

IN THE RESIDENT MA GISTRATE COURT OF MBEYA

AT MBEYA

ECONOMIC CASE NO. 07/2015

REPUBLIC

VERSUS

ACCUSED : LUCAS S/O MWAMBULA

JUDGMENT

Date of last order : 06/01/ 2016

Date of Judgment 15/ 01/2016

The accused person in this case one LUCAS s/o WAMBURA @ LUCAS s/o WAMBURA GINGA appeared before the Court to face one count of Unlawful Possession of Government Trophy, c/s 86 (1) (2) (c) (ii) of the Wildlife Conservation Act, No. 5/2009 read together with paragraph 5 of 2009, read with paragraph 14 (d) of the first Schedule to and section 57 (1) of the Economic and Organized Crime Control Act, cap 200 (RE 2002).

Particulars of the offence alleged the accused person on 30/11/2015, at Tunduma area, within Momba District, in Mbeya Region was found in unlawful possession of Government Trophy to wit four (4) pieces of Elephant Tusks valued at Tanzania shillings sixty four Million, one hundred and Forty thousand (Tshs 64, 140,000/=) only, the property of the Director of Wild life.

When the charge was read over and explained to him, the accused person pleaded not GUILTY. In its attempt of establishing his guilty, the Prosecution called and examined a total of seven (7) witnesses. It's also worth pointing that the accused person sought the services of Kamru Habibu Advocate.

That, the led evidence goes thus,

Pw1 :- D 6454 CPL Geni told the Court he is the Police working with the General Duty, GD, at the OCD Tunduma. He is the in charge of Border Patrol. His duties is to prevent crimes generally.

He remembers that on 30/11/2015 on 06:00hrs he was on duty at the Border area. It's the Boarder of Tanzania and Zambia, and was at the side of Tanzania. He was with Pc's Fortunatus, (PW2, and Cyprian. They were inside the fence of the area. While there, they saw the accused person Lucas s/o Wambula @ Ginga. At first , they were not knowing him. He had a black bag and wanted to use un official path. He was from Zambia to Tanzania. He means he wanted to pass at the path other than the gate used. He ordered the two Police Pw2 and Cyprian to go and ask what he was carrying with him in the bag. They followed him, and was returned to the official way used , at the place they work inside the customs gate.

Pw2, Pc Fortunatus said they have interrogated him, but was giving answers which were un satisfactory.

He suggested they search him. As he saw him, he was afraid. He thus went at the office of OCS Tunduma to collect the search warrant, before starting the search exercise . The said office is near to where they were working. He went to collect it leaving the accused under the arrest of Pw2 and Cyprian. He got the warrant and went back to the scene.

He called Mawazo s/o Tensoni, Pw4 as a witness to the search exercise. They searched his body whereby he had MTN and Tecno phones , emergency travel document and a Bus Ticket. The passport has not been Stamped at the Zambia's side. The same bears the name of Lucas s/o Wambura @ Ginga. The Bus Ticket was of him, from Lusaka to Nakonde. The emergency travel document , bus ticket & two Phones were collectively admitted as Exhibit "PE1".

That, the emergency travel document of the accused was issued at Ileje, he is a resident of Dares Salaam , born at Mara on 02/01/1976, a Tanzanian back. It was has his photocopy. When carrying stamped, but stamped it when going there to. The ticket is of Lusaka – Nakonde no numbers and dated 29/11/2015, of Golden Logistics. They did open the zip of the bag and found a blanket with Multiple colors like Leopard, opened it, took the blanket out and found four (4) pieces of Elephant Tusks. That, the Tusks were wrapped in the blanket, and the way he was putting them, tusks down, the blanket on top. The blanket, tusks & a black bag were collectively admitted as Exhibit " PE2". Later, he filled the search warrant and told Tensoni and polices to sign . He gave the accused one copy.

The same has his hand writings, names of witnesses, and he listed the travel document, two mobile phones, bus ticket a black bag and four pieces of Elephant Tusks. The same were admitted and marked as Exhibit " PE3".

