

ECONOMIC CASE NO. 18 OF 2006

THE REPUBLIC

VRS:

- 1. HAMISI RAMADHAN @ HAMISI
  - 2. HAJI NADA @ DACAS
- - - - - ACCUSED PERSONS

28/5/2008 & 25/6/2008

JUDGEMENT

BEFORE J.M. KARAYEMBA, RM.

The accused persons Hamisi Ramadhani @ Hamisi and Haji Nada @ Dacas stand charged with the offence of unlawful possession of Government Trophy contrary to para 15(d) of the 1st 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 read together with Section 67(1) and 2(b) of the Wildlife Conservation Act No. 12 of 1974.

The brief facts of the case were that on or about the 14th day of April, 2006 at Ogutu area within Simanjiro District Manyara Region the accused persons were jointly and together found in unlawful possession of Zebra Meat valued at T.Shs. 408,000/= the property of Tanzania Government.

When the charge was read over the accused persons were not required to plea as per the Law dictates. On 5/6/2006 the second accused was released on bail. From 15/11/2006 the second accused jumped bail and all the struggles to rearrest him proved unsuccessful. When investigation was complete and the subordinate court given consent to prosecute this case, the Public Prosecutor prayed to proceed with the case under section 226 Criminal Procedure Act (Cap 20 RE 2002) as to the second accused person. Preliminary hearing was conducted to the first accused only who pleaded not guilty to the charge and disputed the offence save for personal particulars and arrest. Thereafter the prosecution intended to call 4 witnesses and 4 exhibits.

It was not until the 2nd day of January, 2008 when the prosecution produced Saiguram Mlel Molllel before Hon. D. Msaffe, RM. who posed as PW.1. He introduced himself as an antipoaching Unit, at Kimolo Village within Manyara Region. He told the Court that on 14/4/2006 at about 4.00 p.m. when he was on patrol together with Erick Kazungu and Emmanuel Makali to the place where the accused resides met the accused. Suddenly the accused after seeing them took on his heels. The young boys they had chased him and captured him. It was then discovered

that the accused's clothes he wore were full of blood. But he told them that it was cow's blood. They decided, he said addingly, to take him to the car and afterwards proceeded to the accused's home. After searching they discovered a Zebra's skin and Meat. The accused promptly told them to have been given that meat and skin by one Kibiriti. In there they found a meat cooking wire and a spear stained with blood.

PW.1 proceeded to testify that after they had asked the accused several questions he (accused) took them up to the meat drying place which was about 4 to 10 Kilometres from his house. At that place they saw one Zebra's skin. He said further that at the accused's place they found the second accused and he did not know the exact place the second accused resided. At this stage the witness tendered in Court the spear, wire, and the skin. They were all admitted and marked collectively as Exhibit P1.

Untiredly, the witness said furthermore that they arrested both accuseds and took them to Kolomo Police Station. They wrote the statement and on the following day they went to Arusha at Anti-poaching Unit. While there he filled the inventory. The same was admitted to Court as Exhibit P2.

On ~~cross-examination~~ the PW. testified that he knew the accused very well from the date he arrested him. That when he was running/escaping he had no meat. That they were on patrol when they saw him (accused) who then decided to run away. That many people were just walking but the issue came when the accused decided to run. That he ignored the claim that the blood was for cow that is why he decided to take him to Police Station and that it was the accused who shown him (them) to his place and saw the money at his home.

That the 2nd accused was at the 1st accused's home. He introduced himself and then started searching.

When he was re-examined he told the court that when before making a search in the accused's home he asked about the ten cell leader but he was told he resided very far about 20 k.m. from the accused's home and it was by then 5.00 p.m.

