

IN THE DISTRICT COURT OF IRINGA

DISTRICT AT IRINGA

ECONOMIC CRIME CASE NO. 33 OF 2014

REPUBLIC

VERSUS

ALOYCE A KALINGA.....ACCUSED

JUDGMENT

Aloyce s/o Kalinga (the accused person) stand charged with the offence of Unlawful Possession of the Government Trophy Contrary to Section 86(1), (2) (b) of the Wildlife Conservation Act no 5 of 2009 read together with paragraph 14 (d) of the first schedule to and Section 57 (1) of the Economic and Organized Crime Control Act [Cap 200 R.E 2002].

Particulars of the offence it was alleged that, on the 17th day of November, 2014, at Lubilo Village in Mufindi District and Region of Iringa, was found in possession of six pieces of Abbotts Duiker (mind) skin all valued at Tshs. 1,501,080/= (Tanzanian Shillings One Million Five Hundred and One Thousand and Eighty) only, being the property of the Government of United Republic of Tanzania without any permit thereof.

Accused person entered a plea of not guilty to the effect that the prosecution side called witness to establish their case against him. Three (3) witnesses appeared in the court at the trial to support the case as the prosecution side. They were, PW1. Filbert Raphael, PW2. Benald Alphonse and PW3. Wachawaseme Elias Mwanuke. The prosecution Side was conducted by the Public Prosecution from the office of State Attorney while the accused person was defending himself.

During the trial **PW1, Filbert Raphael** a game warden testified that on 17/11/2014 while in the patrol with his fellow Manyama, Triforia and Selina around 11:45 a.m they got an information from a secret person informing them that an accused person having possessing of a government trophies on Ludilo village at Mufind District and because they were near to that village they decide to went on the accused's home being introduced to him and followed all the requirement of search as well as called VEO one Wachawaseme and another one Elia Pascal.

He went on contending that, while searching on his house they found six pieces of Abbotts Duiker (mindj) skin which used in the chair and because they have an experience on that skin which is differ with other animal and when asked the accused person on the ownership of that, he replied that all were belongs to him because was bought but he failed to mention the place or even the person who sold and when asked if he has any certificate of ownership but he did not show them as the result they arrest him and collect all chairs fill in search order and prayed to tender the

said six chairs as an exhibit which the same were admitted as an identification only and he further prayed to tender search order after being filled and signed by all witnesses as well as the accused person as an exhibit which the same was admitted and marked as an exhibit P1. Then after they arrest and send to Iringa police station.

During cross examination by accused person PW1 replied that, because he failed to show any permit of being with that skin that why they arrest him and that they make patrol inside and outside of the National Park.

In re-examination by S/A, PW1 replied that, he is the professional in animals and that they arrest him because of failed to show any license of of being with it.

PW2. Benald s/o Alphonse a game warden testified that, on 18/11/2014 while in his office at Ipogolo he was received a phone and informed to went at police station for conducting valuation, while at the police station they shows six chairs with the skin and because has an experience on it and according to the size of the chair on how made he simply believe that it might be three duiker as one of it may be able to prepare two chairs and due to that he make valuation and got a total of Tshs. 1,501,000/= for the valuation of exchange of Dollar of that date.

He further contended that, then after completed filled it he left to police station and the same prayed to tender as an exhibit which was admitted by the court and marked as exhibit P2. He continues inform the court that, he did not know the accused

person even to see him but which he done was just to conduct valuation.

PW3. Wachawaseme s/o Elis Mwanuke a VEO of Ludilo Village testified that, on 17/11/2014 they came game warden in his village and told him that they want to see accused person because of having the government trophies, they went to accused person while there they conducting search and they found six chairs which prepared or made with the skin of animals and he did not know which animals used to made that chair because were new once.

Upon asking accused person the owner of that chair he replied that were belongs to him as he was bought to one Kalinga now is dead and they all signed and identified that chairs as the same which found in the accused person home.

During cross examination by accused person, PW3 replied that, he did not know the animals of which that chairs made and that when they look on the pictures of the animals they did not seen and they take for further research on the skin which used to made that chairs and that he did not know the skin of mind foud in the village.

On re-examination by S/A, PW3 replied that, he is the justice of peace and that he was there to witness and seen six chairs which were made with unknown skin of animals.

After the prosecution case was closed, the court ruled out and found each accused person having a case to answer for the offences they stand charged with. Nevertheless a prima facie case was established sufficiently to require accused person to state his

defence as the requirement of the law under section **231 of the Criminal Procedure Act (Cap 20 R.E 2002)**.

The defence case was opened by **Aloyce s/o Amon Kalinga** hereinafter called the accused person testified that, on 17/11/2014 around morning time while at his home, they came unknown people and told him that they want to conduct search so as to know if there were any documents belongs to Government. When VEO present they start conducting search and they found six chairs which made with skin of cow and when check in their picture of animals they failed to identified which kind of animals but they take those chairs for further research.

