finds the accusations against the accused person being proved beyond reasonable doubts. It finds him guilty and convicts him under section 235(1) 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
22/01/2016

Order (1) Exhibit P2 which was previously ordered to be kept by the Katavi National Park should remain to be kept there as ordered.

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

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

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