

IN THE DISTRICT COURT OF DODOMA
AT DODOMA
ECONOMIC NO 17/2015
REPUBLIC
VERSUS
HAMISI JUMA RAMADHANI @ STUMAI NTIREE
JUDGEMENT

HON. J.E.FOVO, RM

From a charge sheet at hand, first and second accused persons one Hamisi Juma Ramadhani @ Stumai Ntiree and Husen Juma Bakari stand charged with the offence of unlawful possession of government implies with contrary to section 86 (1) and (2) of the wildlife conservation Act No. 5 of 2009 which read together with paragraph 14 (d) of the first schedule to the Economic and organized crime control Act, (Cap 20. R.E 2002), while the third accused person is separately charged with unlawful Reading in Government Trophies contrary to section 80 (1) and 86 (1) and (2) (c) (ii) of wildlife conservation Act No. 5 of 2009 which read together with paragraph 14 (b) of the first schedule to the Economic and organized crime control Act (Cap. 20 R.E 2002) respectively.

Pursuant to prove a charge sheet with its counts, prosecution called a total of four witnesses as PW1 to PW4 together with eleven exhibits which were admitted and marked as P.E Exh. 1 to 11.

On defence, a total of five witnesses were called upon together with one exhibit which was admitted and marked as D.E Exh. 1.

It has been particularly narrated by the prosecution side in respect of the first count that, first and second accused on 19th May, 2014 at Artha village within Kondoa District in Dodoma Region, were found in possession of two elephant tusks weighing 43kg valued 23,650 united states Dollars which is equivalent to Tanzania shillings Thirty Eight Million Five Hundred Forty Nine Thousand and Five Hundred (Tshs. 38,549,500/=).

From the testimonies of both sides and evidence at hand, it is undisputed fact that, first and second accused persons were arrested on 19th May, 2014 at Artha village in Kondoa District in Dodoma Region and arresting officers were PW1 and PW2 together with other officers. The only key question remain, for the first count against first and second accused persons is;

Whether the first and second accused persons were found in possession of the said two elephant task, and if the answer if YES, then whether that possession was unlawful.

In analyzing the evidence in respect of the first count, I examined the testimonies of PW1, ASP Mathayo Mmari and PW2, Richard Shilunga, a Park Chief warden from Tarangire National Park who testified to organize that arrest after received the information about the two accused persons hence accomplished that arrest were they seized two elephant tusk which were found in the back of a car model ESCUDO.

These witnesses from prosecution tendered in this court, two pieces of ivory tusk, (P. Exh. 2), a car SUZUKI ESCUDO with Reg. No. T. 127 Act (P.Exh.5), certificate of seizure (P.Exh.1) and Trophy valuation certificate (P. Exh. 6) respectively. I further examine the prosecution exhibits 9 and 10 which are cautioned statements of the first and second accused persons.

On the other hand, I examined the evidence from defence side in respect of this first count, it is from defence side that procedures were not complied by PW1 and PW2 for preparing and filing a certificate of seizure as there was no independent witness and the receipt to acknowledge the seizure as required by Section 10 (2) and 38 (3) both of the Criminal Procedure Act, Cap 20 R.E 2002. Hence, first and second accused persons, advocated by Mr. Malimi learned counsel, are disputing the fact of them be found in possession of the said Elephant tusk.

I have seen the arguments in the final written submissions from both counsels, Mr. Kakula Learned state attorney for prosecution

and Mr. Malimi Learned advocate for defence, and I am satisfied that, requirements of section 10 (2) and 38 (3) both of CPA. Cap 20 as revised for PW1 and PW2 to produce a receipt after search and seizure and calling independent witness were not fit and applicable under the circumstance as per evidence at hand. Section 10 (2) of CPA, Cap 20 as revised states that;

“10 (2) any police officer making an investigation may order in writing require the attendance before himself of any person living within the limits of the station of that police officer or any adjoining station, who from information given or in any other way appears to be acquainted with the circumstances of the case, or who is in possession of a document or any other thing relevant to investigation of the case to attend or produce such document or anything relevant to investigation of the case to attend or to produce such document or any other thing, and that person shall attend and produce a certified copy of the document or any other thing as so required.

