

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

CRIMINAL CASE NO. 99/2011

REPUBLIC

VS

PETER CHILANGASO & THREE OTHERSACCUSED

JUDGMENT

BEFORE: C. M. TENGWA, - RM

The accused persons are Peter Chilangaso, Mohamed Seif, Petro Shija and Lubenza s/o Mlima. They are charged with three counts namely unlawful possession of government trophies c/s 86(1)(2)(a) and (c) (iii) of the Wildlife Conservation Act No 5 of 2009, unlawful possession of firearm c/s 4(1)(2) and 34(1)(2) and (3) of the Arms and Ammunition Act Cap 223 RE 2002 and Unlawful possession of Ammunitions c/s 4(1)(2) and 34(1)(2) of the Arms and Ammunition Act Cap 233 RE 2002.

In respect of the 1st count it was alleged by the prosecution side that on the 17th day of April 2011 at or about 07:35hrs at Mafunsi village within Mpanda District in Rukwa Region the accused persons were found in unlawful possession of Hippopotamus meat valued at Tshs 2,500,000/= the property of the United Republic of Tanzania without any written permit.

In respect of the 2nd count it was alleged by the prosecution side that on the same date place and time the accused person was found in unlawful possession of one muzzle gun loading gun commonly known as Gobole without a valid licence or permit from any unauthorized officer.

In respect of the 3rd count it was alleged by the prosecution side that on the same date time place and area the accused persons were found in unlawful possess of 57 ammunities used in a muzzle gun without a permit.

The accused pleaded denied the allegations and the prosecution side brought a number five witnesses to disapprove the accused denials. The 1st and the 2nd accused person heard all prosecution witnesses but the 3rd and the 4th accused heard only PW1 and PW2.

The prosecution hearing was opened by PW1 one Juma Saidi who described himself as a game officer of the Katavi National Park. He testified in court that on the 17th day of April 2011 he was in patrol at Mafunsi area at Itenka A village with his fellow park rangers who were Michael Kipula, Shamim Ulomi and Adam Omary. They were accompanied by the village executive officer one Christopher Mayengo and a militia called John Midende.

They were told that there were people in that area who had killed hippopotamus at the Mafunsi River. They went to the scene of the crime and found the accused person roasting meat. The accused saw them and took on their heels. They chased and managed to arrest four of them. They took the accused persons up to the area where they were roasting the said meat. They found a muzzle gun and fifty seven ammunities used in the muzzle gun.

They asked the accused whether they had any valid licence authorizing them possess the meat, firearms and ammunitions but denied to have. They took the accused persons to the police station for further legal measures.

Thereafter came **PW2 one Adam Omary** who described himself as game warden of the Katavi National Park. He testified in court that on the 17th day of April 2011 at 0200hrs they were tipped that in Itenka A village at Mafunsi area there were people who have killed hippopotamus. They went to the area after having been directed by the informer.

They picked the Village Executive Officer and the militia and headed to Mafunsi. They arrived at 07:00hrs they found a crowd of people roasting the meat. They tried to catch them and managed to arrest only four. They had a meat of hippopotamus, one muzzle gun and fifty seven of ammunitions. They took the accused persons directly to the police station. The accused person denied having any permit allowing them to hunt or kill hippopotamus.

Thereafter came **PW3 one Mbonea Hassani** who gave his testimony by telling the court that on the 18th day of April 2011 a meat of hippopotamus weighing 200kg was brought to him. The value of the meat was Tshs 2,500,000/= . He prepared the certificate of evaluation of trophies and handed the meat to the police. He prayed to tender the certificate of evaluation of the trophy and the court admitted the same as exhibit Tan 1.

Thereafter came **PW4 one F. 5327 DC Privatus** who described himself as a police officer. He told the court further that he was a police investigator at the Mpanda Police Station. He came to know the accused person after he had assigned with a police case file. That on the 18th day of April 2011 he was assigned a police file for investigation purposes together with four accused persons charged with the offence of being in unlawful possession of government trophies and the meat of hippopotamus.

The meat weighed 200kg and valued Tshs 2,500,000/= . He handed the inventory for form disposal orders since it was unfit for human consumption. After that he wrote the statement of the accused and the accused persons were found with one firearm and fifty seven ammunitions. He prayed to tender the gobore and its fifty seven ammunitions and the court admitted the same as exhibit P2. Thereafter he took the accused persons to the court.

Thereafter came PW5 one Christopher Mayengo who gave his testimony by describing himself as a Village Executive Officer of Itenka Village in the Machimboni ward between 2006 and 2011. On the 17th day of April 2011 he was in Itenka. Then, police officers and park rangers came and knocked at his door. They asked him to accompany them to Mafusi River as there were destructions that were going on. They went there and found a meat of hippopotamus being fried and more than four people who took on their heels.