After the testimony of PW.1 the Public Prosecutor told the Court on 26/02/08 that he was unable to get two other witnesses by names Ali Kazungu and Emmanuel Makali. These two, he said, were working with a Tourist Company (Tanzania Be Game Safaris) That they were reported to have ceased services in there. Therefore, he prayed under section 34(1) of the Evidence Act to file their statements. When the Court granted such prayers the accused blamed the prosecutor for delaying the case and at the same time prayed the Trial Magistrate to withdraw as he had no faith in her. The Magistrate Hon. Macfo, R.M. step down and the file was re-assigned to me. On studying the file I discovered that the statements were of PW.2 and 3. Their testimonies were as hereunder:

while on patrol met the accused HANISI RAMADHANI. That when he saw them he run away with his two dogs. They chased and caught him whereby they discovered that his clothes were tainted with blood. He told them that he was going to the mines Nalusuki. They then ordered him to take them to his home. At his home, he said, they found hunting nets, blooded spear and dried Zebra meat. The accused told them that that was not his home but Haji Nanda's. They arrested Haji Nanda to whom the accused said was the owner of the meat. The accused then told them, he said concluding, that they were employed to slaughter but the real owner of the meat was KIBIRITI. That when they went to the scene they found salt packets.

In his duly signed statement PW.3 said that on 14/04/2006 at about 10.30 p.m. at Ugutu Village District of Simanjiro Manyara Region when they were on patrol using Tanzania Big Game Car together with Robati Aginami and Emmanuel Makali they met Hanisi Ramadhani (accused)

That after the accused had seen them he took on his heels. They chased and caught him. They discovered that his clothes were tainted with blood - That made them to be inquisitive but the answer was that it was cow's blood. That after they had pressed him hard with questions he (accused) told them to be residing at the Mines. They instantly loaded him in the car, and went directly to his home. They found Haji Nada who admitted to be knowing the accused. Then they introduced themselves as anti poaching officers and wanted to search the house. But Nada told them the accused was renting that house.

He said further that in the course of searching they discovered Zebra Meat and nets which Nada said were for the accused. The accused thereafter disputed and said they were for his Land Lord who was possessing them with the purpose of committing economic crimes. That the Land Lord was sometimes taking him to do illegal hunting. That the accused took them to where the roasting and slaughtering is done. When they reached at that place they found left overs and sour of an animal. That in his house they found a spear and hunting nets. Then after all that they arrested the accused person and his Land Lord.

The prosecution untiredly called one Michael Maelakiti who posed as PW.4. This witness introduced himself in court as An Anti-poaching Unit who has dealt with that work for 30 years. That his daily duties were to combat illegal poaching. He said further that on 17/4/2006 when he was in his office he was ordered by his boss to categorise the meat brought and tell would be of what animal. That he discovered the same to be of Zebra and filled the certificate of Valuation of Trophy form. The form

The form was admitted in court as Exhibit P3.

On cross-examination he said the accused was taken to the office with the meat. That he did not ask the accused questions because his duty is categorising animals' meat.

After all these testimonies a prima facie case was found to be established and thus the accused in terms of S. 131 (1) CPA was called upon to defend himself.

HAMIS RAMADHAN HAMIS, DW.1, told the court on oath that on 14/4/2006 at about 16.30 hrs at Ukutu Village met the Antipoaching Officers using the Tanzania Big Game Car. That he met them when he was coming from his work in one Whiteman's farm. When they saw him, he said, they decelerated and on noting that he run away, because they were always disturbing him. That they chased and caught him. Thereafter started beating him.

DW.1 continued to tell the court that he did run away because he was afraid of the car. That by that hour he was coming from the Whiteman's farm. He was then forced to board their car and his assailants searched him to reasure he had weapon and in the course of doing that they took his money. That when they arrived at Nadorijuki he called for assistance from people mending bysicles but they run away because he was naked. After a while they also caught a woman whom when they were interrogating her husband came and identified him and told the Anti Poaching Officers that he used to working in a whiteman's farm.

He proceeded to testify that they forcibly started searching the house without following procedures and found dried meat and "Congo". That they instantly arrested him. They went to his house??? at Komolo and were ordered to unload laggage in the car. They unloaded 3 kgs of meat, 5 bags of charcoal and a bysicles and thereafter cleared the car. After these activities they both were tied and spent a night at his home.