Provided that where a police officer receives any certified copy of a document or any other thing he shall issue to the person from whom he received such document or that thing a receipt thereof”

Furthermore, the directives in section 38 (3) of the same Cap. 20 as revised states that;

"38 (3) where anything is seized in pursuance of the powers conferred by subsection (1) the officer seizing the thing shall issue a receipt acknowledging the seizure of that thing, being the signature of the owner or occupier of the premises or his near relative or that person for the time being in possession or control of the premises, and the signature of witness to the search if any"

From evidence adduced, arrest was made in Artha village, on 19/5/2014 at 01.00hours. As per P.Exh. 7 a sketch map of the scene of crime which was admitted as exhibit without any objection from defence counsel or accused person themselves, it is clearly that arrest was made in the middle of the forest. I acknowledge to read the argument from accused when testified as defence witness together with PW5 Hamadi Shabani, that arresting point was not in the forest but it was 100 meters from his (DW5)'s house, but I find it with no base and it is an afterthought since that was not an issue when a sketch map was tendered and admitted as P.Exh.7.

From P.Exh 1, a certificate of seizure, which was admitted in this court, it is undisputed that both first and second persons signed on the same to acknowledge a search and seizure of all tendered properties including the two tusk of ivory and Tsh. 1,000,000/= from a car SUZUKI ESCUDO No. T. 127 ATC.

Under these circumstances, I am not convinced that requirements of calling independent witness and issuance of receipt

were fit and applicable. Apart from this limb of evidence in respect of the first count, I also examined the prosecutions exhibits 9 and 10, the cautioned statements of the first and second accused person. I am warning myself to discuss the issue of its procedural validity since they were both admitted by this court after an inquiry and satisfaction that they were properly fit to be exhibits.

At this juncture, this court is satisfied that prosecution evidence has been corroborated and overwhelmed to the extent of prove that, first and second accused persons were found in possession of the two Elephant tusk hence the government trophies. Since defence offered no explanation on the prove of lawful possession of the same as required by the wildlife conservation Act 2009 in section 100 (3), this court is convinced that a possession of these two Elephant tusk was unlawful.

On the second count of unlawful dealing in Government trophies against the third accused person Hilali Jafali Omary, it has been alleged by prosecution that on divers dates between 17th May, 2014 to 10th June, 2014 he did deal in trophies by sending Tanzania shilling six millions to Hamisi Juma Ramadhani @ Stumai (1st accused) via M-Pesa to facilitate procurement of two elephant tusks.

The key issue here is;

"whether, as per adduced evidence, the third accused person was dealing in Government Trophies.

In pursuant to connect the third accused person to the third count, prosecution presented their case based on a cautioned statement of a third accused person himself, P.Exhb. 11, confession of the co-accused, hence the cautioned statements of first accused persons, together with print out from Vodacom P.Exh.8.

It is a testimony of PW4 A/INSP MBILE who stated that upon recording a cautioned statement of first accused person, he confessed to receive some money in Tshs. 6,000,000/= (six millions) from the third accused via Mpesa with direction that the two task of Elephant be taken to his place. That, it was from that angle he followed the Vodacom print out for transaction of a mobile phone of third accused person. This witness further stated that, he reveal the said transaction of different dates and he arrested the third accused immediately after collecting the transaction print out of a mobile phone number 0763194643 from Vodacom Company.

On the contrary, third accused person offered his side of story that, he does not disputed to sent the money on the stated dates, but he was doing business of buying and selling beans with the first accused person. That, it was for that purpose he sent the money to the first accused person.

It is from this limb of evidence, Mr.Kakula learned state attorney prayed for this court to find the third accused person guilty for the charged offence. On the contrary, Mr. Malimi learned counsel for defence argued that prosecution has nothing to prove against the third accused person that the money was sent for the purpose of dealing in a business of government trophies.