The park rangers chased and arrested only four. The arrest took place at 7:30am. The accused persons had a muzzle gun and pieces of iron bar that were being used as ammunitions. The properties that the accused persons had were a muzzle gun and a meat of hippopotamus. The four (accused) were taken up to the village office together with their exhibits. The police signed a visitor's book and the accused persons together with their exhibits were taken to Mpanda Police Station.

The evidence of PW5 marked the end of prosecution hearing and the court found a prima facie case being made against the accused persons. Their rights to give defence call witnesses and tendering exhibits were explained. Out of four accused persons only two appeared and entered their defence. The 3rd accused person jumped bail even before the commencement of the prosecution hearing while the 4th accused person absconded his bail after the closure of the prosecution case.

The defence hearing was opened by DW1 Peter Chilangaso who gave his defence by telling the court that he was on the way from the village centre to the Shamba. When he was about to cross the river he saw a woman running. He asked the woman why he was running but replied nothing. The park rangers and kicked him. They accused him to have run from the carcass of hippopotamus. They took him up to the house of one man in the rice field. He found many people

arrested and the meat seized. They took them to the Mpanda Police Station.

Thereafter came **DW2 one Mohamed Seif** who gave his defence by telling the on the 17th day of April 2011 he was in the camp in his shamba. He heard an explosion heading toward the camp. Since he had nothing to worry he kept on remaining in his camp until when they came and arrested him. They started to beat and asked him about the killed animal. He denied knowing anything. They arrested and took him where the carcass of hippopotamus was.

He found many people there. He was taken up to the police station and finally to the court. They were accused of killing hippopotamus. The testimony of the prosecution witnesses differed with the preliminary hearing which is the map of evidence. The facts of preliminary hearing show that they were arrested with a meat and a hand of hippopotamus as well as fifty ammunitions but the last witness denied to have seen ammunitions but only pieces of iron bar.

He asked the last witness the distance between his house and the area but denied to know while the area was within his leadership as a Village Executive Officer. Only the gun was brought before this court while the preliminary hearing alleged that they were arrested with a panga, axe, a knife, gun, ammunition and a meat of hippopotamus. The hand of hippopotamus that was alleged was not brought.

As the charge sheet manifests, there were four accused persons in this case. Out of four accused only two entered their defence. They were all accused of being in unlawful possession of government trophies, gun and ammunitions. It is of significance to determine the verdict of each accused person and see whether the testimony tendered against him has been proven beyond reasonable doubts.

Starting with the 1st accused person one Peter Chilangaso, the prosecution side alleged to have seen and found him roasting a meat of hippopotamus at the scene of the crime. That, the 1st accused person took on his heel and the park rangers went after him. The race ended in favor of the park rangers as the accused was apprehended. The said race and its product was witnessed by village executive officer one Christopher Mayengo.

At the scene of the crime there was a meat of hippopotamus but the gun was hidden. The 1st accused person alleged to have been wrongly and mistakenly arrested as he was on the way to the shamba. The question to be asked is whether the 1st accused person was not among the culprits who were seen roasting the meat of a buffalo. In the course of determining that question I came to realize that PW5 was sole independent eye witness as he was a village leader.

He was, therefore, not interested with the outcome of the case. Likewise, he appeared to be conversant with the identity of the 1st accused person as he replied him that he (DW1) was the one who showed the park rangers where the muzzle gun was hidden. The court had no reason to disbelieve the testimony of PW5 as he was somehow independent compared to the park rangers. It, therefore, believes that the accused person was at the scene of the crime roasting the meat of hippopotamus.

After having been satisfied that the 1st accused person was at the scene of the crime it is of essence to ask ourselves whether he possessed the same. It is my settled view that once a person is exercising a certain control over a property he or she possesses the same. The 1st accused person was seen roasting the meat. As such he possessed the same.

Likewise, according to section 77 of the Wildlife Conservation Act No. 5 of 2009 a meat of hippopotamus is a government trophy. Its possession requires a permit from an authorized officer under Part VII of the same Act. Similarly, arms and ammunitions are supposed to be possessed with a licence or permit under sections 4 and 32 of the **Arms and Ammunition Act Cap 223 RE 2009**. The 1st accused person was therefore obliged to prove how lawfully he possessed the meat of the hippopotamus, the muzzle gun and ammunitions. But he could not do that.