That, they left for police , as the OC- CID had information of the incident, he communicated with the wild life officers who were to go and confirm if they were actually Tusks. Before the arrival of the said officers, CPL Ado nick, Pw5 wrote his Cautioned Statement. They come and confirmed to be Tusks. They went at the Post office to weigh them. Those who went there included he, accused OC-CID, Pw2, and D/ CPL Ado nick.

He said two Elephants were killed each valued USD 15, 000/- with a total of 9.4 Kgms . The wild life officer wrote a certificate of valuation of Trophies, Exhibit "PE6" .

He concluded that, the bag and trophies were under his custody, as he is the one who was keeping them. He has thus taken them from police to Court.

Pw2 :H 2218 Pc Fortunatus told the Court he works with Tunduma Police from 2013. His duty is to guard people's safety and properties.

On 30/11/2015 on 06:00hrs he was at the work place at the boarder of Tanzania and Zambia. He was with Pc Cyprian and CPL Geni, Pw1, while there that time at the Tanzania's side, they saw one person at the Tanzania's side wanting to pass at the path which was not official.

He was to pass at the middle where there is one gate.

He was to pass at the Migration and also be inspected.

He was at the right hand side of the border, with a big black bag with him. Having seen him, Pw1 directed him and Pc Cyprian to go and follow him, whereby they later learnt was Lucas s/o Wambura. They asked where he was from, and said from Zambia to Mb4eya Later, he charged and said was going to Dare Salaam . Following the answers , he thought there was something wrong. They thus took him to Pw1, who also interrogated him, but his answers as was before were not satisfying . Pw1 went to the Police, before the start of the search exercise , whereby they put him under arrest.

Pw1 went there with a search warrant whereby they called Mawazo s/o Tensoni, Pw4 , a resident of the said area who was passing so as to witness the search exercise. Search started in his body, whereby they found him with two mobile

phones, bus ticket and emergency travel document. The phones were MTN & Techno, the passport had his photograph, whereby he was shown and identified Exhibit "PE1".

That, they opened the bag, whereby inside there was a blanket with leopard or Multiple colors "chui chui", four pieces of Elephant Tusks, Exhibit "PE2". He, the accused, witness, and Pw1 signed the search warrant, Exhibit "PE3" also the OCS who signed it at the police. In the warrant, his name appears 1st in the list of witnesses. They took him to Police together with all the exhibits. At the Police, they found the oc- CID who receiver them, and accused kept under arrest. People from the wild life were called and CPL Adonick, Pw5 wrote his Cautioned Statement. After one hour, people from wild life came and they went to weigh them at the Post office. He was shown the bag and contents, and Pw7 confirmed they were Elephant Tusks. Those who went at the Post office are he, Pw1, Cyprian, oc- CID wild life office, CPL Adonick and assistant of RCO. The Tusks were weighed and found to have 9.4 kgms. They used a weigh measure scale whereby a women who is a post employee, Pw6 assisted them. After the exercise, Pw1 kept all the exhibits, which were with him till today when he has produced them.

The accused is in Court, pointing at him.

Pw3 :- Pottine Paul Massawe told the Court he is the Resident Magistrate II with Tunduma Primary Court .He is there from June, 2012.

Amongst his duties is to receive Criminal and Civil cases. He is also a justice of peace.

He recalls on 30/11/2015 on 14:00hrs he was at his place of work. While there, he recalls to have recorded the extra Judicial statement of the accused person. While proceeding with his daily activities, the clerck told him there was a Police who

brought him wanting to record the statement as he was confessing. The Police is called CPL Adonick, Pw5 and the accused was Lucas s/o Wambura. He is in Court, pointing at him. He wanted to confess on the offence of Unlawful Possession of Government Trophies. He ordered the Police and Court Clerk to go outside. He remained with him only, and did introduce himself, and that he was the justice of peace, the accused also introduced himself to him. He asked him if he was willing to give the statement, he said yes. He also asked if he was knowing Swahili, and if he has any health problems. He said was okay and knows Swahili.

