

IN THE RESIDENT MAGISTRATE COURT OF ARUSHA

AT ARUSHA

ECONOMIC. CASE NO. 3 OF 2007

BETWEEN

THE REPUBLICCOMPLAINANT

VERSUS

1. JOSEPH JUMNNE @ MUHITHE1ST ACCUSED

2. NELSON NANYARO2ND ACCUSED

JUDGMENT

MKAMA RM

In this judgment, accused persons above named do hereby stand charged jointly and together on two counts whereas one being in unlawful possession of the Government trophy contrary to section 67 (1) and (2) (b) of the Wild life Conservation Act No. 12 of 1974 read together with the Economic and Organized crime control Act No. 13 of 1984, under paragraph 16(d) of the 1st schedule, and section 59 (2) as amended by Act No.10 of 1989 and Act No. 3 of 1992.

Whereas it was alleged that the accused persons above named on or about 25th, December, 2006 at about 06.00 hrs around Makuyuni JKT area within Monduli district and Region of Arusha were found in possession of the giraffe meat valued at 873,637.38/=

loaded on the motor vehicle make land rover 109 with the registration number T 558 AMC the property of Tanzania government, without a lawful written permit from the director of Wildlife. Secondly it was alleged that the same person do stand charged of another count of unlawful killing of the natural game contrary to section 65 of the Wildlife Act, supra as read together with paragraph 16 (d) and section 59 (2) of the Economic Act, supra whereas it was established that the above named accused on the same day, time and place did kill one giraffe using fire arm G 3 with Reg No. 070010946 valued at 873,673.38 the property of Tanzania Government without the lawful permit from the Director of wildlife.

To substantiate the prosecution case, the following witnesses where called, suggest Abnal Mwampondele, Philipo Ami and Rajabu Nyoni, and for the purpose of this judgment the said witnesses shall through be referred to as PW 1, PW2 and PW3 respectively whereas 1st accused and 2nd accused did not opt to call to witness, instead they defented on their own, and for the purpose of this judgment the said accused persons shall be referred to as DW1 and DW2 respectively

On his side PW1 held that, he is working with Tanzania government designed as Pakrage in Manyara Lake stationed at

Arusha. On 25th December, 2006 on morning hours while on patrol he together with other security guard did meet one Motor vehicle make land rover 109 with Registration No. T 558 AMC travels from Mto wa Mbu to Makuyuni, where as they stopped it and DW 1 and DW2 were found in the said car dressing in uniform, which uniform notified that DW1 and DW2 are the employees of JWTZ, PW1 and his notes after stop the said motor vehicle they took the trouble of inspecting it where as they found fire woods and beneath it some meat where also found, on asking of the permit of the Director of the Wildlife DW1 and DW2 replied that they did not have the said permit, On meaning it was 12kg of Giraffe meat, and therefore DW1 and DW2 where token to Mto wa Mbu Police Station. PW2 held that since there where few kilos, they asked DW1 and DW2 of where they got the said meat, and DW1 and DW2 took them to the said reaching the said area half of the meat, skin and tail of killed giraffe where seen where as they failed the inventory to that effect to around the decay of the said meat.

On his side PW2 held that he is also waking with Tanzania Government as Game winter statement at Arusha, and on 25th December, 2006 he was on Patrol together with other officer eventually he received the call from the OCD of Mto wa Mbu that

there are some people have been arrested of the offence of killing giraffe. Around 4:00 pm PW reached the scene and managed to identify the meat, it was the giraffe meat

Lastly PW 3 held that he is also working with Tanzania Government designed as anti poach police and he is stationed at Arusha, on 26/12/2006 he was assigned the duty to substantiate the trophy as whether it was the Giraffe meat or not, and according to his experiment the same was found to be Giraffe meat valued at USED 700/=

It was not until the 23rd July, 2008 when the defence case started to be heard where by DW1 held that on the day of incidence, he was actually arrested but with the meat of as and not Giraffe as exculpated by the prosecution witnesses. WD 1 held further that in his car in which he was arrested with these were also some fire woods and therefore the claimed Giraffe Meat does not belong to him.

Lastly DW2 to his side held that, on the day of incidence he was with his friend DW1 from Mto wa Mbu to Makuyuni carrying meat of cow and fire woods in the said Motor van and on the way they met the TANAPA staffs who alleged that the said DW1 and DW2 have had killed giraffe and charged them accordingly. DW 2 Stestotarianly

contest that the said meat in which they were arrested with is purely a cow meat and not giraffe. Having painstakingly gone through the said evidence from both sides this court had only one issue for determination.

- a) Whether or not the evidence so produced by the prosecution side suffices and warrants conviction to an accused person as charged?

So to speak there is no doubt that the said accused were actually arrested being in the car make Land Rover 109 with Reg. T.558 AMC within it being with fire woods and some meat, this assertion that DW1 and DW2 were arrested with the said material was not disputed by any party to the suit. But the point of return has been that the complainant alleges that the said meat in the car was of the giraffe and the defence witnesses both DW1 and DW2 state strongly that it was the car meat. With this therefore I am of the considered view that the court is called to make determination whether the same was the cow meat or a giraffe meat as alleged by both parties.

I am very much aware of the existence of section 111 of the Evidence Act Cap 6. R.E. 2002 and the legal phenomenon of "who alleges must always prove", these two synonymous phrases mean that the

prosecution side since are the one who established that the said meat in which accused person where arrested with is the giraffe meat and not cow. But to me the Issue of proving that a certain meat belongs to a certain animal is more scientific than intrusion of experience devastation.

This means that I strongly wonder and ponder as to how did PW1, PW 2 and PW3 draw conclusion that the said meat was the giraffe meat and not cow or elephant or Lion? Just a mere looking at the fresh concluded the experiment that the said meat was that of giraffe and not any other animal this artistic experiment is to me, not a proper get way to conclude the analysis, I suppose an expert person could be employed to test on the said fresh and come up with the said remakes rather than using the ant poaching polices or the game wanders as it was done.

Similarly the prosecution side alleged that the said accused person used fire arm to kill the said giraffe to with G 3 with reg. number 070010946 but the same was not brought to this court to be shown, therefore to me this sounds as a "pipe dream" conscience of which has a nugatory effect.

With the commutation of these evidence herein, I really and actually due to hold that this prosecution case is founded upon

many doubts. Due to this the decision of ZAKARIA JAPHET AND OTHERS VS. R Criminal Application No 37 of 2003 (unreported) Comes into play where by his lord ship Justice Lubuva held that

"It is a cardinal principle of law that in criminal charge DOURIS are resolved in favour of the accused person however slight they may be."

The similar situation was held in AHMED VR. R. Criminal Appeal No.50 of 2001 where by Madam Judge Kimaro (as she then was) held that the accused person cannot be counted on the doubtful evidence" with this therefore, I do hereby hasten to acquit both accused person from the offence which they stand charged.

It is so ordered.

MKAMA ALLY ABDALLAH

RESIDENT MAGISTRAT

21/8/2008

Right of Appeal Explained

This copy is a true copy of original
Resident District Magistrate

MKAMA ALLY ABDALLAH

RESIDENT MAGISTRAT

21/8/2008