This court, therefore, finds the accusations against the 1st accused person being proved beyond reasonable. It, henceforth, finds him guilty and convicts him of the offences of unlawful possession of government trophies, weapons and ammunitions and convicts him under section 235 of the **Criminal Procedures Act Cap 20 RE 2009**.

In respect of the 2nd accused person it was alleged by the prosecution side that he was among the suspects that were took a futile race. Before the commencement of the futile race the 2nd accused person was seen roasting the meat of hippopotamus. Even PW5 who was an independent eye witness alleged to have witnessed the 2nd accused person roasting the meat of a hippopotamus, taking on his heel and being arrested by the park rangers.

At the scene of the crime there was a meat of hippopotamus ammunitions and a muzzle gun. The 2nd accused person alleged to have been arrested into the rice paddy field where he was working. As I have already pointed out PW5 was an independent eye witness who testified to have seen the 2nd accused person roasting the meat of hippopotamus and taking on his heel after they arrived with the park rangers at the scene of the crime.

He similarly alleged to see the park rangers bringing back the 2nd accused person at the scene of the crime. PW5 being an independent eye witness could hardly lied laid against the 2nd accused person as he was not interested with the outcome of the case. Likewise he

alleged to know the 2nd accused person even before the incident by replying him to have been coming to the village centre as well as a relative of Daudi Ngamilima. He alleged the 2nd accused person to hold a knife when the meat was being roasted.

This shows that he was certain with the identity of the 2nd accused person even before his arrest. It is my settled view that if a person is certain with the identity of the other he cannot mistake him if he sees him in day time. This court had no reason to disbelieve the testimony of PW5 as he was somehow independent compared to the park rangers. This court, therefore, believes that the 2nd accused person was at the scene of the crime roasting the meat of hippopotamus. As such, he was in possession of the weapon, ammunitions and meat as he was controlling them.

It is trite law that once a person is found in possession of certain stuffs which requires license or permit the burden of proving how lawfully he possesses the same lays on his shoulder. The said proposition was articulated in **Abdul Salum Mnuye & Another v. Republic (1990) TLR 131**. The 2nd accused person failed to prove and justify the legality of his possession.

This court, therefore, finds the accusations against the 2nd accused person being proved beyond reasonable. It, henceforth, finds him guilty and convicts him of the offences of unlawful possession of government trophies, weapons and ammunitions and convicts him

under section 235 of the **Criminal Procedures Act Cap 20 RE 2009.**

Coming to the 3rd accused person one Petro s/o Shija, the prosecution side alleged him to be one of the suspects who took a futile race. Unlike the 1st and the 2nd accused person, the 3rd accused person absconded his bail and forfeited his unalienable right of giving defence when a prima facie case was made out against him. The mere fact of alienating his own right cannot make this court to conclude that he committed the offence. The court is still obliged to examine the evidence tendered and determine whether the same proves the allegations beyond reasonable doubts.

In **R v. BIMONYIRA (1971) HCD No 215 Kindly Ag J** as he then was had this to say:-

(1) "It is of course a mistake to think that because I said that there was a case to answer that, if no defence is offered, this court must convict. This is clear from what was stated by Wilson J. in REX v. JAGJIWAN PATEL AND FOUR OTHERS I T. L. R. (R) p. 85 at p. 87 I think The wording in RAMANLAL T. BHATT v. R. [1957] E. A. 332 at page 335 too supports this view. The reference to the words "could convict" would indicate that it does not necessarily mean that such court must convict at the end of the trial if no defence is put forward. The accused is entitled at this final stage, to a full consideration of the evidence irrespective of what I said when I ruled that there was a prima facie case against the accused for the accused to answer. A mere prima facie case is not sufficient to support conviction" (see WABIRO alias MUSA v. R. [1960] E. A. 155 and GABRIEL s/o MUHOLE v. R. [1960] E. A. 159)." (2) "The case against the accused is based on circumstantial evidence. For such evidence to found a conviction, the court must find that the inculpatory facts are inconsistent with the innocence of the accused and incapable of explanation upon any other hypothesis that that of guilt. (See SIMON MUSOKE v. R. [1958] E. A. 715, SHARMPAL SINGH v. R. [1966] E. A. 762 and ILAND s/o KASONG v. R. [1960] E. A.

780). It is therefore for this court to examine the evidence in this case to find out it is of such nature that it leads to only one conclusion that of guilt of the accused.”

It is clear from the testimony of PW1, 2 and 5 that, the 3rd accused person was arrested after a futile race. PW5 who was an independent witness alleged to have witnessing the 3rd accused person roasting the meat of hippopotamus, taking on his heel and being apprehended. This court has, therefore, no reason of disbelieving the testimony of PW5. After having satisfied that the 3rd accused person was seen at the scene of the crime it is of paramount to determine whether the 3rd accused person was in possession of the said meat, gun and ammunitions.

