

IN THE RESIDENT MAGISTRATE'S COURT OF ARUSHA

AT ARUSHA

ECONOMIC CASE NO.12 OF 2014

PASTORY JOHN @ KALENGA

JUDGEMENT

BEFORE: P.A.KISINDA-RM

The accused person, Pastory John Kalanga stands charged with unlawful possession of government trophy contrary to section 86(1) and 2(b) of the wildlife conservation Act, No. 5 of 2009 read together with section 57(1) and paragraph 1(d) of the 1st schedule to the Economic and organised Crime Control Act Cap 200 R.E 2002.

That on 24/01/2014 at Landman village within Simanjiro District and Region of Arusha, the accused person was found in unlawfully possession of Dikdik meat valued at USD 250 Equivalent to Tshs 396,750/=, the property of Tanzania Government.

The accused person pleaded not guilty to the offence, where in order to prove the case, the prosecution brought (4) witnesses who testified against the accused person.

The first witness, Gerald Remi who is the officer from KDU, stated that on 24/01/2014, when him and his fellow officers were in the Patrol duty at mashamba mapya in Simanjiro District, they found one person, who was the accused person and suspected him as they were in patrol in that area and when they started to follow him, he run to the bush and left behind his bicycle.

He continued saying on that bicycle, they found a sulphate bag which had on dikdik meat.

They later on caught the accused person when told them he had dikdik meat on that bag. After that, they filled in the certificate of seizure which showed the items found with the accused person, and after that took him to the KDU's Officer for further procedure.

Another witnesses were PW2, Buchadi Mkandara and PW4, Alexander Bujiku, who were with PW1 on the stated date of 24/01/2014, while arresting accused person.

They both stated how they saw the accused person in the Landman village at Simanjiro and arrested him with the meat of dikdik which they stated to be unlawfully possession to be meat since the accused person had no any permit of possessing that meat.

The last witness was Mwanahawa Mohamed, who said on 24 /01/2014, when she was at the office at KDU, she was assigned to inspect the parcel which was brought there.

When she did that, she found in that parcel the head of an animal dikdik and other parts of the body of that animal.

She said- she after that filled in the inventory form and conducted the evaluation on of the meat found whereby she said the total value of the said meat was equivalent to USD 250/= Tshs, 396, 250/=.

That was the prosecution evidence, after the accused was found with the case to answer he defended himself under oath saying he was arrested with "gongo" by the witnesses at the stated date when he was walking toward to his house.

He said after being arrested he was beaten up and being forced to sign the documents he knew nothing about.

From the evidence from both side, this court after going through the records of evidence it has only duty of looking at the prosecution evidence whether not they have been abled to prove the case from the defence evidence entered by the accused person.

Looking at the evidence adduced, the accused person has stated to have been arrested with "gongo" and not meat of dikdik as prosecution.

On alleged, however, it is clear from the prosecution evidence that the accused person signed the certificate of seizure to prove that what he was found with.

Still looking at that point of view, it also clear that the accused person regarding the fact that he started to have been beaten up to sign the document, he had never proved that fact before the court.

Basing on that, the Law of the wildlife conservation Act is clearly stating that for the one to possess the said meat he or she should have a permit to do so and if no permit granted them, the previous of section 86(i) of the said law applies.

It is clear from the evidence adduced that the accused person has not proved to have any permit of possession the meat he was found with and for that reason, he contravenes with the provision of the said law.

Coming to the issue of the evidence adduced by the PW1 which was raised by the accused person PW1 and PW4 this court found that fact to have no merit as the records of evidence is clear that they both stated to have arrested the accused person at the same place. As for the statement, the PW2 stated to have given the accused person all his rights before she took his statement and the accused was willing to do so.

From the findings of the case, this court, basing on the fact that the prosecution on regarding to the evidence of accused person, they have also been abled to prove their case against the accused person, and for that reason, this court finds the accused person guilty of the offence charged and hereby convicted accordingly.

Sgd: P.A.Kisinda-RM

21/07/2015

PREVIOUS CONVICTION

No records of any previous conviction.

Sgd: P.A.Kisinda-RM

21/07/2015

MITIGATION

I pray for the court leniency since the witnesses did not prove the offence

Sgd: P.A.Kisinda-RM

03/08/2015

SENTENCE

This court order section 86(2) (b) of the wildlife conservation Act is hereby sentence the accused to pay a fine 3,962,500/= Tshs, or one year imprisonment in default of such payment.

Sgd: P.A.Kisinda-RM

03/08/2015

I certify that foregoing is a true
and correct copy of original
.....
Resident Magistrate
Arusha Dated... 22/12/15