

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

EC. CRIMINAL CASE NO. 40/2007

REPUBLIC

VS

DOMINICO MAYANGA AND TWO OTHERSACCUSED

JUDGMENT

BEFORE: C. M. TENGWA, -RM.

The accused persons are **Dominico Mayanga, John Justine and Isack Mayanga**. They are arraigned of unlawful possession of government trophy contrary section 67(1) and 2 of the **Wildlife Conservation Act** No.12 of 1974 read together with paragraph 15(d) of the first Schedule and section 59(2) and 80(2) of the **Economic and Organized Crime Control Act 1984 as amended by Act No. 10 of 1989 and No. 3 of 1992.**

It was alleged by the prosecution side that on the 29th day of October 2007 at or about 1205hours at Itenka B village within Mpanda District in Rukwa Region the accused persons were found in unlawful possession of a meat of hippopotamus valued Tshs 1,105,000/= the property of the United Republic of Tanzania without a valid permit.

The accused denied the allegations. Before the commencement of the prosecution hearing the accused persons were already at large after they had jumped their bails. As a result of their abscondments and the prosecutor's prayer to proceed with the hearing in the absence of the accused persons, found favour in the eyes of the

court. In that regard, a total number of three witnesses were summoned to disapprove the accused denial.

The prosecution hearing was opened by PW1 **one Amini Ngonyani** who described himself as a park ranger. He testified in court by describing his duties as protecting wild animals within and outside the national park. He testified in the court that on the 29th day of October 2007 he was with his fellow park rangers. He mentioned them as Wakala Mohamed, Martine Juma and others. They were responding to the intelligence information that were availed to them by their informer that there was a person in Itenka B village who was in possessing the meat of hippopotamus.

They went there and traced the VEO, introduced themselves and the purpose of their visitation. They similarly disclosed him the names of the suspects. The VEO one Getruda Kilimanjaro admitted to know the suspects namely Dominic Mayanga, John Justine and Isack Mayanga. They left with the VEO up to the TUKOMA Suburb. In the suburb, they traced the chairman of the suburb one Martine Mloli. The VEO introduced them to Martina that they were park rangers who wanted to be taken to the residence of the accused persons.

The chairman of the suburb led them up to the house of the accused person one Dominic Mayanga. They reached at the residence of the accused and the chairman of the accused suburb knocked and the accused opened the door. They disclosed their identities and told him

that they were accompanied by the VEO and the suburb chairman. It was at 2300hrs when all those happened.

They told the accused that they were suspecting in his house. The accused allowed them to search. In the course of search a meat of hippopotamus was retrieved. They similarly asked the accused person to lead them in the second house where a meat of hippopotamus was retrieved. They asked the accused person about the meat but replied them to have taken it from the National Park.

Thereafter, they went into the house of John Justine and told him that they wanted to search in his house. They searched and retrieved a meat of hippopotamus. They went to the house of the 3rd accused person and searched it. Likewise a meat of hippopotamus was retrieved. They took the accused persons to the police station together with the meat seized from their houses. They opened the case and charged them with the offence.

Thereafter, came **PW2 Alexander Gerald** who described himself as a Game Warden. He testified in court that on the 31st day of October 2007 he was in the office. Then a skin was brought for identification and evaluation. He identified the skin and found it being a meat of hippopotamus. After he had evaluated he recorded the findings in the certificate of evaluation of trophies. The meat weighed 2kg and worth 1,105,000/=valued He prayed to tender a certificate of trophy

evaluation as exhibit and the court admitted the same as **exhibit Tan 1**.

The prosecution hearing was concluded by **PW3 one F. 5666 DC Benedictor** who described himself as a police officer. He gave his testimony by telling the court that on the 31st day of October 2007 he was given a police case file concerning unlawful possession of government trophies. He was given a meat a meat with a view of taking the same to the office of the natural resources for examination valuation and identification.

He prepared an inventory form and showed it in court. He took the meat to the court for a disposition order as it was unfit for human consumption. He prayed to tender the said meat as exhibit and the court admitted the same as **exhibit Tan 2**. Thereafter he handed the case to his fellow investigator to proceed with investigation. The statement of Martine Mloli was admitted as exhibit under section 34 of the **Evidence Act Cap 6 RE 2002**.

That marked the end of prosecution hearing. The court evaluated the evidence and its exhibits and found a prima facie case being made against the accused persons. At that time the accused had already absconded his bail and the prosecution effort to procure his attendance failed.

It is my settled view that once a prima facie case has been made against the accused person a duty to defend and contradict the

prosecution evidence arises. In **Makuzi Zaidi v. Republic (1969) HCD 249** the court held that:

The case to be called prima facie must be such that:-“a reasonable tribunal properly directing its mind to the law and the evidence could convict if no explanation is offered by the defense.”

The accused persons defaulted to make their defence and the police's effort to bring them turned futile. As the prosecution evidences project, the accused persons were found with meat of hippopotamus. PW1 and PW2 were the eye witnesses who participated in the search of the houses of the accused persons, seizure of the meat and their arrests. The park rangers were not aware of the residences of the accused persons as they were led or taken their by the suburb leader one Martine Mloli whose statement was admitted as exhibit Tan 3 under section 34 of the **Evidence Act Cap 6 RE 2002**.

The court has gone through the statement of suburb leader and fished out that, there were many civilians whose houses were searched on the material night. The houses of the accused persons were among the houses. In houses in which the meats were not found nobody was arrested unlike in the houses in which the meats were found and seized as the owners were arrested.

The presence and participation of the local leaders in the search and retrieval of the trophies denies the possibility of frivolous accusations. The accused therefore were obliged to prove how lawfully they possessed the same but absconded bail before doing so. The failure

of the accused persons to prove how lawfully they possessed the meat this court finds the accusations against the accused persons being proved beyond reasonable doubts. It finds them guilty and convicts them in absentia under section 226 of the **Criminal Procedures Act Cap 20 RE 2002**.

Sgd.
C.M. Tengwa RM
24/12/2013

PP: Records of previous conviction

I pray for stiff sentence as these types of offence are rampant in the society.

SENTENCING

The accused persons are first offenders as there is no record of previous conviction. Though the accused persons absconded bail, this court will not hesitate to exercise its mercy as he was a first offender. As such it sentences every accused person to serve a sentence of twenty years in prison.

Sgd.
C.M. Tengwa RM
24/12/2013

Order (1) arrest warrant be issued against the accused person and his sentence shall commence from the date of his arrest.

Sgd.
C.M. Tengwa RM

24/12/2013

Delivered on the 24th day of December 2013 in the presence of the accused person and the prosecutor.

Sgd.

C.M. Tengwa RM

24/12/2013

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

Sgd.

C.M. Tengwa RM

24/12/2013