

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

AT CHUNYA

ECONOMIC CASE NO. 3 OF 2015

THE REPUBLIC

*Versus*

ABEL S/O CHRISTOPHER .....ACCUSED

JUDGMENT

**Date** : 08/12/2015 & 19/01/2016

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

In this case, **Abel S/O Christopher** hereinafter referred to as accused arraigned with two counts. On the 1<sup>st</sup> count he is charged with the offence of being unlawful possession of Government Trophies s. 86 (1) (2) (c) (ii) 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, on the 2<sup>nd</sup> count, accused is charged with the offence of being unlawful possession of fire arm s. 4 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 21<sup>st</sup> day of November, 2015 at Gua village within Chunya District in Mbeya Region accused was found in possession of the Government Trophies to wit, one Common Waterbuck meat valued at Tshs. 1,728,000/=, Duiker meat valued at Tshs. 540,000/= all to the tune of Tshs. 2,268,000/= the property of the Government of United Republic of Tanzania and also, he was also found in the possession of fire arm to wit muzzle loading guns without permit or authority.

Accused pleaded not guilty, wherein, the prosecution led evidence through five witnesses, their names are PW1 (Kennedy Philip), PW2 (Shafii Shaban), PW3 (WP 9673 D/C Veronica), PW4 (Erick January Sumbizi), and PW5 (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.

It is in the evidence of PW1 and PW2, the Wildlife Officers working in Lukwati/Piti Game Reserve area told the court that it was on 11/12/2015 around 16:00 hrs they were informed that accused was possessing a Government Trophies and muzzle loading guns. The trophies and muzzle loading guns was hidden inside of his dwelling house. PW1 and PW2 did not know actual of residence of accused so they consult PW4; a suburb leader of the area and told all what had been transpired to his area of leadership. Around 19:00 hours PW1, PW2, and PW4 went to the suspected accused and before their arrival; they heard "mungurumo wa pikipiki" and sooner thereof, accused appeared. They (PW1, PW2 and PW4) stop and put him under arrest. Accused was taken to his dwelling house for the sake of conducting search. On arrival, PW1, PW2 and

PW4 saw three houses and before doing anything accused searched PW1, PW2 and PW4. Their clothes did not have anything. Then, PW1, PW2 and PW4 searched his three built houses.

The search was led by PW1 and PW4 and they started the search on the dwelling house where they found a cooked Duiker meat and a hanging meat of the Common Waterbuck. Nothing was retrieved from the adjacent house which used as a store save for two muzzle loading gun, snare and twenty two (22) muzzle loading ammunition were found into the “tobacco burning house (“bani”). Thereafter, a seizure order was prepared and all of them including accused signed it. No force was used in course of conducting their statutory work.

That, the two muzzle loading gun, snare, and twenty two muzzle loader ammunitions were tendered as exhibits. Although accused objected for the same to be admitted as exhibits his objection was overruled out and two muzzle loading guns were admitted as exhibit “PE1”, snare exhibit “PE2” and twenty two muzzle loading ammunitions as exhibit “PE3”. The seizure order was prepared and signed by all person attended the search including accused. The seizure order was tendered and marked as exhibit “PE4”.

PW3 also was called to testify. She told the court as she is a Woman Police and it was on 22<sup>nd</sup> November, 2015 OC-CID Msaki called her and assigned a Police File case record with reference number CH/IR/876/2015. The file case was concerned the offence of unlawful possession of Government Trophies and two muzzle loading gun. Accused was already arrested and kept

in the lockup. What she did when she was assigned the case file, she called out a suspect, she identified herself as a police officer, explained over all of his rights under section 58 of the CPA, [Cap. 20, R. E. 2002]. Accused was satisfied with the explanations and was able to give his story. PW3 recorded a cautioned statement and she tendered in court as exhibit. The cautioned statement was admitted and marked as exhibit "PE5". Accused was not threatened, beaten, induced, and promised anything when his cautioned and recorded his statement. Accused was healthier when he told her the whole stories.

PW5 also testified. He said he is Wildlife Officer and sometimes working as an Acting Project Manager of Lukwati/Piti Game Reserve area. It was on 23/11/2015 around 08:30 hrs the OC-CID of Chunya District informed him via his cellular phone. He needs him for identifying and evaluating the government trophies that was arrested with accused on the Game Reserve area by his Co-Wildlife Officers. when he was informed, PW5 rushed to Chunya Police Station, met OC-CID around 13:30 hrs, PW5 was given the trophies and started identifying and evaluating.