It is transpired from the testimony of PW1, 2 and 5 that the 3rd accused person was roasting a meat of hippopotamus. It is my settled view that one cannot roast a meat without controlling it. Since he was controlling the same, he, therefore, possessed it. Likewise, the gun and its ammunition were retrieved by the 1st accused person. Since the four were together the possession of one is the possession of the rest.

The question to be asked is whether the 3rd accused person possessed the said stuffs unlawfully. It is not disputed that the possession of hippopotamus meats and ammunitions requires permits or licenses under the **Wildlife Conservation Act No 5 of 2009** as well as the **Arms and Ammunitions Act Cap 223 RE 2002**. The

accused persons were therefore obliged to prove how lawfully he possessed either the meat or the gun and its ammunitions. But, he could not do that. This court, therefore, finds the accusations against the 3rd accused person being proved beyond reasonable doubt. It, henceforth, finds him guilty and convicts him under section 226 of the **Criminal Procedures Act Cap 20 RE 2009**.

Coming the 4th accused person one **Lunzebe s/o Mlima**, the prosecution side alleged to have seen him roasting the meat of hippopotamus and arrested him at the scene of the crime. The 4th accused person like the 3rd accused person deprived his own right of giving a defence after a prima facie case has been made against him. A prima facie case or even the accused fault to enter his defence had never been a reason for convicting the accused person as it was held by **Kindly Ag J** in the above cited case of **R v. BIMONYIRA (1971) HCD No 215**.

As such, the prosecution evidence is liable for scrutiny. Upon my keen examination of the prosecution evidence, it has appeared that PW5 was an independent witnesses compared to PW1 and PW2. Being an independent witness, could have not been influenced and said what he did not see with a view of securing a conviction. He alleged to have seen the accused persons and his fellow roasting the meat and taking on their heels.

He similarly witnessed the park rangers chasing those who took and their heels and managed to apprehend only four out of eight. This court is therefore satisfied that the 4th accused person was among the eight suspects who were found roasting the meat of hippopotamus. As such, the 4th accused person was in possession of all stuffs at the scene of the crime and obliged to prove how lawfully his possession was. But he could not do that. This court, therefore, finds the accusations against the 4th accused person being proved beyond reasonable doubts. It, henceforth, finds him guilty and convicts him under section 226 of the **Criminal Procedures Act Cap 20 RE 2009**.

Sgd.

C.M. Tengwa RM

11/03/2014

Records of Previous Conviction

PP: There is no record of previous conviction. But poaching activities have been mushrooming in Katavi Region to the extent of endangering the wellbeing of the wild animals. The intervention of the court is necessary. That can only be done by way of inflicting severe sentences. I pray the court to intervene and discourage poaching activities.

Mitigation

1st accused person

NILL

2nd accused person

Sentencing

There is no doubt that the accused persons are first offenders as the prosecution side has failed to avail any records of their previous convictions. The purpose of punishment has always been that of rehabilitating offenders. This has to be balanced with the interest of the public that fosters and advocates for the preservation of the natural resources for the benefit of the present and the future generation. At this juncture, this court strikes a balance over the two conflicting interests. It finds it appropriate to sentence each accused person to serve a sentence of twenty (20) years in respect of the 1st count. In respect of the 2nd count each accused person is sentenced to pay a fine of five hundred thousand (Tshs 500,000/=) or serve a sentence of two years in case of default. In respect of the 3rd count each accused person is sentenced to pay a fine of Tshs one million (Tshs 1,000,000/=) or serve a sentence of two years in prison in case of default. All sentences shall run separately.

Sgd.

C.M. Tengwa RM

12/03/2014

Order (1) Arrest warrants be issued against the 1st 3rd and 4th accused persons. Their sentences shall have effect from the date of their arrests.

(2) The muzzle gun and ammunitions tendered as exhibits which for the time being are in the police harmony are hereby confiscated and shall remain there for safe custody until destroyed.

Sgd.

C.M. Tengwa RM

11/03/2014

Delivered on this 12th day of March 2014 in the presence of the 2nd accused person and the Tanapa Legal Officer as well as in the absence of the 1st 3rd and 4th accused persons.

Sgd.

C.M. Tengwa RM

11/03/2014

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

Sgd.

C.M. Tengwa RM

11/03/2014



I CERTIFY THAT THIS IS A TRUE
COPY OF THE ORIGINAL WRITTEN
JUDGEMENT / DECISION
DISTRICT RESIDENT
MAGISTRATE