

THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT COURT OF CHUNYA DISTRICT
AT CHUNYA

ECONOMIC CASE NO. 1 OF 2015

THE REPUBLIC

Versus

FESTO S/O ERINEOACCUSED

JUDGMENT

Date : 08/12/2015 & 29/12/2015

Before: Hon. Mr. O. N. Ngatunga-DRM.

That, **Festo S/O Erineo** hereinafter referred to as accused stand charged with two counts. That, the 1st count is the offence of unlawful possession of Government Trophies s. 86 (1) (2) (c) (i) of the Wildlife Conservation Act, No. 5 of 2009 read together with paragraph 14(d) of the First Schedule, sections 57(1) and 60(2) of the Economic and Organized Crime Control Act, [Cap. 200, R. E. 2002].

And, the 2nd count is the offence of being unlawful possession of fire arm s. 4 (1) and 34(2) of the Arms and Ammunition Act, [Cap. 223, R. E. 2002] as amended by Written Laws (Miscellaneous Amendments) No. 3 of Act No. 17 of 2010.

It is alleged on or about 25th day of March, 2015 at Gua village within Chunya District in Mbeya Region accused was found in unlawful possession of the Government Trophies to wit, 0.5 kg of warthog meat valued at Tshs. 893,250/=,

the property of the Government of United Republic of Tanzania and a fire arm namely muzzle loading gun (gobore) without a permit.

Accused pleaded not guilty, whereof, the prosecution led evidence through four witnesses, their names are PW1 (Edward Michael), PW2 (D. 8471 D/SGT. Hassan), PW3 (Peter Hopley), and PW4 (Musa Mmbaga) in their endeavour of discharging the burden of proving the case beyond reasonable doubt against accused. Accused (DW1) defended himself without calling anybody to corroborate his defence.

PW1 and PW4 are the Wildlife Officers working at Lukwati/Piti Game Reserve area and PW3 is an independent witness working with Michelle Mantheakis Safaris. The company involves with tourist hunting inside of Lukwati/Piti Game Reserve area. It was on 25/03/2015 PW1, PW3 and Novati Fadhili John gone to the patrol. While they were in Game Reserve area they heard a bullet fired on the Northern part of the Game Reserve area. PW1, PW3 and Novati Fadhili John thought either the bullet was fired by their fellow Wildlife Officers or poachers of the wild animals. PW1, Novati Fadhili John and PW3 approached the area and seen the blood and the footprints of a human being.

PW1 and PW3 followed the footprint which was directed towards one of the houses built nearby the tobacco farm. PW1, PW3 and Novati Fadhili John abstained from doing search on that particular time waited till night time. When it arrives around 23:00 hrs, they resume their target, approached the suspected house, knock the door, accused responded, wake up, accused opened the door and got outside of his house. PW1, PW3 and Novati Fadhili John told him their intention of going to the house was as they were suspecting him possessing of the Government Trophies and the muzzle loading gun illegally.

PW1 and PW3 said when accused was informed such story he did not object anymore, he responded by entering into his house adjacent to the dwelling house and retrieve to them (PW1, PW3 and Novati Fadhili John) the muzzle loading gun. PW1 and PW3 told the court as the muzzle loading gun was hidden to the tobacco burning house (bani). Apart from retrieving the muzzle loading gun accused availed them with the local muzzle ammunitions and the warhog meat. PW1 produced the search order that was indicated things which were tendered by accused and all of them signed it. PW1 tendered the search order to the court which is admitted and marked as exhibit "PE1". Accused was arrested and on the next date, that is, 26/03/2015 was referred to Mkwajuni Police Post together with the muzzle loading gun and the warhog meat.

That, on material date, PW2 and PW4 was not around to the scene area. Upon arrest of accused, he was taken to PW2 for legal action. It was on 26/03/2015, while PW2 was at the Police Post, Mkwajuni PW1 sent accused, muzzle loading gun and 0.5 kg of warhog meat. The muzzle loading gun (gobore) was tied with rope. Also, PW1 interrogated accused and recorded the cautioned statement. In course of recording it, accused admit owning muzzle loading gun (gobore) and that of the warhog meat. PW2 tendered the muzzle loading gun and the cautioned statement as exhibits. The court admitted them, the muzzle loading gun as exhibit "PE2" and the cautioned statement as exhibit "PE3".

