

THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT COURT OF MONDULI DISTRICT
AT MONDULI

ECONOMIC CASE NO. 2 OF 2013

THE REPUBLICPUBLIC PROSECUTOR

VERSUS

ACCUSED:..... RICHARD FAUSTINE RICH & OTHERS.

BEFORE: M. P. MRIO (SRM).

J U D G M E N T.

The accused persons named Richard s/o Faustine Rich, Jumanne s/o Athuman. Michael s/o John, Kelvin s/o Thomas and Wenslaus s/o Benard stand charged with one offence to wit unlawful possession of the government trophy c/s 86 (1) and 2 (b) of the Wildlife conservation Act, Act No. 5 of 2009 read together with Section 14 (d) of the 1st schedule to and Section 60 (2) of the Economic and Organized Crime Control Act, [Cap 200 R.E 2002].

It was alleged that the above mentioned accused were charged on 31/01/2013 at Manyara Ranch area, in Monduli District, Arusha region were found in unlawful possession of two Zebra meat(sic) valued at usd 2400 the property of Tanzania government. When the consent was ready the charge was read over to the accused persons who pleaded not guilty to it. The accused persons were not represented. Preliminary hearing was conducted and nothing much was agreed thereto except accused's personal particulars. Prosecution side called up five witnesses to prove the charge.

The first prosecution witness was AMOS s/o MPANDA who posed as PW1. PW1 testified under oath as to the following; that it was on 31/01/2013 around 16.45 hours when he got a call from the information that at Oltukai there were people who were hunting. They went to the scene whereby far away they saw five people who were cutting some meat. They had a motor bicycle, two of them ran away by foot when they saw them while three of them took the motor bicycle

and stated to ran away. They divided themselves into two groups, some of them chased those who were on foot while the rest chased those with motorcycles by using a car. They fired a gun on air and managed to arrest those who were at the motorcycle. They went back to the scene where they found out that their fellow had already arrested the two accused's. They saw two Zebra which were killed. They arrested them to Mto wa Mbu Police. He could not recall those people whom it was the 1st and the 5th accused's. He noted that it was a Zebra meat as it had a skin and a head.

When PW1 was cross – examined by the 1st accused person he told the Court that the accused's had two bush knives and one knife. He did not know the kind of gun used for hunting. They told him that they used a motorcycle to carry the said Zebra. When PW1 was cross – examined by the 2nd accused he told the Court that the said meat and the motorcycle were taken to the Police. He was not there when the inventory was made. When PW1 was cross –examined by the 3rd accused he told that the Court they arrested them at the residential area on 32/01/2013 and there was a way for people to pass through.

The 2nd prosecution witness was OSHUMU s/o MWASUMU who posed as PW2. PW2 affirmed and stated as follows it was on 31/01/2013 when they got a call form the informer when he was at Kwesi area to the effect that there were some people who were hunting. They went to Oltukai area where they saw two bicycles and five people when they reached nearby those people, two of them ran away while three of them took a bicycle. He got down form the car and ran after two person who were on foot. They arrested them. They saw two heads of Zebra and it was around 16.00 hours. He could not recall those people whom he arrested.

When PW2 was cross – examined by the 1st accused he told the Court that Zebra can be killed by using a motor bicycle. They ran after it and when it becomes tired then they cut it using a bush knife. It was impossible for him to do so as Zebra was a dangerous animal. When PW2 was cross – examined by the 2nd accused he told Court that it was impossible to distinguish cow meat and Zebra meat by they saw skin and a head of Zebra. He cannot manage to kill Zebra using a motor bicycle. When PW2 was cross – examined by the 3rd accused he told the Court that they arrested them around 18.00 almost dark times. When PW2 was cross – examined by the 4th accused he told the Court that he arrested them at the area where pastoralist feed their animals and it was nearby boma areas.

The 3rd prosecution witness was SANGOYA s/o MAHENGA who posed as PW3. PW3 testified under affirmation as to the following; that on 31/01/2013

around 16.45 hours they got a call form information that there were people hunting at Oltukai area, he was at Manyara headquarters at that time. They went to Oltukai around 17.00 hours when they saw two Zebra already killed. They saw people who were running by foot while three people were using a motor bicycle. He got down from the car and he ran after the two people. Their fellow in the car ran after the three people. They managed to arrest the 2nd and the 4th accused persons. They arrested them around 18.00 hours. He could not recall the clothes they were wearing.

When PW3 was cross – examined by the 1st accused he told the Court that they were using a motorcycle to ran after Zebra and cut it by a bush knife. It was possible to do so as a lot of people were doing so. They had a bush knife if he could be given a bush knife he can do the same.

When PW3 was cross – examined by the 2nd accused he told the Court that Zebra meat had a yellow layer of fat while cow meat has white layer. When PW3 was cross – examined by the 3rd accused he told the Court that they found him hunting and Zebra were already killed. When PW3 was cross – examined by the 4th accused he told the Court that they arrested them in the residential area. When PW3 was cross – examined by the 5th accused told the Court that he does not know how to ride a motorcycle.

