

**IN THE RESIDENT MAGISTRATE COURT OF ARUSHA  
AT ARUSHA**

**ECONOMIC CASE NO: 6 OF 2010**

**THE REPUBLIC .....PROSECUTOR**

**VERSUS**

- 1. SAIMON S/O CHARLES**
- 2. FRANCIS S/O HARIOHAY**
- 3. ALLY S/O MOHAMED**
- 4. ANNI S/O SULLE**
- 5. WINNA S/O MSEMO**
- 6. MARTIN S/O JOSEPH**
- 7. VENANCE S/O DANIEL.....ACCUSED PERSONS**

**JUDGMENT**

**6/2/2013 & 8/2/2013**

**BEFORE: C.A. CHITANDA – RM**

This is a Judgment stems from Economic Case No. 6/2010 on which seven Accused; Simon s/o Charles, Francis s/o Hariohay, Ally s/o Mohamed, Anni s/o Sulle, Winna s/o Msemo, Martin s/o Joseph and Venance s/o Daniel stands charged with three counts; that is unlawful possession of government trophy c/s 14 (d) of the 1<sup>st</sup> schedule and Section 60 (2) of Economic and organized Crimes Control Act, cap. 200 R.E 2002 read together with Section 70 (1) and 2 (b) of the Wildlife Conservation Act Cap. 283 of the R.E 2002, the second count is unlawful hunting c/s 34 (a) of the Wildlife Conservation Act, Cap 283 of the R.E 2002 read together with paragraph 14 (a) of the 1<sup>st</sup> schedule to and Section 60 (2) of the Economic and Organized Crimes Control Act, Cap 2002 and the third count is unlawful entry in Ngorongoro Conservation Area, c/s 21 (1) of the Ngorongoro Conservation Act, Cap 284 of the R.E. 2002.

It was alleged by the prosecution on the first count that on or about 12<sup>th</sup> February,2010 at about 04:00 hours at Ngorongoro conservation Area within Ngorongoro District in Arusha Region, the seven accused persons jointly and

together were found in unlawful possession of Government trophy to wit, one carcass of Buffalo valued at T.shs. 2,489,000/- which was carried in the motor vehicle with Registration No. SM 4117 makes Toyota Land cruiser, the property of Tanzania Government.

In the second count, both accused jointly and together on the same day and within the same area did hunt and kill one Buffalo valued T.shs. 2,489,000/- the property of the Tanzania Government.

On the third count both seven accused are jointly and together on the same day and within the same area did enter in Ngorongoro Conservation Area without permission from the said Conservation Authority being previously sought and obtained.

Prosecution side bring five witnesses to prove its case, while on the defence side bring nine witnesses to defend their case.

PW.1 Enock Laizer who work for NCAA at Karatu as a game ranger did testify before the court that both accused commit the offence as he was among the arresting officers at the scene of the crime when all accused found in possession of Buffalo meat. He also testified that the information about illegal hutting was obtained from the secret informer from the Elewana Lodge. Both accused were in the car with Registration No. SM 4117 makes Pick up at the time of inspection and they were found with one carcass of Buffalo, two knives two shotguns, one axe and one panga. PW.1 also testified that, he knows the first accused Simon Charles as game officer at Karatu district Council and Winna Msemo the 5<sup>th</sup> accused that used to call PW.1 and others to help him to chase the animals that entered in his farm.

PW.2 Emmanuel Guluko who works as a Security Guard during the material day was on duty on Elewana Lodge which is along the NCAA boundaries. He testifies that on that day they saw a certain motor vehicle coming to their lodge; they followed the car and meet four people who ordered them to open the gate. They refused because it was too dark and they failed to recognize the registration numbers of the car. They recognized those people in the car as they were employed by Conservation Authority. He also testified that before seeing that car, they heard a gunshot and they thought it was used to chase away animals.

