

**THE UNITED REPUBLIC OF TANZANIA**  
**IN THE DISTRICT COURT OF MANYONI DISTRICT**

**AT MANYONI**

**CRIMINAL CASE NO. 241 OF 2013**

**REPUBLIC**

**VERSUS**

**RASHIDI MKENGA @ BERNAD**

**JUDGEMENT.**

The accused named above is charged with two counts namely;

- (a) Unlawful entry into Game Reserve contrary to section 15(1)(2) of the Wildlife Conservation Act.No.5 of 2009,
- (b) Unlawful possession of weapon in the Game Reserve contrary to section 17(1)(2) of the Wildlife Conservation Act no 5 of 2009

It is alleged by the prosecution that on 6<sup>th</sup> December 2013 at about 11.30hrs at Ipululu area within Muhesi Game Reserve within Manyoni District, in Singida Region, the accused did enter into the Game Reserve without a written permit of the Director of the Wildlife Conservation previously sought and obtained.

Besides, it is averred that on the same date, place and time, the accused was found with one muzzle loader in the game reserve without the written permit from the director of wildlife previously sought and obtained.

However, when the accused was arraigned, he denied the allegation and the prosecution managed to call a total of two witnesses to prove the case.

During hearing of the prosecution case, PW1 said on 6/12/2013 at 11.30hrs he was with his fellow Game Wardens in patrol at Ipululu area within Muhesi Game Reserve where he saw one person in the game reserve, they quietly approached him and arrested. According to PW1, the accused was found with one muzzle loader while he had no any permit which allowed him to enter into the game reserve with a weapon the muzzle loader(unnumbered) was admitted as exhibit PI.

Also PW2 said on the date of event stated ealier they were in patrol within Muhesi game reserve when they saw a person walking and they managed to arrest him. Moreover,PW2

saw the accused had muzzle loader and when they asked him if he had any permit, he said he had not, so they took him to Manyoni Police Station for further legal action.

On close of prosecution case, the accused was found to have a case to answer, and he was informed of his right to defend and so the defence evidence below.

In his defense DW1(the accused) said on 7/12/2013 he was on his farm building a house at about 9.00hrs he saw the people going toward him, one had a panga and the other held an axe and suddenly he saw the other one holding a gun. According to DW1 they asked him what he was doing in the Game Reserve and he said he was not in the game reserve since the land was allocated to them by the village leadership and they cultivated it each year.

Apart from that DW1 said those people ordered him to lie on his back and legs up, beat him and asked him if he was Amiri but he refused since Amiri lived in the other house but on that day he was not there, that even when they all went to Amiris' place of residence, he was not there, they only found the fire burning.

Also DW1 said he told them that Amiri had a gun which he kept in one of the borehole tree is when two of those people went there, found it and took it while saying had DW1 said it earlier he would not have been beaten. From there they asked DW1 to send them to the village where Amiri lives but to his wonder,DW1 was brought to Manyoni and surprised to hear the charge of unlawful hunting.

When cross examined by the prosecution side and the court, Dw1 said he was arrested at Ipululu area but in the village land they were given many years ago and there is a school built there.

From the evidence adduced the issue is whether the accused is guilty of the two offences in question.

To start with the second count, it is alleged that the accused was found in unlawful possession of unnumbered muzzle loader which is a weapon in the game reserve without permit, but the defence evidence shows that it was not in the game reserve but in the place where there were houses, the game wardens knocked the accused's house,and after the arrest he told them that he was not Amiri, the latter lived in another house, also the accused told them that Amiri possessed a gun, it was kept in the hole bore tree and when they went there they found it, the exhibit PI in this case. In my view the gun was not found with the accused on the material date but it was kept by one Amiri in that tree, so it was the duty of the arresting officer to trace Amiri who was mentioned by the accused and not to impute the offence to the innocent accused who assisted them to get the weapon, thus I hold that in this case there is no sufficient evidence to prove the offence, and the accused is acquitted.

As to the first count, it was said that the accused entered into Muhesi Game Reserve without permit, however, the defense evidence indicate that it was within dwelling place where people used to cultivate land allocated to them by the village leadership, there were houses, school built there, these facts were not disproved either. The prosecution is duty bound to to prove a fact alleged to exist or not, in criminal cases beyond reasonable doubt under section 3(2)(a) of the Tanzania Evidence Act, Cap 6, 1967 R.E 2002. Therefore the prosecution has failed to prove the case beyond reasonable doubts, I find the accused not guilty of both offences he is charged with, I dismiss the charge and acquit him.

**SGD: F.H. KIWONDE**

**4/6/2014**

**06/06/2014**

CORAM: HON. KIWONDE, F.H. DRM

PP: J. BALITAZARY

CC: MUSSA H.L

ACCSD: Pt in in person.

Pp: The matter is coming up for judgment and I am ready to proceed. That's all.

Acc- I am ready too

Crt: The judgment is delivered today in open court in the presence of both parties and right to appeal is explained.

**SGD: F.H. KIWONDE**

**DRM**

**6/6/2014**

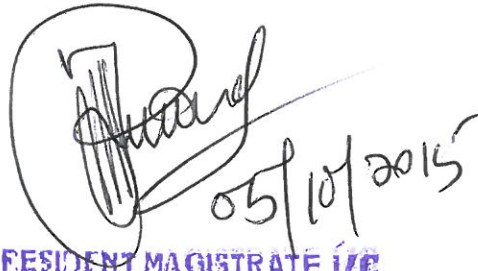
**ORDER:** The muzzle loader, exhibit PI which is unclaimed by the accused is put under the Director of Wildlife for his action.

**SGD: F.H.KIWONDE**

**RM**

**6/6/2014**

**CERTIFIED TRUE COPY  
OF THE ORIGINAL**

A handwritten signature in black ink, which appears to be 'F.H. Kiwonde', is written over a circular stamp. To the right of the signature, the date '05/10/2015' is written in black ink.

**DISTRICT RESIDENT MAGISTRATE I/C  
MANYONI**