With all these, he told him when written, the statement will be used as evidence against him. The accused said was ready to give it, so they proceed the Trophies. He gave it to him, he read it over and got satisfied it was proper it was and they signed. He then called the Court Clerk who was to call the Police. The police went there after 4 minutes, whereby he handed over to him the accused and the statement has wrote. He told the Court that the said statement has his writings, signature further and seal of the Primary Court Tunduma. The same was admitted and marked as Exhibit "PE4". In Exhibit "pe4" he introduced himself as Pottin Massawe, whereas the accused said was Lucas s/o Wambura, wanted to know if he knows Swahili and wanted to say anything, the reply was yes. Was arrested on 30/11/2015 and was in cells from 06:00hrs to 14:00hrs and was willing to give the statement no one has forced or promised him anything and willingly wanted to give it. He asked him if he was willing he having understood all the rights.

He said yes. He told him was a businessman selling female clothes from Dar es salaam to Choma Zambia. On 09/11/2015 he sent a Motorcycle to a person called Oscar s/o Mshona and was partly paid. Went there twice as he was Claiming 5000K, and on 29/11/2015 he left Lusaka for Nakonde.

On 30/11/2015 he was arrested but never knew if it was an offence as the same were from Zambia. They both signed. It was after he has read it and got satisfied it was proper. The Police who was outside, was called, took him away, together with the statement.

Pw4:- Mawazo Tensoni told the Court he is selling water and ground nuts at Tazara – Tunduma. The area is between the two customs of Tanzania and Tunduma.

He recalls on 30/11/2015 in the morning on 06:45hrs he was from home going to his place of work. On the way, he was called by a Police called Geni, Pw1. He said sorry, come! He asked what was wrong and was told there was someone he wanted to search. So he was to witness the search exercise. He was with two Police and a person with a black bag. They were suspecting him and wanted to know what the bag had.

He was told of their wish to search, and the exercise started in his body. Whereby they found a passport, two phones to wit Tecno & MTN and Bus Ticket. The bag was opened, inside there was blanket, in which he had wrapped four (4) pieces of Elephant Tusks. The bag was big, black in color, Exhibit “PE2” which be identified. As to the blanket and Tusks he was not sure if they were the one he was arrested with on 30/11/2015. However, he said he had four pieces of Elephant Tusks. As to the emergency travel document, he said is the one the accused was found with that day, together with the Bus Ticket , & two phones. After the search, he and accused both signed, and later went at Tunduma Police. He signed as a witness. He wrote his statement and phone numbers.

That, the search warrant was in respect to properties the accused was found with including phones ATM & Tecno , Bus Ticket, passport, blanket, black bag and four (4) pieces of Elephant Tusks.

Geni, Pw1 also signed it. He identified his signature as being number 2. Polices said they were Government Trophies, he however does not know exactly they were of which Animal. The person he is talking about is in Court, touching him. Pw5:- No 1470 D/CPL Adonick testified that he works with CID at Tunduma.

He is there from 2012, his Boss the OC – CID one SP Mtaki. On 30/11/2015 in the morning he at his work place at Tunduma . While there on 07: 45hrs he was told to write the cautioned statement of the accused person. He prepared himself, whereby on 08:00hrs, he took him to his office. He was there in with him only and said was Lucas s/o Wambura , he also introduced himself and the offence which he is charged with, his rights as an accused. He told him may write it or not, if he write may be used as evidence against him in Court, may also call a relative, friend or Advocate to witness it written. He did understand, and signed, also wrote it. He gave him some copies as he said knows how to read and write. He was following the asked questions. He wrote what the accused told him. Having finished writing, he gave it to him, whereby he read it and got satisfied it was proper, he wrote the verification and signed. The same has his hand writings, and signature, same to the accused names and signature. He prayed it be admitted whereby after an Injury it was admitted and marked as Exhibit “PE5”

That, in the statement, he said was Lucas s/o Wambura, 38yrs, Business man of Ukonga Dsm, it was written on 30/11/2015 from 08:00hrs to 09:00hrs.

