

**THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT COURT OF KILOSA  
AT  
KILOSA**

**ECONOMY CASE NO. 16/2012  
REPUBLIC  
VRS  
SAID S/O SALEHE MAKWAWA & 1 ANOTHER**

**JUDGEMENT**

The accused person Saidi Salehe Makwawa and Mashaka Saidi Salehe are charged with 4 counts. On the first count both accused persons are charged with the offence of unlawfully possession of Government Trophies c/s 86(1), 2(c) (ii) of the wildlife conservation Act, No.5 of 2009 read together with paragraph 14(d) of the first schedule to and S.57 (e) and 60(f) of the Economic and organized crime control Act (Cap 200 R.E. 2002).

It was alleged that, on 12 November, 2012 at Kigenge, Mbuyuni village within Kilosa District in Morogoro Region both accused were found in possession of Government Trophies to wit Impalement, valued Tshs.1,227,330/= the property of the Government of United Republic of Tanzania without permit or licence.

On the 2<sup>nd</sup> Count, both accused persons are charged with the offence of unlawfully Hunting in a Natural Park c/s 23(1), (2)(d) of the National Parks Act, Cap 282 R.E. 2002 read together with paragraph 14 (ii) of the first schedule to and S.57(e) and 60(2) of the Economic and organized crime Act, Cap 20 R.E. 2002.

It was alleged that, on the same material date at Mawale area within Mikumi National Park in Kilosa District and Morogoro Region both accused persons did hunt two Impala without a licence or permit.

On the third count, 1<sup>st</sup> accused person are charged with the offence of unlawfully possession of fire Arm c/s 4(1), 34(1), (2) of the Arms and Ammunition Act Cap 223 R.E. 2002J.

It was alleged that, on the material date at Kigenge Mbuyuni village within Kilosa District in Morogoro Region, the accused person was found in possession of a fire Arm make, short gun greener No.23737 without permit or licence.

On the fourth count, the 2<sup>nd</sup> accused is charged with unlawfully Transfer of fire Arm, c/s 24 and 34(1), (2) of the Arms and Ammunition Act (Cap 223 R.E. 2002).

It was alleged that on the material date at Kigenge Mbuyuni within Kilosa District in Morogoro Region the 2<sup>nd</sup> accused person did unlawfully transfer his fire arm make short gun greener No.23737 to one Saidi Salehe Makwawa the 2<sup>nd</sup> accused, without authorization.

The charge was read and Explained fully to the accused persons both, and the both accused persons pleaded not guilty, then the prosecution had a duly to call its witnesses.

PW1 who is Amos Hillary told this court that, He lives at Rudewa Mbuyuni, PW1 said, on 12/11/2012 while he was at his office he was phoned by OCS of Kimamba police post to go at Kigenge since there is a person who was found with meat unlawfully. PW1 said he went to the house of the 1<sup>st</sup> accused, there he found PC Hassan and other people.

PW1 said, when he reached there he was shown the meat of "Nyamapori" which the 1<sup>st</sup> accused was found with were kept on the bucket and they were suspected the animal was shot by the machine gun. PW1 said, they wanted to conduct a search, since he is the village chairman he was called as a witness.

PW1 said, the search was conducted on the 2<sup>nd</sup> room to the room of the 1<sup>st</sup> accused, they found a machine gun under the bed. When the 1<sup>st</sup> accused was asked, he said the gun is belongs to one person who lives at Kimamba.

PW1 added, the 1<sup>st</sup> accused said the owner of the machine gun has a farm Kigenge, PW1 concluded, he did see the machine gun.

On Re-Examination, PW2 said, the 1<sup>st</sup> accused was the one cutting the meat. It's an offence to have government trophies to your house.

PW3, who is E 6455 D /Crpl Elia, told the court that, he was the one who was Investigation this case. PW3 said, he took the caution statement of the accused and the witnesses that the meat was ordered to be destroyed by the magistrate. PW3 also said, the meat was identified to be of Impala animal who valued TShs.1,227,330/=.

PW3 said, the 1<sup>st</sup> accused admitted to be found with meat and said the weapon is of the 2<sup>nd</sup> accused. Also the 2<sup>nd</sup> accused admitted there short gun to be his property, that he kept it to the 1<sup>st</sup> accused whenever he go at Kigenge.