I examined the present evidence for the second count and I stand on the opinion that, apart from cautioned statement of third accused person himself and those of first and second accused person as confession, prosecution are relying on P.Exh.8 which is print out for money transaction from the third accused's mobile phone to first accused. It is a fact that P.Exh.8 does not indicate the purpose under which that money was sent for. On the contrary, D.Exh.1, which is the only exhibit from defence shows that first accused has been doing a business of selling the grains as there are receipts from Kondo District Council showing that he has been paying the revenue for that business. I then direct myself to the wisdom of the court of Appeal in the case of **MKUBWA SAID OMARY Vrs Serikali ya Mapinduzi Zanzibar (S.M.2) (1992) CAT, Zanzibar (C.J.Kisanga and Ramadhani JJA)** in which it was inteadia heard that;

“PW4 was a witness whose evidence needed corroboration before it could be accepted and acted upon. **Such evidence could not itself corroborate accomplice evidence**”

Back to the case at hand, it is clearly that evidence of PW4 A.INSP MBILE in respect of **purpose of sending** the said Tshs. 6,000,000/= from third accused to first accused together with the print out, cannot stand to corroborate other evidence since itself needed corroboration.

It is also a well settled principle that, it is very unsafe to convict accused person based on a confession taken before a police officer from him or co-accused in absence of the best and fullest evidence to support the charge. In the case of **Republic V. A.C.P ABDALAH ZOMBE and 12 OTHERS (2006) No. 26 MASATI,J**, when dealing on confession analysis and adopted the principle from **R.V KAMAU (1924) 10. KLR.8** which was cemented in **MUNUBHAI HIRA V. THE CROWN (1945) 7 2.LR, 4 T.E.A.C.A, 229**, the honorable court held that; "this was clearly demonstrated in the present case, as have observed on the evidence on record. A part from the 11th and 12th accused statements, the only other independent medical and ballistic and circumstantial evidence was inconclusive and could not prove the case against accused person beyond reasonable"

The same demonstration is clear in this present case, a part from the 1st, 2nd and 3rd accused persons statements, the only independent evidence was money transaction print out from Vodacom (T) Ltd which is inconclusive and indeed could not prove the case against the third accused person beyond required standard.

From the above analysis in respect of the present case at hand, I hereby convict the first accused person HAMISI JUMA RAMADHANI STUMAIN @ NTIREE and the second accused person HUSEIN JUMA @ BAKARI for the charge offence of UNLAWFUL POSSESSION OF GOVERNMENT TROPHIES Contrary to S. 86 (1) and (2) (c) (ii) of the wildlife conservation Act, No. 5/2009 read together with paragraph 14 (d) of the first schedule of the Economic and organized crime control Act Cap. 200 as revised in 2002.

I however, acquite the third accused person HILALI JAFALI OMARY from the charged offence of UNLAWFUL DEALING IN GOVERNMENT TROPHIES Contrary to S. 80 (1) and 86 (1) and (2) (c) (ii) of the Act No.5 of 2009 read together paragraph 14 (b) of the first schedule of Cap. 200 as revised, I order the immediately release of the third accused person unless otherwise he is lawfully held.

Sgn: J.E.Fovo, RM

18/2/2016

Previous Criminal Records

S/A: Your honor, we have no previous criminal records, but we pray for forfeit of a car and money Tshs. 1,000,000/= which are proceeds of crime.

Mis. Miriam: Your honor we pray for short adjournment so that we can go through the said procedure for forfeiture.

Court: Let a matter be adjourned for 30 minutes so that both advocates can come up with proper submission to lead the court.

Sgn: J.E.Fovo, RM

19/2/2016

AFTER 30 MINUTES

Coram: J.E.Fovo, RM

Pp: Mr. Kalula S/A.

Cc: Mrs. Gondwe.

Convicts: Present and advocate Wasonga and advocate Miriam.

S/A Mr. Kakula: Your honor, as I stated earlier we have no previous conviction records for offender but the vehicle was arrested where the task were found in there, together with the money Tshs. 1,000,000/=, we pray for both things be forfeited as per Section 111 (1) of the wildlife conservation Act of 2009, which stipulate clearly that there must be an order for forfeiture following the conviction. A car was used to commit offence and money was a convince, we pray for the two thing be forfeited. We further argue that, these kind of offences are now becoming very common, they cause death of many Elephants and the government is using a lot of money to prevent these kind of offences. We recently witnesses a choper shot

down by these peoples. We pray for stiff punishment so that to be a lesson for offender themselves and to anyone who wishes to commite the similar offences I further pray for the trophies be forfeitured for the government.