In the following morning the wrote caution statements and on 18/4/2006 they were brought to lock up thereafter taken to Court. He told the court further, that to his knowledge his offence is the one of running away. And he did so because the officer was always after arresting him. That the meat they caught was from Mgodini Village not his village. That if they searched his house why did they not call the ten cell leader and other villegers to witness the incidence. That he wondered why he was taken to Komolo not Police, why he was interrogated and drew up a charge sheet. That ~~there~~ was nobody who came to back up their story that they found meat in his house. He said addingly that this arrest was the 4th and in all occassions his bysicks and other goods were taken from him. Furthermore, that fearing that offices is a result of allegations that he is a kilkar and that made him run away. He said, concluding, that if he was dealing with this business he could not be in the poverty situation.

When he was cross-examined he said prior his arrest and brought to court his occupation was peasantry and a watchman in the whiteman's

farm known as Gerald Miller. That on the date he was arrested he was coming from his job going home. That he was going to work at 5.00 a.m. and retiring at 10.30 p.m. His arrest was effected at 10.30 p.m. just near the farm. That he was living alone in his house. He said that he was arrested by Saiguran Molliel, Robert Kinandu and Erick Kazungu plus other who made a total of 7 (seven) people. That if they were brought to Court he could not identify them. One, he said, was a driver and others introduced themselves as anti poaching officers. He said addingly that prior his arrest he knew them because the same persons had arrested him previously. Basing on these arrests and harassments he reported to the Village Office but no step was taken because he had no evidence.

DW.1 admitted to be knowing one Haji Nada Haji firstly as his co-accused and secondly as his friend who was selling to him "Gongo" and lives at Nadonjuki Village. That he knew him for almost a month after starting his work. He negated knowing one Kibiriti he stated conclusively that his offence is to be found possessing Zebra Meat.

Basing on the evidence and documents tendered in Court the issue to be resolved be this court is whether the accused persons were found in unlawful possession of Zebra Meat valued at T. Shs. 408,000/- the property of Tanzania Government.

Proving that both accused persons committed the offence PW.1, 2 and 3 told the court that when they were on patrol they met the first accused. This accused on seeing them decided to run with the view of escaping. When they caught him they realised that his clothes were tainted with blood stains. Of course, this made them inquisitive to know the source of that blood but the accused person told them it was cow's blood.

Their testimonies are silent on whether the accused took them to the place where he slaughtered the cow. But when they loaded him in the car presumably by force he took them to his home and it was leaveled by the accused that he was living in there alone. The searching of the house revealed that there were hunting nets, blooded spear and dried Zebra Meat. It is doubtful, if so to say, whether blood on the spear and on the accused's clothes was that of the dried Zebra Meat. But they were taken to the slaughtering and drying place where they found Zebra skin and a sour.

In my considered opinion these items were dried. But it should be reckoned from the PW.1 when cross-examined. He said at this stage that when the accused was running had no meat. And it can be extracted from the evidence that all the caught meat was dry. Equally, therefore, the Zebra skin. What about blood? None of the Prosecution's witnesses told the Court that it was fresh. Not even the accused person. It can, then, be understood from the context that even the blood was not flesh. Taking into consideration of the villagers habit of <sup>e</sup>waring

the same cloths for several days provided it is for work, I can be illuminated that may be the stains of blood on the accused's cloth was not for the day he was arrested.

Again PW.2 told the court that the accused told them that the house was for Haji Nanda together with the meat found therein. Then the accused told them that they were employees of one Kibiriti. This person was the one owning the meat. It should be noted that Haji Nanda the 2nd accused jumped bail.

PW.4 told the court that on categorising the meat, he discovered the same to be of Zebra. As per Exhibit P3 the meat was of one piece valuing to USD 324. Converting this figure summed to T. Shs. 408,000/=.

The defence testimony is worthy of being discredited for being full of contradictions and lack of focus. He at one point admitted that when he saw the anti-poaching car he run because he was afraid of it. And then said that he run away because he feared the officer who had allegations of killing. He did not say when and where he heard those allegations. He did not either tell the court whether that officer had intimidated him priviously that when he meets him would kill him. To this extent the accused has not established good ground as to why he run away. This, then, makes me believe that he run away because he knew his offence and the result was to escape the arresting.