The prosecution then prayed to produce the caution statement of the 1<sup>st</sup> and 2<sup>nd</sup> accused as well as Inventory, which was delivered by this court and marked as PE3 caution statement of the 1<sup>st</sup> accused, PE4 of the 2<sup>nd</sup> accused and Inventory was marked PE5.

On cross Examination between the 1<sup>st</sup> accused and PW3, PW3 said, the 1<sup>st</sup> accused said the animal was killed by the 2<sup>nd</sup> accused. The one who owns the gun is supposed to have permit. It's an offence to kill animal without permit, both of them are offenders.

There was no cross Examination between PW3 and the 2<sup>nd</sup> accused. On Re-Examination, PW3 said, no permit produced by the accused persons. It's prohibited to give the weapon to other person that the weapon is supposed to be used to the activities you prayed for. That the 2<sup>nd</sup> accused said he prayed for it to protect him and the activities of the farm.

PW3 was then recalled by prosecution to produce a statement of the witness Selemani Rumambe who was nowhere to be found. The court delivered it and marked it as PE6.

On cross Examination with the 1<sup>st</sup> accused PW3 said he was the one took the statement to witness and he signed it. No cross Examination with the 2<sup>nd</sup> accused. On Re-Examination, he said he was a witness.

PW4 who is John Mtimbanyongo told this court that, he was the one identified the meat of impala also made evaluation of the value of Impala since he is the officer of Natural Resources stationed at Kilosa District, on 13/11/2012.

The prosecution was then prayed to produce the certificate of evaluation of the got trophies which this court delivered it and marked it PE7.

On cross Examination, PW4 said, he didn't measure the Kgs. That it's not easy to identify which weapon used to kill the animal.

On Re-Examination, PW4 said, he knows the animal was impala. His responsibility is to list and prepare the certificate.

The prosecution then prayed to close the prosecution case, on the Ruling, the accused person both of them were found with the case to answer as S-231 of CPA. They were required to prepare their defence.

DW1 told this court that; on 11/11/2012, the 2<sup>nd</sup> accused went to his house and prayed for his escort to go to the farm since his crops are basing eaten by wild animal. DW1 said, the 2<sup>nd</sup> accused had a short gun greener, DW1 contended they went to the farm and saw two Impala and the 2<sup>nd</sup> accused shot them. They removed the skin and left the legs and head as well as the skin to the farm and returned back to the house of DW1. DW1 said, he gave the 2<sup>nd</sup> accused one room to that he can sleep.

DW1 said, on the morning, they wake up and cut the meat into pieces both of them. The 2<sup>nd</sup> accused returned to the farm and left his short gun to his house.

DW1 said, the policemen come and he told them, the meat is of Impala and the one who shot them is DW2. DW1 said, the policemen searched his house and they found the short gun. They arrested him together with the meat and the short gun. DW1 said the caution statement was taken to him.

On cross Examination, DW1 said he has no permit. He thought DW2 has permit but he did not show him the permit, he knew the short gun was left by DW2 to his

room. DW1 said, he did not know, it's an offence to possess government trophies. That he knows to help someone to commit an offence is an offence.

DW2 who is Mashaka Saidi told this court that, on 11/11/2012, he left with the accused (1<sup>st</sup> accused, DW1) and went with him to his farm. DW2 said, two impala came and he shot them by using one bucket which killed two Impala and returned to the house of DW1. DW2 said, he told DW1 to cut the meat and sell them. Also the removing meat will distribute to themselves.

DW2 said, on the next morning, he went back to the farm when he returned, he heard that the 1<sup>st</sup> accused was arrested. He was then went to the police to make follow up of his short gun that is where he was arrested and connected with this case.

DW2 concluded by saying he killed Impala inside of his farm.

On cross-Examination between the DW1 and DW2, DW2 said, he was the one shot the animal and the short gun was his property that he left the short gun to the room behind the bed.

On cross-Examination between the Republic and DW2, DW2 said, he had one bullet. That he did not hunt them, he went to the farm to protect his crops. That he knows Game Reserve Officer who lives at Mjimpya. He is the one responsible to take out the animals from the farms of the Individuals.

That he did not follow the Impala to the National Park but they went to his farms. That DW1 his host on that village so whenever he go to Rudewa, he went with him to the farm. That he knows to kill animal is an offence but he did not go to hunt the animal but the animal entered to his farm. DW1 said that, he didn't report anywhere. That he did not left the short gun outside but in the room behind the bed.