He wrote it after warning the accused person, telling him the offence he was charged with, was free to either write it or not, and wrote it having understood all

the rights, and did sign to show understood the rights. He told him where he was born, at Butiama, his family the business which was doing before. On 11/11/ 2015 Oscar s/o Mshona wanted a T – Better and took it to him that day. He sold it for K 11, 000,000 whereby he paid only K 5000. Later, he gave him 4 pieces of Elephant Tusks which he never knew if it was an offence to have them.

Was arrested by Police of customs, and searched. He a part from the Tusks was found with a Bus Ticket. Also signed at the end of the statement. Having finished, he returned the accused to CRO & the statement was handed over to the oc – CID.

Pw6 : - Hadija Idd Misayo told the Court of her stay at Msasani area to Tunduma, from 13/05/2013. She is working with the Post office from 18/05/2013. Amongst their duties are to transport letters, parcels, and do NECTA works. Also they do many agency works.

On 30/11/2015 she at her place of work on 11:30hrs when policies from Momba went there. She however does not recall their number. They were accompanied by a person who was hand cuffed. They said the person had Elephant Tusks which they wanted to weigh. The same were carried in a black bag, covered with a blanket Leopard colors. She was given four (4) pieces for weighing and were whitish in color. She asked them and they so said, and she used to see them onto the TV. They started weighing them and got 9.4kgms. They spend almost 15 minutes in her office. She also recorded her statement , and they later went away.

The person she is taking about is in Court, pointing at him.

That, she was shown the black bag, blanket, and four piece of Elephant Tusks , Exhibit :PE2” and identified them.

Pw7 :- Mussa s/o Mmbaga testified that he works at Chunya as a wild life officer. He is in the field from 2007. Here at Mbeya, Chunya District, is there from 2008. He works with all Districts here in town, with Game Reserves. He is also the assistant of the Manager. He supervises all works relating to wild animals.

On the 30th November, 2015 he was here in Court from 07:30hrs .While here, he got sms from the Deputy RCO, one Mtatiro. He was to accompany him to Tunduma to identify the found GV trophies. He was allowed to go, but was to give evidence on the next day.

Other witness continued . Mtatiro come to collect him here at the Court. They went and arrived there on 10:45hrs. They went at the exhibits store, whereby he was showed a bag with the Trophies. It had four (4) pieces of Elephant Tusks. He so know because the same has two parts, outside part called crown and inner part called root. He did identify them and requested the Polices to take him to where he can weigh them. Opposite the Police, there was a Post office, about 25-30metres. They went there with a person alleged to have been found with them. They went there on 11:05hrs, and the person they went with is here, touching the accused person. The trophies were in the bag carried by a police and were hovered blanket with Leopard colors.

The witness was shown the black bag, Tusks four of them and a blanket and identified them.

At the Post Office, they recorded the weight of each Tusk. The bag in Court is the one he saw at Tunduma. It was at the Post office when weighing the Tusks. He is the one who recorded numbers one (1) to four (4) and weights of each Tusk.

They managed to get 9.4 kgms for all pieces. They spent fifteen (15) minutes weighing them. He went back to Police to fill the Trophy Valuation Certificate.

That, the same has his hand writings and seal of the Project Manager and was admitted as Exhibit "PE6".

In exhibit "PE6" he filled his names, Designation, the laws which he used file TDM/IR/3345/2015. Two species killed, white in color, rate applicable on 30/11/2015, 2138/= US D 30, with total of Tshs 64,140,000/=

The exchange rate was of 30/11/2015. The value of Animals is per GN 207/2012, giving Guidelines on all wild animals killed. Each Elephant has the value of USD 15,000. The exchange rate is per BOT on 30/11/2015.

As per the above GN, the Wild life officer has authority to do valuation. He too is a Wild life officer.

This concluded the Prosecutions case. From the led evidence, the accused person was found to have a case to answer. He opted to give his evidence in defense on oath and fended himself.

That, the defense case goes thus, DW1: Lucas s/o Wambura @ Ginga told the Court he was buying clothes at Dares Salaam and was selling them at Zambia. He was doing the business from year 2013. Also was buying Motor cycles at Dares salaam and later sales them at Zambia, Western Province.

