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

**CRIMINAL CASE NO. 110/2014
REPUBLIC**

VS

EMIRY FERUZI..... ACCUSED

JUDGEMENT

BEFORE: C. M. TENGWA, -RM.

The accused person one **Emiry Feruzi** stands charged of unlawful possession of Government trophies c/s 86(1) & (2)(c) of the **Wildlife Conservation Act No 5 of 2009**.

It was alleged by the prosecution side that on the 12th day of February 2011 at 2200hrs at Migazini Nsemilwa area within Mpanda District in Katavi Region, the accused person was found possessing 20kg of hartebeest meat valued Tshs 600,000/= the property of the United Republic of Tanzania without any permit previously sought and obtained.

The accused person denied the charge. The prosecution side brought four witnesses in order to disapprove the accused denial.

The prosecution case was opened by PW1 one G. 5728 DC Salum who described himself as a police officer. He testified in court that on the 14th day of February 2011 he was in the OC CID office. Then, a file concerning unlawful possession of government trophy was given to him for investigation.

The file and its exhibit which was the meat of hartebeest were handed to him. He took the meat to the court for a disposition order as it was unfit for human consumption. He produced an inventory form and prayed to tender the same as exhibit. The court admitted the same and marked it as exhibit P1. He similarly wrote the statement of the accused person. Before taking the meat to the court he passed first into the department of Natural Resources for identification and valuation. The meat was identified to be of the hartebeest weighing twenty kilograms.

Thereafter came PW2 one **Shamim Uromi** who described herself as a park ranger. She testified in court that on the 12th day of February 2011 they were patrolling with her fellow park rangers. They were tipped by their informer that there was a person who was offering for sale a wild meat. They drove up to the Mpanda Police Station where they were asked to accompany DC Yohane. They went up to Nsemlwa Migazini. Before going to the residence of the accused person they traced first the ten cell leader of the area and found one Paul Mtue.

They disclosed the purpose of visiting him. The ten cell leader agreed and accompanied them to the residence of the accused person. They surrounded the house of the accused person and the ten cell leader knocked the door. As a result of knocking a woman got outside and the ten cell leader asked him whether Emir Feruzi was inside. The woman denied. Then the police asked the woman whether there were wild meat in her house but denied to have it.

Thereafter they asked the woman to let them search into his house. They searched into the sitting room and found nothing. When they entered into the bed room they found the accused person one Feruzi Amiry sitting in bed. They ordered the accused person to get out. They put him under arrest as they were after him. They kept on searching and found a big bag hidden under the bed having a meat. They took the meat outside. They weighed the meat and found it having 20 kg.

They asked the accused person whether he had any permit authorizing him to possess the same but denied to have it. The police filled the search order. They took the accused person up to the police station. They asked the accused person where they got the said meat and replied to have hunted the same in the forest.

The accused told them that the meat was of the hartebeest. The house in question belonged to the accused person that was why the ten cell leader led them there. According to the woman who opened the door the accused person was her husband. From the beginning he was not aware of the residence of the accused person that was why they were led by the ten cell leader. She prayed to tender the search warrant and the court admitted the same as exhibit P 2.

Thereafter came PW3 one **Mbonea Hassani** who gave his testimony by describing himself as a game warden. One of his duties included that of evaluating government trophies. That, on the 14th day of February 2011,

he was in the office. Then a meat was brought to him for identification and evaluation. He examined the meat and found the same being of a hartebeest with a weight of 20kg. The same worth 600 USD which was equivalent to Tshs 600,000/=. At that time one USD was exchanged with Tshs one hundred thousand. After he had evaluated he handed the meat back to the police. He prayed to tender a certificate of evaluation and the court admitted the same as exhibit P3.

Thereafter came **PW4 one Paul Mture** who gave his testimony by describing himself as a ten cell leader. That on the 12th day of February 2011 at 22:00hrs he was at home sleeping. After a while he heard a knock at his door. He came to realize that the police were the one who were knocking. They told him that they were in need of him as there was a problem at his street as he was a leader. He dressed up and went with them up to the house of the accused person one Feruzi Emiry. He had never seen the accused person for a long time. He wondered what was going on.

The police knocked at the door of the accused person and the wife of the accused opened the door. The police asked the woman whether she was the owner of the house but replied them that the owner was not there. They told the woman that they were in need of searching into the house. The police asked him to enter inside with them for search. When they entered inside they found the accused person in bed. They searched into the house of the accused person.

In a course of search a bag of meat was found hidden under the bed. They all got out. The park ranger said that the meat was of the hartebeest. After they had searched the park rangers wrote on a piece of paper and asked him to sign after the accused person had been signed. The meat was weighed and found weighing 20kg. Then the accused person was taken to the police with the meat. The police escorted them home.

The evidence 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 to the accused person of his right to give defence call witnesses and tendering exhibits to the effects.

The defence hearing was opened by DW1 one **Emiry Feruzi** who gave his defence by alleging that the evidences against him were flatted with lies. He alleged PW1 to have spoken lies for alleging that the wild meat was found into his house. Likewise, he alleged the ten cell leader to have lied for failing to specify the type of meat found in his house. PW1 alleged to be a park ranger. That, when he asked him the type of weapon she had replied him that she had a gun.

She alleged the gun to be capable of killing hartebeest. A house has to be searched upon the issuance of the court order under section 90 of the Criminal Procedures Act Cap 20 RE 2009. PW1 alleged to have no permit. The evidences of Shamimu were therefore flatted with lies. The ten cell leader denied to have seen or heard him trading in wild animals.