He further said that, they arrest him and send to the forest where they slept to one Mzungu known as Maganga in the evening while on the same place they start beating and enforcing him to be admitted the offence and on 18/11/2014 they send to the office of Ipogolo where they ordered him to sigh for the things which was not true. Those chairs is belongs to him.

During cross examination by S/A, DW1 replied that they take six chairs with the skin of cattle, He saw when his grandfather maintain that chairs and that the skin were bought from one Kabura and he admitted that he did not know the different between the skin of animals but he believes that it was cattle skin because he was the one who carry that skin and was the one who prepared while that skin was fresh carry it from his motor cycle.

Upon hearing from both sides of this case the prosecution side and defense side, now it is the time to evaluate and analyze all the adduced evidences from both sides with regard to offence the accused person stand charged before this court.

I have gone very carefully and considered all the contentions from both sides and before the forthcoming decision could be reached, I found only one issue to be raised such as;

Whether the offence of unlawful possession of Government Trophies was proved beyond reasonable doubt

Now in answering the aforementioned and raised issue the court asked itself the main question on how do you (prosecution) establish an offence? Normally this is done by the prosecution through adducing all the available and potential evidence capable of building their case at hand which in turn can never in any way be shaken by the defence, when defending their case.

Again how do you prove the established offence? Usually one among of the most preached cardinals of criminal law is **Onus Probandi**, which always lies to the prosecution and the standard of proof is beyond reasonable doubt as the owner of the case, it follows that one who alleges must prove. Therefore the prosecution is to bring all the available, necessary, important and potential witnesses who will have to testify in support of the prosecution case against the Accused person upon which in turn their evidence of which if it carries weight in relation to the defence case, will stand firm less to

be shaken by the defence case evidence and hence the prosecution will in no doubt win their case.

Nevertheless from the foregoing case and the issue raised above, firstly the prosecution failed to answer the offence as posed by the court, they even failed to bring the skin of Duiker (mindj), of which they could be able to identify the alleged skins of animals, but of all the prosecution witnesses no one was brought or identified himself to be with the skin of Duiker and of the skin of cow or cattle, this brought doubts not only in the mind of the court but also gave a chance to the defence side to shake the prosecution evidence, from the aforementioned doubts and reasons and from the fact that the skin of Duiker which alleged to have been used to prepare six chairs were not totally proved and the court was not totally convinced, as the prosecution failed to prove their case on the offence.

In Criminal Cases the one who alleges must prove his allegations; this is to say, it is upon the prosecution side to prove his allegation beyond reasonable doubt. This was also seen in the case of **Joseph John Makame V. Republic** [1986] TLR 44 (CA) where the evidence adduced in support of the doubts was raised to the offence. Therefore it would be injustice to convict a person just basing on opinion and not on facts.

On top of that it was further cemented in the case of **Dick Mwakamele V. Republic** (1987) TLR 122 (H.C), in which the court explained that, the failure of the prosecution side to prove their offence cannot convict the accused person. Coming to the case in

hand in my opinion the fact that the prosecution side failed to prove the alleged skin to differentiate the same with the skin of Duiker and of that cattle or cow is enough to disapprove the alleged offence and weaken the evidence of the prosecution side.

On top of that in my opinion, I am in no doubt if one may have possessing government trophies be the skin which tendered before the court or any other animals which possessed by government it is the time now to prepare education to all citizens so as to know that anything which one want to possess shall first find or got license through the authority by paying fees for or on the required offices of the government, therefore, it is my prayer for the government or the party which deals with to educate people on the important to have license on everything which required to have. Being that the fact and after got knowledge it may reduce of possessing the government documents without license.

Having said so, I am in well settled mind accordingly; I find that the Prosecution Side has failed to prove beyond reasonable doubt because it failed to prove the offence as the accused person stand charged with in this court. Hence I satisfied with the evidence adduced by defence case.

I acquit the accused persons with the offences they stand charged in this court under section 235(1) of the Criminal Procedure Act [Cap 20 R.E. 2002]. The accused persons are hereby acquitted.

It is so ordered.

Sgd. A. P. SCOUT- RM

17/02/2016

Court: This judgment is delivered in the presence of the accused person, State Attorney and Court Clerk in Chamber Court this 17 day of February, 2016.

Sgd. A. P. SCOUT- RM

17/02/2016

Court: Right of appeal is fully explained.

Sgd. A. P. SCOUT- RM

17/02/2016

ORDER: I hereby order six chairs which made with skin to be returned to the accused person as the same was not proved to be the skin of Abbotts Duiker (mindj).

Sgd. A. P. SCOUT- RM

17/02/2016