

IN THE DISTRICT COURT OF MANYONI

AT MANYONI

ECONOMIC CASE NO. 18 of 2014

REPUBLIC VERSUS

- 1. THERESIA JOHN**
- 2. KWALU NJILE @ MBASA**
- 3. EMANUEL BONIFACE @ RUKARI**

JUDGMENT

The three accused persons stand charged with two counts namely unlawful possession of government trophy contrary to section 86(1) (2) © (ii) of the Wildlife Conservation Act, No 5 of 2009 read together with paragraph 14 (d) of the first Schedule and section 60 both of the Economic and Organized Crimes Control Act, cap.200 (R.E. 2002) and unlawful dealing in the government trophy contrary to sections 80 (1) and 84 (1) of the Wildlife Conservation act No. 5 of 2009 read together with paragraph 14 (R.E 2002).

It is alleged by the prosecution that the accused persons on 29th August 2014 at about 00: 15 hours at Mpola village within Manyoni district in Singida region were found in unlawful possession of government trophy to wit eight (8) pieces of elephant tusks valued at Tshs. 19,511,250/= the property of the United Republic of Tanzania.

Also it is averred that on the same date, place and time stated earlier on, the accused persons were found in unlawful dealing in government trophy to wit eight (8) pieces of elephant tusks valued at Tshs. 19,511,250/= the property of the United Republic of Tanzania.

When the charge was read over explained to the accused persons, they all denied the allegations and the prosecution brought three witnesses to prove the case.

During hearing of the prosecution case, PW 1 said he identified and valued the government trophies sent to him to be eight (8) elephant tusks (pieces), that after valuation he filled in the trophy valuation certificate which was admitted in evidence as exhibit PI, but when he was cross- examined by the accused he said he did not know the accused persons.

According to PW 2, on 28th August 2014 he was informed that there was sale transaction of elephant tusks and he and his fellow game wardens were assigned to work on it. Also PW 2 said they got a broker from Majengo - Manyoni who is the 3rd accused who told them that they had to go to Mpola village, that on arrived, they saw a woman, the 1st accused carrying a nylon bag famously called "sarufeti" on her head and others were there, so they disembarked from the car and bargained the price at Tshs, 200,000/= per Kilogram, then they asked the 1st accused and the 3rd accused to get in the car to make payment is when they were locked in, the game wardens fired in air and other people ran away.

Apart from that, PW 2 said after that there was filled in certificate of seizure for the accused had no permit which allowed them to possess and sell the and sell the government trophy and they took them to police station, and added that the 3rd accused looked for the market.

When he was cross-examined by the defence counsel for the 2nd accused, Mr. John Chigongo advocate, PW 2 said the 2nd accused had a torch and that he was not found with government trophy.

In re-examination, PW 2 said the 2nd accused indulged in the unlawful transaction for he was in that group that time.

Besides, PW3, an investigation officer of police, tendered the statements of Loderick Chuwa, a person who cannot be easily brought to testify in court for he is in the United States of America (U.S.A) in lieu of oral evidence under section 34 B of the Evidence Act, cap 16, 1967 (R.E 2002) as he is the one who (PW 3) took the statements.

Also PW 3 tendered a certificate of seizure which was admitted as exhibit P.II and the eight (8) pieces of elephant tusks were admitted in evidence as exhibit P.III collectively.

On close of the prosecution case, the accused persons were found to have a case to answer, they were informed of their right to defend, its kind and the nature of the offences and all opted to offer defence as below.

In her defence, Dw 1 (the 1st accused) said she did not commit the alleged offences, rather, on 28/8/2014 she was travelling to Sanza, When the bus left, she got a small private car and the 3rd accused joined them. According to Dw 1, in front of them she saw two men on the motorcycle and one man from the car which was from Manyoni got down, talked to them, and one Justin also got down, they took the gun and quarreled and she heard firing in the air three times and the 2nd accused was brought in the car and her belongings such as mobile phone and a certificate of local medicine treatment were taken, that they were brought to court.

When she was cross-examined she said the 2nd accused just had a torch.

The evidence of Dw 2 (the 2nd accused) is that he was not found in unlawful possession of government trophy and or dealing in them but on 28/8/2014 he was going to Itigi auction to buy cattle, he travelled by using a motorcycle with his relative and they had sold "Ufuta". According to Dw 2, they went through Nkonko village and when they arrived at Mpola village they found a car parked and one person waived signaling that they stop and when they stopped, he asked for a tube solution for the car tyre was punctured, that Dw 2 went for a short call while his relative wanted to give that other person the tube solution, but Dw 2 heard firing in the air and they were put under restraint, he thought those people were bandits, his relative wanted to run away and he was shot dead but Dw 2 asked the game wardens not to kill him since they pointed a gun to him.

Moreover, Dw 2 said he was ordered to get in the car where he found other three people including the 3rd accused. That they were covered of their faces with clothes and taken to Manyoni police station, but he heard people saying they killed elephants, but he said the torch he had he used

see the place he went for a short call of nature, that his money Tshs.146,000,000/= mobile phone and a motorcycle make SANLG were taken.