That, before 30/11/2015 he was at Zambia. He travel from Dares salaam on 08/11/2015 and crossed the Boarder. He went at Southern Province, at Choma Town. He went there to sale a Motorcycle whereby he was given an advance a K 6000 and K5000 remained which were to be paid on 15/01/2016. He started the journey back home. On 28/11/2015 he left. Choma for Lusaka, and 29/11/2015 Lusaka for Nakonde and he travelled by Bus. It was written Gorden. On 30/11/2015 he arrived at Nakonde on 06:00hrs. He was carrying a small bag with

him “rasket”, or plastic bag which had water, biscuits and ant- malarials. He left his clothes at Lusaka at Madevu street where he used to stay. At Nakonde, he was to cross the boarder so that he comes to Tanzania.

He could not stamp his travel document as it had extra days of staying at Zambia. When at the Tanzania side, Polices called him, being three (3) of them. He was asked where he was from and replied Zambia to Tanzania and they said they go to Police. He agreed, whereby he was put at the reception, later they come with a bag. One Police went there with it. It was black in color. They alleged he was suspected to have Government Trophies. He was shown, Exhibit “PE2” and said was the one. Later, he was taken into a separate room where he stayed to 08:40hrs where he was taken at the back of the building. There, the Police said wanted to record his statement. He inquired why record his statement, the reply was that because he was suspected to have Government Trophies. He refused, whereby he showed him place with hand cults for hanging. He said will hang him if he continued to refuse. Later, he started to ask his names, residence, marital status, if he has children, where he was from said, from Choma Zambia and what he went to do.

The Police was recording his answers. Later he gave him a paper with certain words which he was to record in the paper he had.

He then wrote what was in the paper in the statement written by Pw5. The same was not written by him.

He told him what to say promising to hang him. He was taken back to the lockup till room hours when he was taken to the Primary Court using a Police car, Model Land Cruiser. He went there with the Driver and Police, Pw5.

The police’s name is Adonick. Having arrived he left him in the car and returned later, and told him what he writes should not differ with what he wrote at the

Police. He wrote a statement before at the Police. He wrote a statement before person who introduced himself as a Magistrate. He did introduce himself, asked his names and recorded the statement which was similar to that he wrote at the Police. He signed and was taken he wrote at the Police. He signed and was taken back to Police. The same was not voluntary as Pw5 told him what to write before P3. Later, he was taken at the Posts office, they had a black bag which was opened by them and they took out Tusks for weighing.

He would not know they were of which animal. Later, he was returned to Police lockup. In the evening, he does not recall the time, but was a after the evenings dusk, they started the journey to unknown place. He was with the Driver, Mtatiro and others not known to him. They disembarked at the Central Police here in town.

He was taken at the first floor in one of the offices.

There, he was forced to sign the paper which he was not knowing, and was taken at the lockup after signing. He stayed there for four (4) days before he was later brought to Court, where he was charged with Possession of Government Trophies.

On the charge, the same is false as she was not found with the Tusks. He prayed the Court to find him not.

Going by the led evidence, the issue involved is whether the accused person was found in Unlawful Possession of four (4) pieces of Elephant Tusks.

In answer to the raised issue, I will start with the testimonies of Pw1, 2, and 4 who were eye witnesses to the incident. Pw1 No D6454 CPL Geni told the Court he is a Police working at Tunduma and is the In charge of Boarder Patrol.

Generally, he does the work of preventing Crimes . On the day of the incident , 30/11/2015 on 06:00hrs he recalls to have been on duty at the Boarder area. Its that of Tanzania and Zambia, and was at the Tanzania's side.

He was there with two Polices, PCS Fortunatus, Pw2 and Cyprian and were both inside the fence. While there, they saw the accused person Lucas S/O Wambura @Ginga . At first they were not knowing him. He was carrying with him a bag and wanted to use an official path. He was from Zambia to Tanzania. He mean the accused wanted to use the path other than the gate. He ordered Pw2 and Cyprian to go and ask him why he wanted to pass there and what he was carrying in the bag.