PW4 also testified. He reiterate that he is Wildlife Officer working at Lukwati/Piti Game Reserve area and it was on 27/03/2015 he was called by PW2 to his office. PW2 called him for the sake of doing identifying and evaluating the government trophies that was arrested with accused by his Co-Wildlife Officers. PW5 rushed to Mkwajuni Police Post, met PW2 around 07:30 hrs, PW4 availed with 0.5 kg of the government trophy and used different methods of identification.

In course of doing such work, PW4 used a fiber, born, fur and smell methods of identifying the meat. PW2 discovered that the alleged of 0.5 kg meat was of the warthog animal. He said the fiber differed and was not intact; the born marrow's diameter was narrow and that of the fur. He came to a conclusion that the meat was of warthog animal. PW4 evaluated the same basing the Government Notice No. 207 of 2012. The evaluation of 0.5 kg of the meat was done to an animal even though accused was caught with piece of the meat. A value for the Warthog animal was USD 450 that is equivalent to Tshs. 893,250/= the price for USD 1 was Tshs. 1985/= only on that particular date.

PW4 said the meat was not fit for the human consumption, the court ordered the meat to be destroyed. PW4 ask the leave of the court to tender the Trophy Valuation Certificate and Inventory Unclaimed Property as exhibits. The court admitted and marked the Trophy Valuation Certificate as exhibit "PE4" and Inventory Unclaimed Property as exhibit "PE5".

The court ruled out and finds that a prima facie case has been established sufficiently to require him to enter his defence, call evidence and tender exhibits if any, under section 231 of the CPA, [Cap. 20, R. E. 2002] to disprove his blamelessness.

DW1 (Festo Erineo) defended himself. He testified, admits as he was arrested and prosecuted before this court. He avers that, the Wild Officer went to his house, handcuffed and sent to their Camp where they beat him with gun's buttock and forced him to carry a wild meat and a muzzle loading gun. PW1, Novati Fadhili John and PW3 wrote a statement and forced him to sign. Because of those threats, DW1 did sign it.

However, the prosecution witness sent DW1 to the Mkwajuni Police Post where PW2 recorded his statement and DW1 signed over it. Also, DW1 complained to the Police Officers acts of denying of his Constitution right to bail. He reiterates further that, the prosecution summoned four witnesses among of them none of independent witness neither his local leader nor neighbours was called to support their case.

DW1 was cross examined. He repeats as he was arrested at his farm. He was beaten and taken photographs. The person who beat him was not called to testify. PW2 did not beat at a time of recording statement. This is the end of evidence adduced by both the prosecution and defence before the court and me.

With the above facts at hand and evidence on record the issue before me and the court is whether the prosecution proves their case beyond reasonable doubts as accused was committed the offence he stand charged.

There is no doubt that DW1 denied charge but he agreed that he was arrest on 25/03/201 around 23:00 hrs. Also, the evidence of PW1 and PW3 avers in court that they went to accused house twice that is, on the evening and around 23:00 hours. That, PW1 and PW3 wanted to conduct search to the house however, DW1 was willingly, he entered into his house and produced to them a warthog meat, muzzle loading gun see exhibit "PE1", "PE2", "PE3", "PE4" and "PE5". Although, in his defence DW1 deny to produce the meat and muzzle loading gun and he introduced a new thing that, upon arrival to his home, PW1 and PW3 knock the door, DW1 wake up, open the door. The three people hand cuffed, beat with a gun buttocks and the same was forced him carry a wild meat, a muzzle loading gun and the PW1 and PW3 wrote a statement and was forced to sign over it. DW1 avers, he was seriously beaten by PW1, PW3 and one Novati Fadhili John.

Even though DW1 complains that, none of an independent witness neither his local leader nor neighbours was called to support their case. This point of view is impracticable according to the area DW1 was arrested. PW1, PW2, PW3 and PW4 said as DW1 was arrested with a warthog meat and muzzle loading gun. As I have already said before that accused stand charged with two counts that, unlawful possession of the government trophy and the firearm without permit. These two counts are governed by three Acts, the Wildlife Conservation Act, No. 5 of 2009, the Arms and Ammunitions Act, [Cap. 223, R. E. 2002], and that of Economic and Organized of Crime Control Act, [Cap. 200, R. E. 2002].

Under section 3 of the Wildlife Conservation Act, No. 5 of 2009 define the word trophy an animal alive or dead, and any horn, ivory, tooth, tush, bone, claw hoof, skin, meat, hair, feather, egg or other portion of any animal and includes a manufactured trophy.

