IN THE RESIDENT MAGISTRATE'S COURT OF ARUSHA

AT ARUSHA

ECONOMIC CRIME CASE NO. 15 OF 2001

THE REPUBLIC

VS:

JOSEPH PATTO & OTHERS - - - - - - - - - - ACCUSEDS

JUDGMENT

BEFORE P.M. KENTE, SRM.

Joseph Batto Doo Nyoka and Simeli Legulo hereinafter to be called the first, second and third accused respectively are jointly and together charged with three offences allegedly arising out of one transaction.

In the first place they are charged with unlawful possession of government trophies c/s 67(1) and (2) (b) of the Wildlife Conservation Act No. 12 of 1974 read together with sections 59(2) and paragraph 15(d) of the first schedule to the Economic and Organised Crimes Control Act No. 13 of 1984 as amended by Act No. 10 of 1989 and Act No. 3 of 1992. It is alleged that on or about the 2nd day of June 2001 at about 6.30 p.m. in Serena controlled area Mto wa Mbu in Monduli District Arusha region, the accused were found jointly and together in unlawful possesision of three buffaloes meat (sic) value at Shs. 1,050,000/= the property of Tanzania Government.

In the second count the accused are charged with unlawful hunting in a game controlled area c/s 10(1) and 2(b) of the Wildlife Conservation Act No. 12 of 1974 read together with para 15(d) of the First Schedule to and Section 59(2) of the Economic and Organised Crimes Control Act No. 13 of 1984 as amended by Act No. 10 of 1989 and Act No. 3 of 1992.

The particulars advanced in support of this offence are to the effect that on 2nd June, 2001 at about 6.30 p.m. in Serera Controlled area Mto wa Mbu Monduli District Arusha region, the accused hanted and killed three buffaloes valued at Shs. 1,050,000/= using poisoned spear whilst not possessing a hunting permit from the Director of Wildlife.

Lastly in the third count the accused are arraigned with unlawful hunting during a closed sessor c/s 18(1) and 2(c) of the Wildlife Conservation Act No. 12 of 1974 read together with paragraph 15(a) and (a) sic of the First Schedule to and section 59(2) of the Economic and organised crimes control Act no. 13 of 1984 as amended by Act No. 10 of 1989 and Act No. 3 of 1992. It is alleged that at the same time and place, the accused wihout a lawful written permit from the Director of Wildlife did jointly and together kill three buffaloes. Needless to

say, the accused denied all these charges in black and white terms.

After listening to both sides in this case, I am of the view that the following are matters that are not in duspute between the crown and defence. It is common ground in the first place that the accused hail from Mto wa Mbu area in Monduli District. Indeed it is not in controversy that the accused were arrested in Serera which is a game controlled area. What is hotly contested in whether they were found in unlawful possession of buffalo meat as alleged by the crown.

Relying on the testimonies of two eye witnesses namely Seargent Abuneli Mwampondele (PW.1) and Corporal Sebastian (PW.2), the crown invited me to evaluate the same and finally come to a positive finding. To put it in a nutshell all these two witnesses are firm that they arrested the accused who were then in possession of buffalo meant which is in the category of government trophies. The alleged arrest took place as PW.1 and PW.2 were in the course of normal patrol in a game controlled area.

The accused did not deny to have been found in the said area. What they strongly denied is the allegation that they were in possession of buffalo meat or any meat at all. The first and second accused told this court that they were arrested at the same time and place as they were busy keeping security of a maize field from monkeys. The third accused was collected later on the way as he happened to be at a distant place but likewise doing the same job of safeguarding maize against animals.

The explanations given by the first and second accused were buttressed by their employer one Bartazary Minja (DW.4). He told the Court that indeed there were three carcasses of buffaloes which he saw while on way to his farm where he was going to supply food to his workmen and that as these animals seemed to have died under mysterious circumstances, this was duly reported to the leadership of Lake Manyara National Park. On the following DW.4 after he had gone back home he was surprised to hear that the accused had been arrested on the allegations that they were responsible for killing the three buffaloes and that they were found in possession of buffalo meat.

I have meticulously subjected the crown evidence to serious scrutiny. I have finally come to a finding that the same is wanting

to ground a conviction. There is no squabble on the fact that the accused were arrested in a maize field as then it was a farming season. They were employed to keep animals away from the fields. While the prosecution allegesion in a rather omnibus manner that the accused had three buffaloes in their possession, there is a convicing state of affairs which goes into showing that the accused were rounded up and a arrested at random for no good excuse. Even if there is no direct evidence from the accused which shows that they could be framed up on these charges, I take cognisance of the fact that PW.1 and PW.2 being game wardens have some particulare interests in the final outcomes of this case. They have some particular interests to safeguard. As such their evidence has to be approached cautiously (see

Taking into account the credible explanations given by the accused together with their solitary witness one Barthazary Mathias Minja (DW.4)M1 I'm highly pursuaded that the accused might have been keeping crops safe from wild animals and that they could have been destined to be arrested legally or illegally as soon as they were spotted by PW.1 and PW.2.

With those remarks it is my final holding that the crown has fallen short of proving their case against the accused. As all offences stem from one transaction, the accused are found not guilty of all counts and are consequently acquitted and set free unless otherwise lawfully held.

Sgd. P.M. Kente, RM.
22/10/2002.

Date: 24/10/2002
Coram: P.M. Kente, RM.
PP. Abubakari
Accused: 1st absent, 2nd & 3rd present
C/C: John.

COURT:- Judgment delivered on 24/10/2002 as I happened to be on safari on 22/10/2002.

Sgd. P.M. Kente, RM.
24/10/2002.

Accused's permanent address

All of them are from Engaruka Mto was Mbu Monduli district Arusha.

Sgd. P.M. Kente, RM.
24/10/2002.