Then the Defence case was closed.

Having seen the evidence of both parties this court raised some issues; there are:-

- (i) Whether both accused persons were found in possession of government trophies unlawfully.
- (ii) Whether both accused persons were found hunting in a National park unlawfully.
- (iii) Whether the 1<sup>st</sup> accused was possessing Fire Arm unlawfully.
- (iv) Whether the 2<sup>nd</sup> accused transferred Fire Arm unlawfully.

Starting with the first issue, there is no doubt that, the 1<sup>st</sup> accused was found by the meat of Impala which was based to the killing of two Impala. This was proven by the prosecution witnesses as well as the defence witness. Also it's clear that the 1<sup>st</sup> accused mentioned the 2<sup>nd</sup> accused to be the one who kill those animals by his short gun. If that is not enough, the 2<sup>nd</sup> accused (DW2) also proven to this court that, it was true, he was the one shot those Impala. This was also supported by the caution statements of both accused persons which the prosecution produced to this court, see PE3 and PE4. On which the accused admitted to be found with the meat of Impala. Also the inventory sees PE5 supports that. The question here ask myself was did that meat of Impala or killing the 2 Impala was unlawfully?

As a matter of fact, if you see the evidence adduced by DW1 and DW2 you will see that, both accused insisted and made this court to behave that, those two Impala were killed or shot to the farm of DW2. It's proven that it was DW2 who shot and killed the two animals. According to him, he found them eating and destroy his crops.

It's evident that it's not legal to kill animal i.e. wild animal of the TANAPA. Only because you found the animal is eating your crops. Even DW2 knows this, hence in his evidence he said he was required to report to the Game Reserve Officer who is living at Mjimpya. So he knew what he is doing is not proper but in-steady he choose to shot them.

If you see S.57 (1) of the wildlife conservation Act. It says:- Any person shall not hunt or capture any animal on land occupied under a right of occupancy or

decorative right of occupancy unless that person he is the holder of a licence, permit or written authority.....”

S.57(2) says “A person capture or hunt an animal on the village land shall present certified copies of his permit or licence to the village council.

If you see the law you will agree with no that DW2 had no permit or licence which allows him to kill the animal. This is due to the fact, if he had any, he would produced to the police, if that is not enough, if he did not given enough chance to produce it, then he had all the time to produce to this court. But he did not show to the court his permit or licence, which means he had none.

As a matter of fact, if you see the evidence of DW1 you will realize that, both accused persons knew it's an offence to kill the two Impala that is after killing them they left skin, legs and head to the farm. Since those legs, skin and head if they would carry them, it would be easy for other people to identify easily the Impala. So they were trying to run from such liability.

There is no doubt that the killing of the two Impala which was done by DW2 was unlawfully.

Coming to DW1 lives at Rudewa Mbuyuni. On which the area is near to TANAPA of Mikumi in one way or another, he knows that killing of farcified animals which are found or kept in the National Game Reserve Impala being among of them is an offence. As he said on his evidence, that he knew DW2 has “permit” which means he knows permit is required in order to kill an animal as Impala. He did not ask DW2 if he had permit or licence never the less did he reported to the authority concerned about the killing of the two Impala instead, he cooperated by DW2 to skin off the Impala as well as to cut the legs and head and left them to the farm. To cut the meat into pieces and to sell to the villagers this is also an offence; hence he aids and abite to DW2 mistakes, which means they were in this together and to was also found with the Impala meat unlawfully.

Thus based on this issue, both accused person are liable for basing in possession of the government trophy unlawfully.

Coming to the 2<sup>nd</sup> issue, there is no any evidence which produced by the prosecution witnesses, which shows that the accused persons both were found hunting in a National Park unlawfully. The evidence of prosecution witnesses are weak to prove that; none of the witnesses the prosecution brought to this court and testified to find DW1 and DW2 to the National Park. But the evidence of DW1 and DW2 that they killed the animal to the farm was strong and this court to be having them, since no other evidence said otherwise.

Thus this court is on the view that, both accused person were not hunting to the National Park since No witness of the prosecution proved that.