In course of doing such work, PW5 identified two types of meat. The first one was a meat of Common Waterbuck animal because of its nature of fiber grants of meat. The second one was the head of Common Duiker. It was easier identifying it according to the nature of the animal. PW5 evaluated it using the Government Notice No. 207 of 2012. The evaluation is done to the whole not a piece of the animal. A value for a Common Waterbuck animal was USD 800 which was equivalent to Tshs. 1,728,000/= and that of Common

Duiker was USD 250 equivalent to Tshs. 540,000/=. However, 1 USD was equal to Tshs. 2160/= only on that particular date. PW5 tendered the Trophy Valuation Certificate and Inventory Unclaimed Property as exhibits. The court admitted and marked Trophy Valuation Certificate as exhibit "PE6" and Inventory Unclaimed Property as exhibit "PE7".

The court ruled out and finds a prima facie case 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].

DW1 (**Abel s/o Christopher**) was defended himself. He testified while admits that he was arrested at the same time the prosecution witnesses remove the keys of his motor cycle. It was around 20:00 hrs and he was arrested by six people who hold gun. DW1 was going back home from a local brew shop. He was cyclist his motorcycle.

That, those people suspected DW1 carrying illegal things. DW1 did not hesitate because he was carried nothing. The people did not satisfy with his reply; they started beating him without signing any plausible reasons. He was beaten with sticks, boots, slapped on his chicks the fact made him urinate blood. The people arrested and sent him to their camp.

Upon arrival to a camp, DW1 was poured out cold water, handcuffed and the people continued beating him to fact he became unconsciously. DW1 said, he was left to the same place till the morning. DW1 said he was weak, unable to walk, and urinating blood. DW1 was taken to the Police Station where he was given two muzzle loading gun and muzzle loading ammunitions although these

were not his property. Because of weaker of his health, Police Officer issued to him the PF3 and he was later taken to the Hospital for medical checkup and treatment. PW3 was forced him to sign exhibit "PE5". Likewise, PW1 and PW2 avail him with exhibit "PE1", "PE2", "PE3", "PE4", "PE6" and "PE7".

DW1 avers further that, he was not caught in the possession of the alleged exhibit "PE1", "PE2", "PE3". Also, DW1 reiterates in court that PW3 did not beat him at a time of recording exhibit "PE5" save for PW1 and PW2. DW1 did not have the PF3 to show the court how and where he was real wounded or beaten that necessitate him seeking treatment to the hospital. PW3 did not know DW1 before a date she was recording exhibit "PE5". Likewise, PW4 was not among of the prosecution witness who arrested him nearby his house. The ten cell leader of the area was not called as an independent witness scene because PW1 and PW3 did not reach to his home.

With the above facts at hand and evidence on the record, the issue before me and the court for determination is whether the prosecution proves their case beyond reasonable doubts. The common waterbuck and common duiker are the trophies in accordance to the Wildlife Conservation Act, No. 5 of 2009. A suspect was unlawful possessed a muzzle loading gun and the ammunitions. Lastly but list, accused was committed both offence he stand charged.

It is in the evidence of the prosecution witness PW1, PW2 and PW5 employed by the Government in the capacity of Wildlife Officers. They were stationed at Lukwati/Piti Game Reserve Area. In their capacities they used to secure and patrolling the whole area. Any person wishes to enter into the area

should have a written authority or has previously sought and obtained from entering into the Game Reserve area. The permit is issued by the Director of the Wild animal. The evidence of PW1, PW2, and PW5 has been corroborated in court by the evidence of PW4 who is local leader of the area where accused situates and that the evidence of PW3. These two people are independent witness and PW4 witnessed the whole of the exercise of doing search and retrieved out of the cooked Common Duiker meat and a hanging meat of the Common Waterbuck which was hanging inside the house, two muzzle loading gun, snare and twenty two (22) muzzle loading ammunition inside of the "tobacco burning house.

As I have already said before, accused stand charged with two counts, unlawful possession of the government trophies and of the firearm without permit. These two counts are governed under 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, tursh, bone, claw hoof, skin, meat, hair, feather, egg or other portion of any animal and includes a manufactured trophy.

Also, the same Act and of 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.

