

**THE UNITED REPUBLIC OF TANZANIA**  
**IN THE RESIDENT MAGISTRATE COURT**  
**OF ARUSHA AT ARUSHA.**  
**ECONOMIC CASE NO: 15/2006**

**REPUBLIC**  
**VERSUS**

1. JONGO S/O MASOUD
2. LOMAYANI S/O LONGISHU
3. EMANUEL S/O DAUDI
4. ELIASI S/O CHRISTOPHER @ SHAYO
5. FRED S/O BONIFACE

**14/5/2007 & 11/6/2007:**

**J U D G M E N T:**

**BEFORE D.C. KAMUZORA –RM:**

This is the judgment on Criminal case No. 15/2006 on which five accused; Jongo s/o Masoud, Lomayani s/o Longishu, Emanuels/o Daudi, Elias s/o Christopher @Shayo and Fred s/o Boniface stands charged with the offence of Unlawful possession of Government trophy c/s 67(1) and 2B of the wildlife conservation Act No.12 of 1974 as amended by Act No. 10 of 1989.

It was alleged by the prosecution side that on 29<sup>th</sup> day of September 2006 at about 02.00hrs at Namalulu within Engikariti Longidu District, the five accuseds were jointly and together found in unlawful possession of one Zebra meat value at Tshs. 475,200/= without the lawful written permit from the Director of wildlife, the property of Tanzania Government.

Prosecution side prosecuted three witnesses to prove its case, while on the defence side five accused defended this case on oath and did not have further witnesses.

Pw1 Richard Malisa testified that on 29/9/2006 He was on patrol at Engikareti area in Longido District. That he work at Anti-poaching that at Arusha as a Game ordering. On the said date he received an information from on informer that there were people hunting animals. That after the information, they investigated on the residence of the accuseds. That they waited until 02.00hrs when they invaded the accuseds and found them with a dead Zebra. They found the accused in an open space where they were staying while hunting. That they found accused with meat upon where they showed another which was put into bags. Then they arrested the accused and did take them to Ant-poaching unit Arusha. Pw1 further testified that he was assigned to value the trophy upon valuing it, he presented certificate of valuation as exhibit to this case and the same who received by court as Exhibit P1.

Upon being cross-examined by the accuses Pw1 also testified that, he did not find the accused's with hunting weapons rather the meat which to his knowledge, is the Zebra meat.

Pw2, Philipo Elineema testified that he work at TAWICO a company dealing with hunting. That on 29/9/2006 at about 02.00hrs, they were in patrol when they arrested five people who were hunting. That the accused were found near cattle dam sleeping while having meat in their place.

That they interrogated them and the fourth accused showed them other meat which was hidden. They arrested the accused and did take them to Anti-poaching unit and later to court. Upon being cross examined Pw2 further testified that, they did not find accused with hunting weapon rather they found them with meat. That at they time they went to arrest the accuseds, others were sleeping and others were looking meat and sitting near the five.

Pw3 Michael Melakiti testified that he works at Anti-poaching Unit Arusha as a Game warden. That on 30/9/2006 in was given the government trophy by

his superior to take it to court for order of disposing the same. That he did the same and tendered an inventory form as Exhibit to this case and the same was received by court as Exhibit P2. Upon being cross examined by 2<sup>nd</sup> accused, Pw3 further testified that, he was not present at the time the accused were arrested and that he did not know them either He was only instructed to pray to court for order of disposal of the meat alleged to have found with the accuseds.

After the testimony of Pw3, the prosecution case was marked closed and the court being satisfied that prima-facie case was established against five accused allowed them to make their defence.

Dw1 Jongo Masoud who is here in reffered as first accused testified that on 29/9/2006 five people went to their working area and arrested them on account that they (accuseds) did have meat and animal skins. That when accuseds denied to have the same, they were bitten up by those people. That it was around 01.00hrs and at about 05.00hrs those people called a motor vehicle and did take the accuseds to Kiserian; Ant-poaching Unit, later to Arusha Ant-poaching unit where their statements were recorded and there after transferred to central police station Arusha. They were then brought to court.

Dw2 Lomayani Longishu, the second accused testified that on 29/9/2006 five people appeared to them and did arrest them in the account that they have told that the accuseds did have meat. That those people did search them but found them with nothing. Upon being cross examined by the public prosecution Dw2 also testified that on the material date, they were digging the cattle dam and that they were arrested within the fence of their working place.