The ten cell leader alleged to have seen a wild meet in his residence on the date when the park rangers came and searched into his house. That, on the 12th day of May 2011 the park rangers attacked his house at 0200hrs. they broke the door and took him outside. They forced him to surrender the gun which in fact he had not. After they had searched him they brought a van and asked other fellows to summon the ten cell leader. At that time they had already chained him. Then he saw a bundle of wild meat in the van of the park rangers. PW1 did not produce a certificate of seizure.

As the charge sheet manifests, the accused persons are arraigned of unlawful possession of government trophies c/s 86 of the **Wildlife Conservation Act No 5 of 2009**. For the accused person to be legally pinned under section 86 of the Wildlife Conservation Act the evidence tendered has to leave no doubt that the item or stuff alleged to have been possessed is a government trophy and the possessor possessed the same unlawfully.

Starting with the first limb of our discussion, the prosecution witnesses particularly the park rangers alleged the meat seized from the house of the accused person to be a meat of a hartebeest. Even PW4 who was the ten cell leader alleged to have heard the park rangers alleging the meat seized to be of a hartebeest. The question was given an answer by PW3 one Hassani Mbonea who alleged to have examined, weighed and evaluated the meat. In the course of his examination he found the meat being of a hartebeest. After having been satisfied that the meat was of a hartebeest,

the ancillary question is whether a hartebeest is a trophy. The word trophy is defined under sections 3 and 77 of the **Wildlife Conservation Act No 5 of 2009**. Under section 3 the word trophy is defined as follows means:-

any animal alive or dead, and any horn, ivory, tooth, tursh, bone, claw, hoof, skin, meat, hair, feather, egg or other portion of any animal and includes a manufactured trophy. While section 77 is defining trophy as follows:- means ivory

It has appeared to me that the word possession is not defined in the **Wildlife and Conservation Act No. 5 of 2009**. But the **Blacks' Law Dictionary 8th Edition** quoted a paragraph in the **Essay of Frederick Pollock & Robert Samuel Wright, An Essay on Possession in the Common Law 1-2 (1888)** at page 3691 subscribes a comprehensive meaning. It provided as follows:-

"[A]s the name of Possession is ... one of the most important in our books, so it is one of the most ambiguous. Its legal senses (for they are several) overlap the popular sense, and even the popular sense includes the assumption of matters of fact which are not always easy to verify. **In common speech a man is said to possess or to be in possession of anything of which he has the apparent control, or from the use of which he has the apparent power of excluding others....** [A]ny of the usual outward marks of ownership may suffice, in the absence of manifest power in someone else, to denote as having possession the person to whom they attach. Law takes this popular conception as a provisional groundwork, and builds up on it the notion of possession in a technical sense, as a definite legal relation to something capable of having an owner, which relation is distinct and separable both from real and from apparent ownership, though often concurrent with one or both of them."

Likewise, in **Moses Charles Deo v. Republic (1987) TLR 134** the Court of Appeal held has 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;

It has appeared from the quoted paragraphs that one is said to possess a property if he is aware of its presence and that he exercised control over them, or that the goods although came in his absence but he agreed the same to be brought. The question to be asked and given an answer is whether the said meat of the hartebeest was in possession of the accused person. It was testified by the PW1 and 2 that the meat of hartebeest was found in the house of the accused person. The assertion of PW1 and 2 was strengthened by the assertion of PW4 who alleged to be the ten cell leader of the accused person. PW4 unlike PW1 and 2 had no interest to protect. The absence of such interest makes him independent and free from being swerved by the wind.

Apart from the presence of the wild meat in the house of the accused person still the manner in which the meat of the hartebeest was kept casts some knowledge of its presence to the accused person and his wife. First, the meat was found hidden under bed and secondly the door was closed and it was the wife of the accused person who opened the same. Likewise, the manner in which the accused person was found and got arrest draws an irresistible inference that he was aware of illegality of the stuffs in his house.

At the moment when the park ranger knocked at the door of the accused person, the wife of the accused person laid them that the accused was not there. Later on, they came to realize that the accused was hiding after they had entered into the house with a view of conducting a search. The wife of the accused person was therefore aware of the illegal dealing of his husband. This court therefore finds the accused person being a possessor of the government trophy.

After having been satisfied that the accused person is a possessor of government trophy the next question is whether he possessed the same illegally? The prosecution side alleged the meat to have been possessed illegally as the accused person had no permit authorizing him to possess the same. The accused person was therefore obliged to dispute the allegation by proving the contrary but did not. 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 of the **Criminal Procedures Act Cap 20 RE 2009**.

Sgd.

C.M. Tengwa RM

25/05/2015

Record of previous conviction

PP: There is no record of previous conviction. I pray for a stiff sentence as poaching related acts are rampant into Katavi Region.

Mitigation

I pray for forgiveness as I have never committed any offence in my life.
Likewise, I lost my wife while in prison.

Sentencing

There is no doubt that the accused person is a first offender. This court,
therefore, sentences him to serve a sentence of twenty years in prison.

Sgd.

C.M. TENGWA RM

25/05/2015

Delivered on the 25th day of May 2014 in the presence of the accused
person and the prosecutor.

Sgd.

C.M. TENGWA RM

25/05/2015

Right of appeal is available and hereby explained to the both parties.

Sgd.

C.M. TENGWA RM

25/05/2015



I CERTIFY THAT THIS IS A TRUE
COPY OF THE ORIGINAL MANUALLY WRITTEN
JUDGEMENT / RULING


DISTRICT RESIDENT
MAGISTRATE

26/8/2015