They followed and returned him to the official path, and took him to where they were working inside the customs gate. Pw2 told him, they had interrogated him, but was not giving answers which were not satisfactory. Pw2 suggested they search him . As he saw him, he was worried, so he went to collect a search warrant from the OCS of Tunduma, which office is near to where they were before the search exercise. He went to collect it leaving the accused under the arrest of PW2 & Cyprian . He got it and went back to the scene where he called Mawazo s/o Tenson . Pw4 to witness the search exercise. They started onto his body and found him with two Mobile phones MTN & TECNO , emergency travel document and a Bus ticket, Exhibit "PE1" . The emergency travel document bears the name of accused Lucas S/O Wambura Ginga . Issued at Ileje, and is a resident of DSM, and has his photograph.

Ticket of Lusaka – Nakonde with no numbers of Gorden Logistics Bus . They opened the bag, found the blanket inside which had Leopard " chui" " chui" colours. They took it out and found four pieces of Elephant Tusks. The same, were

admitted as Exhibit “ PE2” and he filled the search warrant, showing all what the accused was found with to wit Exhibit Pw1 & Pw2. Tensoni, Polices and Accused both signed the warrant, Exhibit “PW3”. They left for Police, whereby the OC-CID had information of the incident and communicated with the Wild life officer who were to go and verify if the same were actually Tusks. When waiting for him, CPL Adonock, Pw5 wrote the accused cautioned statement. Later, they confirmed they were Tusks and also went with the accused, OC- CID , CPL Adonick, Pw2. He, Pw7 said two Elephants were killed and with 9.4 kgms, and US 15000 each . He prepared the certificate of valuation of Trophies. He was keeping the bag and Tusks since the arrest till when he has come to produce them to Court.

Pw2 No H 2218.His evidence was not different from that of Pw1. He told the Court, Pw1 ordered him to go to interrogate the accused, DW1. He was not satisfied with his answers as he said was from Zambia to Mbeya, later changed and said to DSM.

He suspected and took him to Pw1. Pw1 also asked him, but the answers were not satisfactory. They searched him and Tensoni, Pw4 was to witness the exercise. They found Exhibits “ Pw1” in his body & “ PE2 in the bag.

He signed in the warrant of search, Exhibit “PE3”, later the Wild life Officer confirmed they were tusks. He, accused, Pw5, Pw1and Deputy RCO went to the office of Posts for weighing the Tusks. They used a scale to weigh them and had 9.4kgm, a women who is the employee of Posts, Pw6 assisted them. After the weighing exercise, Pw1 kept the exhibits. Pw4 Mawazo s/o Tensoni told the Court he is a business man at Tazara Tunduma. Its between Customs of Zambia and Tanzania sales water and groundnuts. On 30/11/2015 he was from home to his work place. On the way, a police by name of Geni, Pw1 called him. He asked what

was wrong, he said there was some one he wanted to search, so was to witness the search exercise. They were suspecting him, so wanted to know what the bag he had contained. Pw1 was with two Polices and the suspect. He was told of their wanting to search him. They found him with Tecno & MTN phones, passport & Bus ticket, Exhibit "PE1". In the bag he had wrapped four pieces of Tusks in the blanket, and the bag black in color, Exhibit "PE2". In the search Warrant, Exhibit "PE3", his Signature appears No2. Polices said were Government Trophies, but he could not know of which animal. He recalls the accused, who is in Court. Pw5 CPL Adonick was at his work place, Police Tunduma. He works with CID. On 07:45hrs he was told to write the Cautioned statement of the accused, DW1. He prepared himself and started to write it from 08:00hrs to 09:00hrs. The accused wrote it after being told and understanding all his rights. He later gave it to him, read it over and wrote the verification that it was proper and signed.

In the statement, he told him his names, personal particulars, where he stays, what he was doing before the arrest, where he was born and studied. On 05/11/2015 his friend called Osca s/o Mshona of Zambia called and wanted a Motorcycle Model T- Better. He sent it to him on 11/11/2015 and sold it for K11, 000,000, whereby he was paid K 6000. Later he was given 4 pieces of Elephant Tusks of which he does not know their value. He was carrying them in the bag blackish in colour. Never knew if it was an offence to have them. He was searched and found with them at Customs area. Polices arrested him. He admitted to have signed the warrant to show was found with them.