PW.3 F 5838 Dgt Corp Ramadhan testified that he is a Police Officer working at Ngorongoro area at Shangrila Estate and he was among the officers

affected the arrest. He told the court that he was received the information about the crime and after 20 minutes Toyota land cruiser with registration No. SM 4117 came and inside the vehicle there were seven people. Feeling the sign of danger they search the car and found one carcass of buffalo, one short gun, and one buffalo, and one spot light, one panga and knives. He also tendered an inventory which was rejected by the court on the reasons that it was tendered by the person who did not prepared it. However, later on it was received and marked as exhibit P.1 as it was tendered by a person making it. PW.3 continued to testify that they stopped at the barrier within Shangrila estate nearby the conservation and that was the place, they arrested the accused. He also told the court that at the place of the scene, the place where they were is not permitted for hunting. He also shows the place where the buffalo is killed and according to him is outside the conservation 30Km away. PW.3 continued by saying that, the conservation is responsible in that area only where the animal from the conservation entered to the estate. That the guards are required to return them to the conservation, he also contended that among the accused are the Government Officer working with Conservation Authority. They have the duty among other thing to return animals to the conservation. He also tendered the map of the scene which was received and marked as exhibit P.2.

Moreover PW.4 one Edward Mlela, the Security guard of Ngorongoro Conservation testified that he received a phone from a secret informer from Elewana Lodge which was near the NCAA forest that there is an incident occurred. That they heard several guns shot from unknown person's vehicle. They went there and stayed around 30Km from the scene. After a short period, they saw a motor vehicle with the registration No. SM 4117 make Toyota Land cruiser Pick up. They stopped the car and found seven people therein. PW.4 recognized the first accused Simon Charles that he worked as game officer. They inspected the motor vehicle and they found two short guns, one carcass of buffalo, 51 bullets, 8 magazines, one short gun which have 7 illumination, axe, two knives and machete, one shot gun make rifle. He tendered the car with Registration No. SM.4117, a shot gun one rifle and the court received and marked it as exhibit P.3 and P4 respectively. He also tendered the knives, axe and machete and the court marked it as exhibit P.5.

In cross – examination PW.4 stated that, when arrested the accused both did not have availed permits to hunt in NCAA Area, He also admitted that the 1<sup>st</sup> and

5<sup>th</sup> accused did have a licence which permits them to own guns, they also found the first accused with a legally government gun. This marked the end of prosecution case.

Regarding the simple facts of the case as well as the evidence adduced by the prosecution side, this court establish a prima facie case, that is both accused are found with the case to answer, thus they were required to defend their case.

On their part, accused persons who represented by counsel Dismas, stating with DW.1 Simon Charles testified that, he is a game officer working at Karatu Council and he tendered his Id and the court received it as exhibit DW.1. He said that his duties as game officer are to protect people from dangerous animal whom they run from NCAA, and also to prevent illegal hunting. He continued to testify that on 12<sup>th</sup> February, 2010 at noon he received information from the Director of Karatu Council that, there were wild animal entered at Daa and Oldeani ward. The Director gave him the car and the gun and they started the patrol at about 17:00 hours. He was with Ward Executive Officer of Daa and Oldeani who are Anni Sule and Francis Hariohay. The two officers were the one who reported to the director that there was a buffalo attacked their village. He was with them in order to show him where the buffalo seen. DW.1 continued to testify that, while they were at Oldeani ward he received a phone from Winna Msemo the 3<sup>rd</sup> accused that, the buffalo was in his farm that he failed to have assistance from the zonal. He also went there and on a way to go back; they met with one hungry buffalo. He took all necessary steps to overcome the situation but he failed, thus he shot the buffalo, the buffalo start to run and about 600m along Shangrila estate the buffalo died. DW.1 testified that it was about 2.65m from Ngorongoro Conservation, meaning that the buffalo was not killed within the conservation rather it was outside the conservation. He insisted that, those properties which were tendered by the prosecution side including the motor vehicle were given by the director to be used in patrol. The buffalo was too big for them to carry as it was, thus they decided to cut it in pieces. After that they go back to Karatu Council where they met the Ngorongoro Council motor vehicle who stopped them after they shot the gun an air. They stopped and the people from Ngorongoro took the key, gun and direct them to Elewana Lodge whom they refused to open the gate. At the end DW.1 contended that he did nothing wrong, what he did was one of his responsibility. The law governing the conservation allows him as a game officer to

kill dangerous animals which threatened people's life as well as their properties. He cited Section 84 of Act 283/2002 as the authority to support the same.

DW.2 Anni Sulle testified that, he is working with Daa ward as Ward Executive Officer. On That day, he was with Karatu District Game Officer and they were assigned with a job of taking care dangerous animals which threatened the people's life. On the way to Oldeani ward, they received a phone call from Winna Msemo thus they were attacked with buffalo. They went and chased the buffalo but one of them become hungry and wanted to attack them. The game officer PW.1 shot the animal and animal died. DW.2 denied to have knives at the particular day, thus he testified that after they shot the buffalo they borrowed the panga from the neighbor to cut it in pieces so that to easier them to carry the carcass. However, they were arrested on the way to go back to council with the Ngorongoro Security Guard.

