

THE UNITED REPUBLIC

IN THE DISTRICT COURT OF MANYONI DISTRICT

AT MANYONI

CRIMINAL CASE.NO. 10 OF 2013

REPUBLIC

VS

ACCUSED: CHARLES S/O MASINGA & 18 OTHERS

R U L I N G

The nineteen (19) accused persons are charged with three counts namely; unlawful entry into the game reserve, unlawful mine and collection of said in the game reserve and unlawful destruction of vegetation in the game reserve contrary to sections 15 (1)(2), 20 (2)(4), 18(1)93) and 111 (1) (d) of the Wildlife Conservation Act, No. 5 of 2009.

It is alleged by the prosecution side that the accused persons, jointly and together, on 15th January 2013 at or about 14.00 hours and 15.00 hours at Kizogo game reserve, within Manyoni district in Singida region, did enter into the game reserve by using thirteen (13) motorcycles and two (2) bicycles without a written authority from the director of wildlife which was supposed to be sought and obtained.

Also it is averred that on the same date, place and time mentioned earlier on above, the accused persons jointly and together did mine and collect sand in the game reserve without permit, and that they cut and fell down trees to collect sand in the game reserve without authority from the director of wildlife.

However, when the charge was read over and explained to the accused, they pleaded not guilty and so the prosecution brought three (3) witnesses to prove the case.

During hearing of the prosecution case, pw 1 said on 15/1/2013 they were in Simbangu area for patrol in the game reserve, that they got information from the secret informer that people entered into game reserve with bicycles and motor cycles. According to pw 1, it was impossible to cross over river kizigo with their motor vehicle so they left it outside the game reserve with their two (2) fellow game wardens, they went ahead about seven (7) kilometers where they heard sounds of the motor cycles, made an ambush and arrested the accused persons who had motorcycles and two of them had bicycles and on search, they found the accused with bags (viroba)with

sand and mineral ores and the accused said they mined at Mnunka hill in the game reserve but they had no permit which allowed them so to do.

Also pw 1 added that there are mineral mines at Mafurungu area where there are gravels grinding machines but about 20 km from the place they arrested the accused.

When he was cross examined by the defence counsel, Mr.kidumage, pw 1 said the accused confessed to have mined at Mnunka area in the game reserve and the motor cycles and mineral ores mixed with sand is the evidence that they were arrested in the game reserve, that other people had started mining in the same area, but he admitted that there are mines outside the game reserve in the village.

Apart from that, pw1 went on to say that some of the accused persons had no bags of sand and these were to be charged with only unlawful entry into game reserve, that no certificate of seizure or receipt were issued, no mining instruments were found with the accused persons and that they went to the affected area one week (7 days) after the date of arrest of the accused.

The evidence of pw 2 is that on 15/1/2013 while in patrol, arrested thirteen (13) motor cycles two (2) bicycles, 14 bags (viroba) of sand mixed with stones, the accused had no permit, the twelve (12) motor cycles were admitted in evidence as exhibit PI collectively, the two (2) bicycles were admitted as exhibit PII while the 13 bags (viroba) were admitted as exhibit PIII collectively.

In cross examination, pw 2 said there were no accused's cautioned statements written, that their motor vehicle was left out side the game reserve, that they went to the affected area five (5) months later on in June 2013, and that there were other cases on the same matter.

Besides, PW 3 testified that on 15/1/2013 while in patrol at simbanguru area they saw signs of motorcycle tyres marks that people entered into the gave reserve, they made a trap/ambush and arrested the accused persons where some had bicycles and motor cycles carrying bags but they had no permit.

When cross-examined by the defence counsel, PW 3 said they crossed river Kizigo and hid their motor vehicle in the game reserve for the river was not full of water and refused to have got informed by the secret informer about the accused's entry into the game reserve. Also she added that while in patrol they use to pickup bags (viroba) which other people leave behind when they see them and run away and the same are kept at Manyoni and that she had nothing to prove that the accused were arrested in the game reserve but the exhibit they were found with.