In the present case, the muzzle loading guns, snare, muzzle loading ammunitions are the facts in issue. In addition thereto, exhibit "PE5" in its face, it was complied with section 58 of the CPA, [Cap. 20, R. E. 2002], accused admit that he was not forced, beaten, induced, promised anything by PW3 when she recorded an exhibit "PE5". The exhibit was recorded at the Police Station, but the alleged of beating took place at Gua village. There was a chance to memorize what a thing was going on.

PW1, PW2, exhibits "PE4" reiterates in court accused was arrested with twenty two (22) local muzzle ammunitions, snare, two muzzle loading gun and a meat of Common Duiker and Common Waterbuck. That, a Common Duiker and Common Waterbuck are wild animals covered under 2<sup>nd</sup> and 3<sup>rd</sup> Schedule of the Wildlife Conservation Act, No. 5 of 2009. In course of doing search, accused was unsuccessful produced the hunting licence, a permit of possessing of arms, ammunitions, meat, and snare.

PW5 identified the meat he was shown to the Police Station to be of the Common Waterbuck and Common Duiker. PW5 used several means, the nature of fiber grants of meat and the head of Common Duiker. It was easier for

identifying it because of the nature of the animal. It does n't matter whether it was fresh, dried, pickled or otherwise preserved or it were a peace, fresh, dried, or a whole animal. PW5 based his evaluation under the G. N. No. 207 of 2012. The value for the Common Waterbuck meat was USD 800 that is equivalent to Tshs. 1,728,000/= and Common Duiker was USD 250 equivalent to Tshs. 540,000/= the price for 1 USD was Tshs. 2160/= only that date.

For reasons I have stated herein above, the proof in my views is sound and beyond reasonable doubts; accused was committed the offence he stand charged. The evidence on record shows accused was apprehended while in possession of the Common Duiker, Common Waterbuck meat and two muzzle loading gun, twenty two ammunicions and snare without permit or licence. In the circumstances, I hereby find Abel % Christopher guilty of the offence as charged and I convict him forthwith %s. 235(1) of the CPA, [Cap. 20, R. E. 2002].

Accordingly pronounces.

  
**O. N. Ngatunga**  
**DRM**

**26/12/2015**

**Date** : 19/01/2016

**Coram** : O. N. Ngatunga, DRM

S/A : DC Fredrick

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 29<sup>th</sup> day of December, 2015.

  
O. N. Ngatunga  
DRM

19/01/2016

**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 five (5) children, and some of them are schooling and depending for their basic and necessary needs.

I am an orphan, my spouse is suffering from TB, and 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 that accused stand charged with and satisfy beyond doubts that, the punishment for the first count is, if value of the Trophy which is the subject matter of the charge exceed Tshs. 1,000,000/= to imprisonment for a term of not less than twenty years but not exceeding thirty years.

In addition thereto the court could impose a fine not exceeding five million shillings or ten times the value of the trophy, whichever is larger amount see section 86(1)(2)(c) (ii) of the Wildlife Conservation Act, 2009.

Apart from it, sections 60(2) of the Economic and Organized Crime Control Act, [Cap. 200, R. E. 2002] imposes a sentence of imprisonment for a term not exceeding fifteen (15) years or to both that imprisonment and any other penal measures.

However, for the second count a convict should be sentenced 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

19/01/2016

**SENTENCE**

Accused sentenced to serve twenty years (20) imprisonment and in addition thereto he is ordered pay fine of Tshs. 2,400,000/= for the first count and Tshs. 300,000/= or five (5) years imprisonment in default for the second count. The sentence to run concurrently.



O. N. Ngatunga

DRM

19/01/2016

**ORDER**

Exhibit "PE1", "PE2" and "PE3" are hereby forfeited for the Government of United Republic of Tanzania <sup>u/ss.</sup> 111 of the Wildlife Conservation Act, No. 2009, 23 of the Economic and Organized of Crime Control Act, [Cap. 200, R. E. 2002] and 37 of the Arms and Ammunition Act, [Cap. 223, R. E. 2202] the same, hand over to Chunya Police Station for their custody and necessary action.

O. N. Ngatunga

DRM

19/01/2016

Judgment delivered in presence of both accused and Public prosecutor  
one DC Fredrick this 19<sup>th</sup> day of January, 2016

O. N. Ngatunga

DRM

19/01/2016

Right to appeal fully explained.

O. N. Ngatunga

DRM

19/01/2016