MITIGATION

MR.WASONGA: Your honor, I am not sure if the section used does fall within the present case. But unfortunately the cited section were not putted on the charge sheet at all. We prepared to submit on section 86 (1) and (2) (c) of the wildlife conservation Act which read together with Economic and organized crime Act. Your honor, since the sections was not is the charge sheet they cannot present it now. They were suppose to amend their charge to fit their prayer. Even the section 86 (1), provide the circumstances to be complied with. The charged offences does not fit any how for forfeitur. There was no place in a charge sheet a car was involved. There must be a due diligence to prove the ownership of a car. We are not be sure on the ownership of a said car. If a car is surely owned by my client he, then he can be liable for it. But if a car is owned by someone else, then that person should be called for any objection. Your honor, not every car is subject for forfeiture. Your honor, there is very big doubt for the use of money to that event. I surely have a big doubt on the forfeiture of the money. I pray for the court to do not agree with the evidence of prosecutions since they are leading this court to wrong

direction. Section 111 of The Wildlife conservation act was not a part of a charge sheet at hand. Your honor I pray for my client to be considered since they have never been convicted for any offence before, we pray for the punishment in accordance with law. The two convicted person have families and their age is still yet not old, we pray for reasonable sentence for them. They suffered a lot since Babati District court to this court. We pray for the same and humbly submit.

Mr. Kakala: Your honor the charge is proper and the punishment is clearly shown in Section 86 and the sentence is clearly provided. On the issue of forfeiture that we did not involved it, we find no injustice occasioned for them not knowing the section. The court has been given a mandatory duty to forfeit the properties. The issue of ownership is not a bar for forfeiture as per laws. It does not matter whether it was with the owner or not. The issue of money your honor, it was confessed by 1st offender that the money were used to buy the said trophies. It is clearly these things should be forfeited accordingly. I pray for the sentence in accordance with the law.

That is all.

Sgn: J.E.Fovo, RM

19/2/2016

SENTENCE

I have considered the nature and circumstances of the committed offence, it is the fact that wildlife sector is one of the key source of income to our government for support the living standard of its people. It is again the facts that, these kind of business of selling elephant task result the death of many Elephants hence their population is very much in danger which is a threat to our nation's economy and development of its citizens. I concur with the leaned state attorney Mr. Kakula that, these kind of offence should be taken seriously by our courts. I have also considered the mitigation factors from Mr. Wasonga, learned advocate for the offenders that, it is the first offence for his clients and they are still needed by their families for the support, I therefore sentence each convict/offender to imprisonment for a term of twenty years (20). In addition hereto, I impose fine payment of five million shillings to each offender.

On the issue of forfeiture, I have heard the prayers from both counsels and I carefully went through the cited section which is section 111 of the wildlife conservation Act No. 5 of 2009 and reveal that, a section establishes a duty to a court for forfeiture upon conviction of the offences under this Act.

My mind is firmly settled that, this is a mandatory duty to the court whether prosecution applied for it or not. From section 111(1) on it own it states that;

“(1) Where a person is convicted of an offence under this act, the court shall order forfeiture for the government of.....”

I therefore find no base from the defence argument that prosecution was in mandatory position to notify or pray to this court for it to perform its duty of forfeiture.

On the issue of money be forfeited or not, I am of the opinion that, the words used in the law are, “satisfaction of the court that it was used or employed in the commission of the offence or for the convenience or comfort of the accused while engaged in the commission of the offence.” I am satisfied that the money were convenience or comfort to offender in their course of committing the offence.

On the issue of a car, I find section 111 in its proviso provide that, the said owner of the car, if not an offender in this dock, was suppose to file an application to prove that he or she had nothing to do with the committed offence and if the court is satisfied with his reasons then forfeiture order could be dismissed or not granted.

Under the present case, I have not received any application from any one claiming the ownership of the said SUZUKI ESCUDO No. T. 127 ATC.

I therefore, by virtue of Section 111 (1) (d) of the Wildlife conservation Act. No. 5 of 2009, order both a car with reg. No. T. 127 ACT SUZUKI ESCUDO and actual money Tshs. 1,000,000/= (one million

shillings) be forfeited for the government. I further order the two elephant task be forfeited for the government too.

Sgn: J.E.Fovo, RM

19/2/2016

Right of Appeal explained.

Sgn: J.E.Fovo, RM

19/2/2016