From the prosecution evidence the major issue is whether there is a prime facie case made out against the accused person to hold them to have a case to answer.

It is now well settled, and established principle that the court of law will hold the accused to have a case to answer if after having directed its mind to law applicable and the evidence, is satisfied that the evidence against the accused is so strong enough to warrant conviction if no defence or explanation is offered.

In the case at hand, it was said that the accused persons confessed to have entered into the game reserve, mined and collected sand at Mnunka Hill without permit, however, there was no such evidence to show that they confessed the offences, say, caution statements, therefore there were mere words of mouths of the witnesses and I cannot act upon this piece of evidence.

Also the witnesses said they had nothing to prove that they arrested the accused in the game reserve apart from the exhibits they were found with. But I find that tendering and admitting of motorcycles and bicycles/bags of sand by themselves do not necessarily prove that the accused were found in the game reserve in the absence of evidence to that effect. This is because PW 3 said the bags of sand were picked up when left by other people who ran away and they are all kept in the store, and the prosecution evidence showed that they found the accused with 14 bags of sand, thirteen (13) motor cycles, but at the trial, there were seen only twelve (12) motor cycles and 13 bags of sand when the court visited the place the exhibits were kept, so it casts doubt if the prosecution witnesses told a true story about the accused persons and any doubt must be for the advantage of the accused.

Not only that but also the prosecution witnesses gave inconsistent and contradictory evidence and so reduced the trust worthiness of it. For example, PW 1 and PW 2 said they could not cross over the river Kizigo with their motor vehicle and so they left it outside the game reserve, but PW 3 emphatically said they crossed and hid the same inside the game reserve in the bush, PW 1 said they got information from the secret informer that the accused entered into the game reserve but PW 3 strongly denied it saying they just saw by themselves signs, the motorcycles tyre marks towards the game reserve; other evidence showed that they went to the affected area one week (7 days) later, but the other said they went there five (5) months later in June 2013, therefore this indicates that the witnesses were not telling the truth about the accused persons too and their evidence has no weight to persuade the court to believe their stories.

Also it is said that there are mines outside the game reserve where there are machines grinding stones/gravels, and so in the absence of proof that the accused were mining in the

game reserve it may be inferred that they were from those mines and not from the game reserve.

Finally, it is said that some of the accused persons did not carry bags (viroba) with sands and admittedly, it was that these were not to be charged with unlawful mine and collection of sand in the game reserve, yet in this case, all of the 19 accused persons were charged so, therefore, I find no evidence to implicate the accused persons; they were not found mining, collecting sand and or cutting down trees, and it is clear from the evidence that there had been other people who had started mining the said area and there were some criminal cases filed to that effect, so it required proof that the accused destroyed vegetation in the game reserve by mining and collecting sand therefrom, but there is no such evidence.

Under the circumstances, I find and hold that the prosecution side has failed to make out a case against the accused persons and so they have no case to answer; I dismiss the charge and acquit the accused persons under section 230 of the Criminal Procedure Act, cap. 20, 1985 (R.E. 2002). It is so ordered.

SGD: F. H.KIWONDE
DRM
6/4/2015

9/4/2015

CORAM: F.H.KIWONDE-DRM

PROS- Baltazary

C/C S.Mwikola

ACCUSED: 2nd, 6th, 7th, 11th, 12th, 15th and 18th are absent, the rest are present.

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

That's all.

Mr.Kidumage adv, for the accused.

We are ready for it.

That's all.

COURT: The ruling is delivered in open court in the absence of the 2nd, 6th, 7th, 11th, 12th, 15th and 18th accused persons but in the presence of Mr.Kidumage advocate for the accused and other accused persons and right to appeal is explained.

SGD: F.H.KIWONDE
DRM
9/4/2015

Order: 1. The exhibit PI and PII be returned to the owners.

2. Right to appeal is explained.

SGD: F.H.KIWONDE
DRM
9/4/2015

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 24/4/2015

DISTRICT RESIDENT MAGISTRATE I/C
MANYONI