DW.3 Winna Msemo, a chancellor at lot ward testified that on the particular day he phoned the Karatu District Game Officer that he was attacked by buffalo in his farm, the Karatu district Game Officer and the Ward Executive Officers of Daa and Oldeani came into his farm and chased the buffalo but the game officer killed one buffalo. On the way to go back from the farm they were arrested by the Ngorongoro Security Guard and brought to Ngorongoro Police Station. He also testified that, normally he used to report to the game officer after the wild animals entered into his farm. His farm is about 3Km from the Ngorongoro Conservation Area.

DW.4 Martin Joseph testified that, he is a peasant at Karatu District, Shangrila Estate. On that day he was on his farm at Deccom outside Shangrila estate. His neighbor phoned the game officer as he was attacked by wild animals named buffalo. The District Game Officer came and found many buffalo. They chased the animals. However, one buffalo remain and tried to attack them, thus DW.1 shot it after he had already shot on air and the buffalo still faced them. The DW.4 also testified that the animal was killed outside Ngorongoro Conservation nearby Shangarira estate which is far from conservation. They were arrested in the morning around 5:45 hours on the way back to Ngorongoro to submit the meat.

More over DW.5 Venance Daniel who is a teacher and peasant/farmer testified before the court that, he has a farm at Deccom, Shangrila estate which is about 5Km from Ngorongoro Conservation Area. He received a phone that, the

other side of their farm there is an animal. They all went to the scene and around 1:00 hours the District Game Officer reached the farm. PW.1 chased the animal and killed one buffalo as it became furious. The PW.1 ordered them to cut the buffalo into small pieces so that they can carry to the car to Ngorongoro District. On the way to Ngorongoro district they were arrested by the people of Ngorongoro.

DW.6 Francis Horiohay on his party testified that he is a Ward Executive Officer of Karatu district Oldeani Ward. On 12<sup>th</sup> February, 2010 he was on patrol with his fellows when they received the information that the farmers were attacked by buffalos. They went to the place and the District Game Officer fired on air and the buffalo run away. However, one buffalo got hungry and started to attack them thus, the game officer killed it. It was 500m at Shangrila Estate where they found that buffalo. DW.6 continued to testify that the DW.1 ordered them to cut the carcass of buffalo in piece that they can take the meat to the Ngorongoro Authority. On the way to Ngorongoro they were arrested even though they were the one who stopped their car. In cross examination, DW.6 testified that he has a duty of ensuring that people live in peace, their property/ies are safe and their life as well. That at the particular Date he was on duty too.

DW.7 Ally Mohamed a driver employed by the District Council of Karatu and who was a driver, driving a car make Toyota land cruiser with registration No. SM 4117 testified that, on 12<sup>th</sup> February, 2010 he was on patrol of chasing animals from the people's area. While he was driving, the District Game Officer received an information through phone that there were dangerous animal attacked the peasant's farm. He was ordered to go to that area where they went with his fellow accused person and show them where the animals are. The District Game Officer (DW.1) chased them and one buffalo was shot and run away till Shangrila Estate where they found it dead. They were ordered to cut it and took the meat to the Ngorongoro Authority. On a way to go Ngorongoro they were arrested. He was the one who stopped the car after seeing the Ngorongoro motor vehicle as he was aware that there were fellow employees. He also testified that the director supplied them with the oil for patrol. That marks the end of defence case.

Having gone through the testimonies of both sides, the court raised four issues to see whether the accused persons commit such an offences as charged.

1. Whether both accused are unlawful found with possession of Government trophy.
2. Whether both accused have valid permit to hunt
3. Whether the accused persons were found unlawfully within the Ngorongoro Conservation Area
4. Whether the prosecution side did prove their case to the standard required.

To start with the first issue as to whether the accused persons are unlawfully found with possession of Government trophy. It is clear from the prosecution witnesses as well as the defence sides that, the accused persons are found with Government trophy make carcass of buffalo and according to the accused persons it was the first accused who killed the said buffalo.