At page 3, of the cautioned statement Exhibit "PE5" he state,

" --- tarehe 11/11/2015 nilifika Zambia. Nilimpatia OSCA pikipiki tulikubaliana anilipe KW 11,000,000/= yeye akanilipa Kw 6000 nikabaki namdai KW 5000,

ambazo ni sawa na Sh 700,000/= ambazo alidai atalipa tarehe 20/11/2015. Nilikaa nikavumilia ikaonekana hana namna ya kupata fedha hizo. Nilijaribu kuwatumia ndugu zake mpaka viongozi wake ikaonekana ngumu ukizingatia nilikuwa mgeni huko kwao Zambia.

OSCA alilazimika kunipatia meno ya Tembo manne kama sehemu ya kulipa fedha zangu nililazimika kuyachukua men ohayo na ... sikujua yana thamani gani

End of the quote.

He adds “men ohayo nilibeba kwenye begi langu jeusi”.

And was arrested outside the fence when preparing to go to board a Bus for the DSM journey. Undelining mine.

PW5 handed over the statement to the OC – CID and returned the accused person the lock up. He was to record his confession / extra judicial statement. In the noon hours, he took him to PW3, who wrote his confession, exhibit “PE4” whereby at page 2 of the same he told Pw3 thus,

..... 05/11/2015 Osca Mshona wa Zambia alinipigia simu kuwa anahitaji pikipiki. Tarehe 09/11/2015 nilienda Zambia nikiwa na Pikipiki hiyo. Nilimkabidhi Pikipiki hiyo 11/11/2015 na akanipa 600,000 K. Nilimfuata tarehe 20/ 11/2015 akawa hana hela akasema nirudi 24/11/2015. Siku hiyo pia hakuwa na hela akasema atanipa meno ya Tembokg 9 ili kufidia deni la 5,000,000K niliyokuwa namdai. End of quote. At page 3, he states,

“ Sikujua kwamba ni tatizo kwa kuwa nilipewa yale meno ya Tembo kutoka Zambia kuja Tanzania, ndio sababu sikupitia njia za uchochoroni”. End of the quote. Pw7 Mussa Mmbaga was called so as to confirm if they were Tusks and

also do valuation. He did so as a Wild life officer. He identified them because Elephant Tusks have two parts roots- inner, outside part called corn. They were four pieces showing two Elephants were killed. He requested to be taken at the place where he can weigh them, and was taken at the post office, where they found Pw6 who weighed them one after another.

Pw7 on his part, further recorded the weight of each Tusks and they got a total of 9.4kgms. He recorded numbers 1 to 4, and weight for each. Having finished, he prepared the trophy Valuation Certificate, Exhibit "Pw6" whereby the rate for 30/11/2015 was 2138 for USD and the value of each Elephant was USD 15,000 x 2 = 64,140,000/= the value is per GN 207/2012, giving a guide line on all killed animals. The Tusks were inside the black bag. Pw6 Hadija Idd Misayo an employee of Posts told the Court on 30/11/2015 on 11:30hrs while at her place of work, Polices went there with a hand cuffed person wanting to weigh Elephant Tusks. They were in a black bag, covered in a blanket with a Leopard colors "chui" "chui". She weighed them by a scale and got 9.4 kgm. She was showed and identified Exhibit "PE".

Even, Unlawful possession con notes Possession, ownership, knowledge or Invitation so that the thing unlawful possessed is found where its found . Its not considered where the same are from meaning within or from outside the Country. As he was carrying the bag no doubt, he was owning, possessing, or had knowledge of its contents.

From the evidence led, Pw 1, 2 & 4 were eye witnesses, they said he was found with them. Later he was taken to Police, PW5 wrote his cautioned statement in which he admitted possessing the, same to Pw3 the justice of peace who wrote his extra judicial statement in which he admitted. PW6 weighed them, whereas Pw7

confirmed were Tusks & did valuation. Am satisfied that he was found in unlawful Possession of four (4) Elephant Tusks valued Tshs 64,140,000/=.