Furthermore, Dw 3 (the 3rd accused) said on 27/8/2014 he was in Dodoma – Kongwa where he sold chips and chicken meat to people, and on 28/8/2014 those people bought 40 hens but they did not pay all money due and Justin Belswa said he would pay the balance at Manyoni and they agreed with Dw 3 for he went to Manyoni to sell maize, according to Dw 3 he was called to go to the main road, where he found Lodrick Chuwa, Panduka and the driver who said they had to go to Mpola village, where there appeared motorcycle with two (2) men, that Justin got down and one man went for a short call of nature, is when Justin took the gun and the one who was caught by Lodrick Chuwa wanted to run away but he was shot on the back and chest and the 2nd accused was seen getting in the car, they were covered of their faces and taken to Manyoni, so he denied to commit the alleged offences.

When cross examined by Mr. John Chigongo, Dw 3 said the two (2) men on the motorcycle carried nothing.

From the evidence, the issue is whether there is sufficient evidence to ground conviction.

The available evidence shows that the 2nd accused, Kwalu Njile 2 Mbasu was joined in this case because he was in that group of people at the scene of event, but Pw 2 clearly said the 2nd accused was not found in possession or dealing with the government trophies, and Dw 3 said the 2nd accused and his relative carried nothing on the motorcycle. So there is no sufficient evidence to implicate the 2nd accused, the charge against him is dismissed and he is acquitted under section 235 (1) of the Criminal Procedure Act, Cap 20, 1985 (R.E.2002).

However, the prosecution evidence indicates that the 1st accused is the one who carried the eight (8) government trophies) elephant tusks on her head, she bargained the price that they would buy the trophies at Tshs 200,000/= per kilogram, and the 3rd accused was there, is when they the 1st and 3rd accused were to go to get in the car to collect money as payment for sale of the government trophy, to wit eight elephant tusks, so the evidence directly implicates the two accused persons.

Besides, the 1st and 3rd accused persons signed the certificate of seizure to show that the trophies were seized from them thus this pieces of evidence supports the oral evidence that the 1st and 3rd accused persons committed the offences in question.

Furthermore, the evidence clearly points out that the 3rd accused acted as a broker in the sale transaction of the government trophies, he looked for the market that is why he sent the game wardens to Mpola village from Manyoni, So I am fully satisfied that there is sufficient evidence against the 1st and 3rd accused persons.

Eventually, I convict the 1st accused Theresia John and the 3rd accused Emanuel Boniphace of Unlawful possession of government trophy to wit elephant tusks under section 86 (1) of the Wildlife conservation Act, No 5 of 2009 and also they are both convicted of unlawful dealing in government trophy by way of sale under section 80(1) of the Wildlife Conservation Act No. 5 of 2009.

SGD: F.H.KIWONDE

DRM

28/10/2015

29/10/2015

CORAM: F.H.KIWONDE -DRM

PP: J.BALTAZARY

CC: MAGRETH - RMA

ACCUSED: ALL PRESENT

PP: The matter is for judgment and I am ready to receive it.

That's all

1st accused: I am ready.

Mr. John Chigongo advocate for the 2nd accused:

We are also ready to receive it.

That's all.

3rd accused: I am ready.

Court: Judgment is delivered in open court in the presence of all parties and the defence counsel for the 2nd accused Mr. John Chigongo advocate and right to appeal is explained.

SGD: F.H.KIWONDE

DRM

29/10/2015

PP: No records of their previous conviction or sentence but I pray for severe sentence to render it a lesson to them and others of his like.

That's all

Mitigations by the convicts

1st convict: I pray for lenient sentence for I have three (3) children who depend on me, I am a widow I am a victim of asthma gastric ulcers and BP.

That's all

3rd Convict: My mother is blind and depends on me, my two children depend on me and my wife all of whom depend on me.

Also my two schooling young brother depend on me.

That's all

Court: I find the convicts the first time offenders, but to have dependent does not exclude them from liability, and the first convict did not prove of she is of ill health, therefore I exonerate sentence on reason they are the first time offenders.

Sentence:

The convicts, Theresia John and Emmanuel Boniface @ Iulari are hereby sentenced for the 1st count under section 86 (2) © (iii) of the Wildlife Conservation Act, No. 5 of 2009 to serve imprisonment in jail for a term of twenty (20) years from today, each.

For the 2nd count, they are sentenced under section 84(1) of the Wildlife Conservation Act, No. 5 of 2009 to serve imprisonment for two (2) years in jail each or pay a fine of Tshs. 39,022,500/= each.

SGD: F.H.KIWONDE

DRM

29/10/2015

Court: Sentences to run consecutively and be confirmed by the high court.

SGD: F.H.KIWONDE

DRM

29/10/2015

Right to appeal to the high court is explained.

SGD: F.H.KIWONDE

DRM

29/10/2015

Order: The eight (8) pieces of elephant tusks are forfeited to the government under section 111(1)(d) of the Wildlife Conservation Act, No 5 of 2009 and they are put under the commander Zonal Anti-poaching Unit Manyoni for his legal action.

SGD: F.H.KIWONDE

DRM

29/10/2015


RESIDENT
MANYONI

5
CERTIFIED TRUE COPY
OF THE ORIGINAL
30/11/2015