Coming to the 2<sup>nd</sup> issue as to whether the accused person have valid permit to hunt, the accused person Simon Charles is a Game Officer at Karatu District Council whom according to the Wildlife Conservation Act, has a duty to protect people's life from being attacked by dangerous animal and to prevent illegal hunting the 2<sup>nd</sup>, 4<sup>th</sup>, and 7<sup>th</sup> accused are Ward Executive Officer of Oldean and Daa respectively within the municipality of Karatu, the 3<sup>rd</sup> accused is a driver, the 5<sup>th</sup> accused is a peasant and the 6<sup>th</sup> accused is a clerk.

The nature of their work, as well as how they explain when it comes into the commission of the offence, both accused did not have valid permit to hunt, what they testified before the court was that, some of them were in patrol and others were in their farm, whereby suddenly attacked by dangerous animals thus they seek for assistance.

Moreover, on the 3<sup>rd</sup> issue, as to whether the accused person where found unlawful within the Ngorongoro Conservation Area, I am afraid to say yes because of the testimonies given by both sides. On the prosecution side they said that they put the barrier at Shangrila nearby the conservation at Shangrila Estate. On other side the defence witnesses testified that, they were in patrol at the area far from Shangrila Estate. The animal they killed run and found it at Shangrila Estate. On the way to the Ngorongoro Conservation they were arrested. To this end I am convinced that the accused persons were not found within Ngorongoro Area as the Shangrila Estate is not part of the conservation area and since they were arrested at Shangrila one cannot say that they were unlawfully found within Ngorongoro area.

At the scene of the crime the court found that the animal was killed at Shangrila estate which is not part of Ngorongoro.

Lastly, as to whether the prosecution side did prove their case to the standard required we have to go through the evidence given to see whether, the accused person are guilty as charged. The prosecutor did complain that, the accused person where unlawful found with possession of Government trophy, they also claimed that the accused person did hunt unlawfully and lastly they found them unlawfully within Ngorongoro area.

There is no doubt that the accused person was found with Government trophy one carcass of buffalo. But the question is how they came into possession. As it was submitted by both defence witnesses, they were in patrol and received the information about the invading of dangerous animal to the peasant's farm, the game officer did kill one buffalo on the process, the game officer order them to cut the animal into pieces so that they can submit it to the Ngorongoro Authority.

On the way to Ngorongoro they were arrested. It is not clear if the accused person where real want to go to Ngorongoro or not, this is because they were arrested at Shangrila before reaching to Ngorongoro, to clear this doubt, the Authority had to follow them to see where they plan to go.

Secondly, did the accused go there for hunting? The answer is no. This is because they were there for patrol as directed by the Director and who supply them with car, gun and oil. According the testimonies given it is usual for the animal to evade the peasant's farm and threaten the properties as well as the people's life that lived nearby the conservation. It was on that process that the game officer did kill one buffalo who threatened to attack them, it is clear according to the Wildlife Conservation Act Cap 283 R.E. 2009 under Section 73 (1) that:

***“It is not an offence to kill an animal in defence of human life or property.....if such an animal causing damage to property”.***

It was submitted that the animal (Buffalo) entered into peasant's farm and endanger the property, the game officer shot on air to chase them, they run but one remain and started to attack them. There is no way out for them neither that to kill the animal defend their life and according to the law it is not an offence, thus, what they did was not hunting rather they were on defence of their life.

Moreover Section 73(2) of the said Act directs what to do after killing of such animal. The law stipulates that, after killing the fact is to be reported to the nearest game officer. As the game officer was the one killed it, it was his duty to report to the authority but before that they were arrested. The prosecution side fails to prove if there was bad intention on the party of the accused. The general rule as it was held in the case of JONAS NKIZE Vs R (1992) TLR 213 by Lordship Katiti,

*“In criminal prosecution that the onus of proving the charge against the accused beyond reasonable doubt lies on the prosecution is part of our law forgetting or ignoring it is unforgivable and is a permit not worth taking”.*

In that regard therefore and from the above reason and arguments thereto, it is the finding of this court that the prosecution side have not proved their case beyond reasonable doubt, in the event therefore I do hereby acquit the accused persons.

**Sgd: C.A. Chitanda – RM**  
**8/2/2013**

**Order:** Shot gun 5287, Riffle 303 Mark IV NO. 4000 and 13 bullets to be returned to the owners who are 1<sup>st</sup> accused and 5<sup>th</sup> accused persons.

**SGD: C.A. CHITANDA**  
**RESIDENT MAGISTRATE**  
**8/2/2013**

I certify that foregoing is a true  
and correct copy of original.



Resident Magistrate

14. 11. 2013