In his defense, he admitted going to Zambia at Southern Province, Choma town to sale, Motorcycle. He like Pw3 and 5 said was paid 6,000,000 K and 5,000,000K remained. The same was to be paid on 15/01/2016. On 29/11/2015 he left Lusaka for Nakonde where he arrived on 30/11/2015 on 06:00hrs. He said was carrying a plastic bag not a black bag. The same had water, biscuits and anti- malarias. He saw the Tusks at the Police. However, he never said why the witnesses Pw1, 2 & 4 would have chosen to lie against him. Further he wrote a confession to Pw3 and cautioned statement to Pw5 in which he admitted to have been found with them. He alleged they were not Voluntary which is wrong, because inquiry was conducted and the Court got satisfied that the same were voluntary . Even, all the allegations are a white lie., He objected to the Cautioned statement being admitted allegedly because he was promised later, during defense hearing, he changed and said Pw5 threatened to hang him if he refused to write!! Interesting. He admitted of Pw3 being with him only , and Pw3 never beat or promised him and what he told him was similar to what he told Pw5. He so said when cross – examined by the SAIS . No doubt the confession was voluntary and what he said is unsupported . It contains his volunteered statement. Also alleged was forced to sign it while here in town. He never knew what he signed, was it the confession or cautioned statement?. He never clarified. Its so because he signed the Cautioned statement on 09:00hrs at Tunduma, unless he wants to say there was another document which was not produced as Exhibit in Court.

Same to the search warrant was signed at the place he was arrested. He alleged the charge is false because was not found with the tusks. What he alleges is not supported with the evidence, as the same clearly shown he was found with them.

Even, he never said any thing on the led evidence in particular those orPWS 1, 2, 4, 6 & 7. It follows that the same remains un disputed. All what he said are thus discarded.

Much has said, suffices to say from all what I have tried to explain, I am satisfied that the led evidence has established GUILTY of the accused person beyond all reasonable doubts.

In the event, I fin7d him guilty as charged and will accordingly convict him of Unlawful Possession of Government Trophy C/S 86 (1) (2) (c) (ii) of the Wildlife Conservation Act no 05/2009, read with paragraph 14(d) of the 1st schedule to section 57 (1) of the Economic and Organized Crime control Act, cap 200 (RE 2002).

Sgd: R. W. CHAUNGU – SRM

15/01/2016

ANTECEDENTS:-

No previous convictions. Accordingly to the value of the Trophies, he be punished according to the Law S. 86 (2) (c) (ii) of Act no 05/2009, so that it's a lesson to others of the like mind. The GVt is fighting hard against poachers.

That's all

Sgd: R.W.CHAUNGU – SRM

15/01/2016

KAMRU HABIBU ADV:

He is first of offender. He is married with young children studying .

They depend on him. He has elderly parents depending on him. We pray for leniency so that he joins the family.

Sgd: R.W.CHAUNGU – SRM

15/01/2016

SENTENCE

The accused is a first offender. I have considered the prayers by the Prosecution and his mitigation. The accused is young and energetic, he would have engaged into lawful income generating activities, but engages himself in the business of Trophies.

No doubt strong deterrent sentence is required. Under S . 86 (1) (2) (c) (ii) of Act no. 05/2009. I will sentence him to go in fail for twenty (20) years.

Sgd: R.W.CHAUNGU – SRM

15/01/2016

ORDERS: - The Bag , blanket & Trophies / Tusks Exhibit :PE2” be for feited to the Directgor of wildlife . The other Exhibits, Exhibit “ PE1” will be returned to him.

Sgd: R.W./CHAUNGU – SRM

15/01/2016

COURT : Pronounced to the accused , his Advocate, and State Attorney.

Sgd: R.W. CHAUNGU – SRM

15/01/2016.

COURT : Right of Appeal fully Explained.





Sgd: R.W. CHAUNGU – SRM

15/01/2016

[Handwritten signature]
RESIDENT MAGISTRATE
MBEYA