At another point DW.1 told the court that he met the anti-poaching officers in his way from work at the whiteman's farm where he was a Watchman. On cross-examination when he was asked of the time particularly retiring one he said it was 10.30 p.m. That he was arrested at 10.30 p.m. This means when he was signing off is when he was arrested before even leaving his work premises. But in a disappointed state he said he was arrested near the farm. To my understanding if he was arrested at 10.30 p.m. and that was his retiring time then he was arrested at his work. But he said he met his assailants in the way from work. This piece of testimony also discredits the testimony of DW.1.

Studying carefully DW.1's testimony it can be extracted that after the Anti-poaching officers became curious of the situation asked him to take them to his home. That he did. But in his ellaboration he did not fell the court it was his home but someone else who was arrested after they searched his house. While under arrest and after his house was searched he told the officers that what was found in his house was for his LandLord. That the meat belonged to one Kibiriti who was employing them. At another point said he lived alone in his

house and that the searching was unprocedural because nobody on the surrounding witnessed. But this is not true because he said the searching was done in his presence one woman and her husband. Despite this fact DW.1 told the court that the ten cell leader was living far from DW.1's home almost 20 km. and it was late evening of 5.00 p.m. This to me is a sufficient ground of not searching in the presence of the ten cell leader. But there were two others. One of those was a co-accused who jumped bail. Another was his wife who could have a choice of testifying against her husband. She could as the Law of evidence stands be competent but not compellable to testify. Since the prosecution side decided to neglect her I don't see any problem. Tantalizing enough DW.1 seems to say Haji Nada was neither arrested nor did he commit the offence. He was his friend where he was going to get a drink "Songo" and resided near the whiteman's farm. If that is the truth how was he arrested if it is not the one he went with at Komolo? Why was he joined in the charge sheet? This also makes one wonder of what DW.1 wanted to explain.

In a nutshell, the accused person is charged of unlawfully possessing Government Trophy. This is contrary to Law of the land. The prosecution's case is built on a hard rock as far as the centre of the offence is concerned. It is a common knowledge that contradictions in any testimonies are never escaped. In this case the prosecution's witness have several contradictions. But these are minor and do not touch the substantial part of the offence which could incline me resolve in favour of the accused person. It is crystal clear that the offence is proved beyond reasonable doubt. The accused person in his defence failed to paralyse the truthfulness of the prosecution's case. Rather it was tainted of contradictions, lack of focus and a lot of repetitions. Reading his demeanour the accused was never settled and sometimes when asked questions tendered to confuse the cross-examiner.

Following all these factors, it is, therefore, not difficult for this court to find the accused liable of the offence charged with. In the upshot he is hereby convicted.

Turning to the second accused, DW.1 stated categorically that he knew him as his co-accused. The anti-poaching did arrest him and brought him to court for justice to triumph. His escape or jumping of bail tends to welcome any one to comment that he really committed the offence. It would be prudent for him to stand firm and prove to court that he did not commit the offence. Albeit the fact that the prosecution presumably did not intend to prosecute him by not asking to proceed against him w/a 226 CPA I find him guilty of the offence charged and he is hereby equally convicted.

Date: 25/6/2008

Coram: J.M. Karayemaha, RM.

Pros: Insp. Pili

Accused: Present

Inter - Drida.

PP:- The matter is for judgment. I am ready.

Accused persons:- I am ready for the judgment.

PP:- NIL.

MITIGATION:-

I pray for lenience.

Sgd. J.M. Karayemaha, RM.

25/6/2008.

SENTENCE:-

Considering the fact that the 1st accused person is the first offender and has been in custody for over two years, he is therefore sentenced to a term of 11 years imprisonment in jail as per Section 59(2) of the Economic and Organised Crime Control Act (Cap. 2002 RE 2002). The 2nd accused to serve a term of 15 years imprisonment in jail as per the same section and Law.

Sgd. J.M. Karayemaha, RM.

25/6/2008.

COURT:- Judgment delivered in open court this 25th/6/2008 in the presence of the 1st accused person and PP.

Sgd. J.M. Karayemaha, RM.

25/6/2008.

COURT:- Rights of Appeal explained.

Sgd. J.M. Karayemaha, RM.

25/6/2008.

ORDER:- Arrest Warrant to issue to the 2nd accused.

Sgd. J.M. Karayemaha, RM.

25/6/2008.

I hereby certify that this is a true  
copy of the original.  