Dw3 Emanuel Daudi; the third accused testified that on 29/9/2006 at about 01.00hrs five people whom he did not know before went to their place where they found them asleep and did awake them. That they arrested them and did the tie them with hand caffe and started to search their place, but did not find anything. That the accuseds were asked if they have meat but denied and did tell those people that they are not hunters rather they are digging the cattle dams. That those people did stay with the accuseds until morning when

they were taken to Kiserian Ant-poaching Unit- On the material date, the accused were beaten to show hunting tools but did not have the same rather did have their work equipment like hoe, wheel barrow and other. That they were transferred again to central police station. They were later brought to court for the present offence.

Dw4 Elias Christopher, the fourth accused testified that on 29/6/2006 at about 01.00hrs five people went to their place and did arrest them. That they searched their place but did not find anything. They tied the accused's with hand cuffs and asked them to show the meat they have. That they did beat the accused from 01.00hrs until 05.00hrs when they called their motor vehicle Ant – poaching Unit. That they were then transferred to Anti-poaching Unit at Arusha and later to central police station. Then they were brought to court.

Dw5 Frey Boniface, the fifth accused testified that on 29/9/? At Kiserian five people appeared to them and did arrest and tie them with hand cuffs. Those people asked the accuseds to show them meat and animal skins, but accuseds denied having the same. That those people did inspect them but found them with nothing. They then stayed with the accused from 01.00hrs until morning when they called the motor vehicle and did take them to TAWICO. They were then transferred to Arusha central police station after their statement were recorded at Arusha Ant poaching unit. They were then brought to court.

I have gone through the evidence of both prosecution witnesses and that of defence witnesses and came up with the question as to whether the prosecution evidence are enough to prove the offence charged against the accused.

The five accuseds are charged with the offence of being in Unlawful possession of government trophy c/s 67(1) and 2B of Act No.12/1974 as amended by Act No. 10/1989. To prove its case, prosecution side brought witnesses who testified that they found both accused while possessing Zebra meat termed as Government trophy . Exhibit P1 and P2 also proved that there

was Zebra meat to which Pw1 and Pw2 alleged that the same was found in possession of accused persons. On the other hand, both accused denied to have been found with Zebra meat because they were not found with hunting tools / weapons and that at the time of search, they were only found with their working equipments which they used to dig water dams.

I do agree with the defence by accuseds that even the prosecution side testified that they did not find accuseds, with hunting tools. But it must be noted that, the offence to which the accused, are charged with does not concern with the means they used to obtain the said meat, rather it concerns with being in possession unlawfully, no matter how they came into that possession. This can be stressed in referring the case of **Rashid Kirand Vs Republic (1990)TLR 59**, where the appellant claimed to have been given the animal by other person and that it did not belong to him. It was concluded that, the circumstances in which he {appellant} came to possess the same could only be a mitigating factor in sentencing, meaning that it doesn't matter how a person came into possession, rather as to whether the possession was such lawful or not.

In the present case, the accuseds denied to have been found in possession of Zebra meat, but the evidence by the prosecution witnesses is of much weight and I am convinced to believe of the same, because all accuseds when cross examined by Public Prosecutor admitted to have been arrested by unknown people to them who did also have no fight before. That being the case their arrest could not have come out of malice and that they were arrested on certain issue, probably concerning the present offence. In that regard I am not much concerned as the means accused used to hunt Zebra but the fact that they were found in possession of the same is enough to prove the offence charged against them. It is the finding of this convict that prosecution side has successfully prove the offence of Unlawful possession of Government trophy against the five accuseds. I do hereby convict both five accuseds on the offence charged.

**Sgd: D.C. Kamuzora –RM**

**27/5/2007.**

**Public Prosecutor:** I have no previous criminal records of the five accuseds.

**Mitigation:**

**1<sup>st</sup> accused:** I pray the mercy of this court because I have not done that and I am charged.

**2<sup>nd</sup> accused:** I have no mitigation.

**3<sup>rd</sup> accused:** I pray the mercy of this court, we have spent long time in  
In prison, I have a lot of dependants and I have no  
Parents. I pray the court to reduce punishments against  
Me.

**4<sup>th</sup> accused:** NILL

**5<sup>th</sup> accused:** I pray the court to consider me. I have no parents.

**SENTENCE:**

I have considered the fact that both accused are first offenders and the fact that they have spent long time in prison. In the event therefore I do hereby sentence the accused (five accuseds) on One year conditional discharged.

**Sgd: D.C. Kamuzora –RM**

**11/6/2007**

**Court:** Judgment delivered today 11/6/2007 in chamber in the presence of accuseds person and Public Prosecutor but in the absent of the 4<sup>th</sup> accused.

**Right of Appeal dearly explained.**

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

**Sgd D.C. Kamuzora –RM**

**11/6/2007**

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*Resident/District Magistrate*  
Arusha Dated...*22.1.2007*...