On the 3<sup>rd</sup> issue, it's evident that, the short gun greener was found to the house of DW1. On the room the gun was found, is the room which DW2 slept according to his evidence. Also there is no doubt that the short gun belongs to him. It's clear that the short gun was found under the bed (under the mattresses) which was kept there. DW2 told the court, he was the one who kept that gun there for safety when he went to the farm.

Basing to the reasons above, there is no doubts at all that, DW1 was not possessing Fire Arm since the owner of it agrees himself (DW2) to be the one keep it there.

Coming on the fourth issue, if you see the evidence adduced by DW2, it's clear that he was the one left the fire arm to the room of the accused (DW1) and he kept it under the bed, on which the police also adduced their evidence that they found them under the bed. DW2 said he kept the gun under the bed hence its safe there. In one way or another there is no any strong evidence produced by the prosecution witnesses which shows that the gun was transferred to DW1.

Basing to the evidence a head, there is no doubt that the short gun greener was not transferred at all to DW1.

As a matter of fact, the prosecution failed to prove to this court based on the 2<sup>nd</sup> counts, 3<sup>rd</sup> count and 4<sup>th</sup> count, they only succeeded to prove that, the accused persons did found with the government trophy made two Impala unlawfully which is the first count.

Basing to the 1<sup>st</sup> count which the prosecution succeeded to prove before this court, they used S.86 (1), 2(c) (ii) of the wildlife conservation Act which read together.

Paragraph 14 (d) of the 1<sup>st</sup> schedule to S.57 (1) and 60 (2) of the Economic and Organized crime control Act. S.56 (1) explains that A person shall not be in possession of or buy, sell ..... Government trophy (2) (c) A person contravenes the provision of this section commits an offence and shall be liable on conviction.

But if you see S.57 (5) of the wildlife conservation Act explains that, any person who (a) a not being a person authorized under subsection (4), hunts or captures any animal on private land without the consent of the owner ....shall be liable to a fine equal twice to the value of such animal or imprisonment to the term not less than six months but not exceeding two years or both.

As a matter of fact, the accused persons DW1 and DW2 hunted the animal on the private land and it was the land of DW2, as a matter of fact, the offence they committed only on the 1<sup>st</sup> count, is supported by this provision therefore the court will consider S.57 (5) of the wildlife conservation Act unsteady of the section provided on the charge on the first count.

Therefore this court is hereby found both accused person guilty to the first count and they will both be convicted upon it. Also this court found both accused person not guilty to the 2<sup>nd</sup> count, 3<sup>rd</sup> count and 4<sup>th</sup> count; since the prosecution failed to prove beyond reasonable doubt on these three counts.

It is ordered.

Sgd. J.J. Mkhosi-RM  
26/11/2014

Date: 26/11/2014

Coram: Hon. J.J. Mkhosi-RM

Pros: Insp. G. Dalali

Accused: Present

Court Clerck: Happy.

Pros: The case is coming for Judgement, I am ready for it.

Previous record: I pray a stiff sentence to the accused persons so that to be a lesson to people like them also to them. I have no previous record to both accused persons.

I also pray that, the short gun greener 23737 to be forfeited by the government based on S.111 (1) (b)... hence the short gun was used to shot and kill the animal which is the government trophies (see cited section on wildlife conservation Acts).

#### **Mitigation**

1<sup>st</sup> accused: I pray the court to reduce the sentence; hence I have a wife who depends on me a child and a mother.

2<sup>nd</sup> accused: I also pray a leniency sentence, hence my son is boy son, and also my father is a blind person. I have also 60Yrs.

#### **Sentence**

This court has considered that, both accused persons are the first offender also their mitigation, but that does not make this court not to punish them, this court is hereby punish them to pay a fine of Tshs.2,454,660/= per each failure to that, they will go to jail for two years per each (each one will serve two years).

Order Accordingly.

Sgd. J.J. Mkhosi-RM

26/11/2014

Order: The short gun greener to be forfeited by the government.

Sgd. J.J. Mkhosi-RM

26/11/2014

Court: Right of Appeal has explained.

Sgd. J.J. Mkhoi-RM

26/11/2014

Court: The Judgement is delivered and pronounced in a open court in the presence of both parties.

Sgd. J.J. Mkhoi-RM

26/11/2014

HERE BY CERTIFY THIS TO THE  
TRUE COPY OF THE ORIGINAL

  
26/11/2014

RESIDENT / DISTRICT MAGISTRATE  
KILOSA