Also, section 3 of the Wildlife Conservation Act, No. 5 of 2009 and the Arms and Ammunitions Act, [Cap. 223, R. E. 2002] define the word arms or weapon to include every firearm of any description; every sword, cutlass, spear, pike, bayonet, dagger, fighting iron, flick-knife, gravity knife, ammunition, or other deadly weapon, every gun, pistol, dart-gun, missile, explosive, poison, spear, bow and arrow, axe, hoe, pick, club stakes, pitfall, net, gin, trap, snare or any combination of these, or other propelling or releasing instrument or mechanism, from or by which any shell, cartridge, bomb, grenade, or projectile, containing any gas or chemical could be used.

DW1 said, he was beaten by the gun buttocks by PW1 and PW3 and forced to sign a written paper but the same not produced in court as exhibit. At a time of

recording exhibit "PE3" he was free, nobody was forced him. The same allegation was introduced and he signs it. PW2, PW2, exhibits "PE4" and "PE5" corroborates the evidence of PW1 and PW3 that accused was arrested with the warthog meat and muzzle loading gun without hunting licence or permit on the ordinary course of storage of the gun and possessing of the meat. PW4 identified to be of the warthog meat through several experiments like the fiber differed and was not intact; the born marrow's diameter was narrow and that of the fur. It does n't matter whether it is fresh, dried, pickled or otherwise preserved. Also, whether the trophy is a peace, fresh, dried, or a whole animal. PW4 based his evaluation under the Government Notice No. 207 of 2012. The value for the Warthog meat is USD 450 that is equivalent to Tshs. 893,250/= the price for USD 1 was Tshs. 1985/= only that date.

For reasons I have stated, the proof in my views is sound and beyond reasonable doubts; accused was committed the offence. The evidence on record DW1 was read handed with the warthog meat and muzzle loading gun. In the circumstances, I hereby find Festo Erineo guilty of the offence as charged and he is convicted forthwith ^{u/s} 235(1) of the CPA, [Cap. 20, R. E. 2002].

Accordingly pronounces.


O. N. Ngatunga
DRM

26/12/2015

Date : 29/12/2015
Coram : O. N. Ngatunga, DRM
S/A : A/Insp. Rukomwa

Accused : Present
C/c : Amina James

Public Prosecutor: Your Honour, the matter scheduled for judgment and I am ready for the result.

Accused: I am ready, your honour.

Court: Judgment delivered in presence of both parties this 29th day of December, 2015.


O. N. Ngatunga
DRM

29/12/2015

PREVIOUS RECORDS:

Prosecutor: Your honour, no previous record of conviction on part of accused person, however, I am praying for the honourable court to abide with the law accused charged, to give him a severe punishment to accused to rehabilitate him and other people of the same characters.

MITIGATING FACTORS

Accused: Your Hour, it is my first offender, I have eight (8) children, and some of them are schooling and depending for their basic and necessary needs. That, four of them are orphans, my spouse and parents, all of them are duly needful of me for their basic and necessary needs. I shall not repeat it, therefore, I pray for a court leniency.

COURT

This court peruse the law accused stand charged and satisfy beyond doubts that, the punishment for the first count is where the value of the Trophy does not exceed Tshs. 1,000,000/= to a fine not less than the amount equal to a twice the value of the trophy or to imprisonment for a term of not less than three years but not exceeding ten years. Apart from penalty under section 86(1)(2)(c) (i) of the Wildlife Conservation Act, 2009 also 60(2) of the Economic and Organized Crime Control Act, [Cap. 200, R. E. 2002] state the sentence is imprisonment for a term not exceeding fifteen (15) years or to both that imprisonment and any other penal measures..

However, for the second count is a sentence of imprisonment for a term not exceeding fifteen (15) years or to a fine not exceeding three Millions (Tshs. 3,000,000/= or to both such fine and imprisonment. This honourable court considers the mitigating factors of accused and the prosecution concerns.

O. N. Ngatunga
DRM

29/12/2015

SENTENCE

Accused sentenced to pay fine of Tshs. 900,000/= or eight (8) years imprisonment for the first count and a fine of Tshs. 100,000/= or five (5) years imprisonment in default for the second count. The sentence is ordered to run concurrently.


O. N. Ngatunga

DRM

29/12/2015

ORDER

That, the exhibit "PE2" is forfeited for the Government of United Republic of Tanzania ^{u/ss.} 111 of the Wildlife Conservation Act, No. 2009 and 23 of the Economic and Organized of Crime Control Act, [Cap. 200, R. E. 2002] and the same should be kept in the custody of Police Station Chunya.




O. N. Ngatunga

DRM

29/12/2015