The 4th witness was NATASHOO s/o MSUYA who posed as PW4. PW4 testified under oath as to the following; that he was a game officer and he was the one who evaluated the Zebra meat so killed. He tendered evaluation report which was received as exhibit PI.

When PW4 was cross –examined by the 1st accused he told the Court that the file (Police File) was taken to it and he saw inventory of which he used it to writes evaluation report. He did not see the said Zebra meat.

The last witness was F2256/DCPL YASSIN who posed as PW5. PW5 affirmed and state as follows; that he was an investigator of this case. On 01/02/2013 he got a call from Officer Commanding Station Mto wa Mbu Police who signed him to investigate a certain file. He saw two Zebra at Police. He took the two Zebra to Mto wa Mbu Primary Court for inventory where it was ordered for the Zebra meat to be destroyed. He tendered inventory form which was received as exhibit PII.

When PW5 was cross – examined by the 1st accused person he told the Court that he became an investigator since 2003. He investigated according to the law. When PW5 was cross – examined by the 2nd accused he told the Court he was not an expert on the trophies but he saw Zebra's skin that was why he said it was Zebra. When PW5 was cross – examined by the 3rd accused he told the Court that he went to the scene of the crime which was Oltukai are which was inside National Park area. There were no residential houses. He did not go with them at the Primary Court to fill inventory. When PW5 was cross – examined by the 4th accused he told the Court that he was not sure that the accused person killed Zebra as he was not at the scene of the crime.

After PW5's testimony prosecution side marked their case closed and a ruling was made out that a *prima facie* case has been established. The accused were given their right of defence. They defended themselves without calling any other witness. Their defences were the same in wording. I see no reasoning of repeating the same wording.

The defence witnesses named RICHARD s/o FAUSTINE, JUMA s/o ATHUMAN, MAIKO s/o JOHN, KELVIN s/o THOMAS and WENSLAUS s/o BERNARD hereinafter referred as DW1, DW2, DW3, DW4, and DW5 respectively defended themselves under oath as to the following; that it was on 31/10/2013 when they were heading to the Masai Village to search for casual works. On their way they met Park Ranger car whereby Park Rangers who were in that car asked them if they met some persons. They responded no. park Rangers asked them as why were they responding no? While those people passed over there. They started beating them and forcing them to enter to their car. They were afraid of being killed so they obeyed. When they entered to the said car they were ordered to sleep by stomach. They were taken to a certain place unknown to them where they found other Park Rangers. They were ordered to get down form the car and they obeyed. When they got down they were told to take some parties of the Zebra meat and a photo was made. They were ordered to take the said meat to the car. They entered to the car and taken to unknown place where they found some people who started beating them till night time. They were taken to Mto wa Mbu Police who took them to the hospital where they got treatment. After some days they were taken to the Court. They denied to have been arrested with Zebra meat. That was the end of defence case.

After summary of the evidence of both sides it is the duty of the Court to make its findings by applying the evidence so adduced and the law applicable to the offences.

The issue is whether the accused's were found in unlawful possession of Zebra meat.

It is a cardinal principle of criminal law that prosecution side owes a duty of proving the charge beyond reasonable doubt. From the charge it was alleged that the five accused persons were charged jointly with unlawful possession of government trophy to wit two Zebra meat valued at 2400 usd. They were arrested at Manyara Ranch area on 31/01/2013 PW1 one AMOSI s/o Mpanda who was a Park Rangers testified to have arrested the accused's at Oltukai area after a call from an informer. The accused's had a motorcycle and when they saw them two of them ran by foot while three to them ran using motorcycle. He ran after those who were by foot and managed to arrest them back to the place where Zebra were killed. He claimed not to recall those people who were arrested but he thought it was the 1st and 5th accused.

According to PW1 they arrested the accused person ready handed at Oltukai area. He was among of the Park Rangers who were arresting officers but when it came to the issues of identification to the persons so arrested to confirm that they were the same persons they arrested PW1 was not sure. He said that he could not recall those persons so arrested. The evidence of saying he could not recall those persons by maybe it was the 1st and 5th accused raised doubt. His evidence cannot be relied on when it came to the issues of identification. He claimed that the area of which the accused's were arrested was a residential area. This was a response when he was cross – examined by the 4th accused. He also noted the said meat to be of Zebra as he noted a skin and a heads. PW1 could not tell the Court on how did he identify that it was two Zebra which were killed.

PW2 one Oshumu s/o Mwasumi who was a Game Scout supported evidence of PW1 to the effect that he was among of them and he ran after the two accused's who were running by foot and managed to arrest them back to the area where Zebra were. His evidence had a slight difference with PW1 in a sense that PW1 told the Court that the accused's had a motorcycle but PW2 said it was a bicycle. It was the same incident but each one saw a thing of his own. PW2 told the Court that he could not recall those persons whom they arrested. Identification was very important in a sense that as the Court was not at the scene of the crime it has to be sure that the person arrested were the same as those who were in Court. The witness could not identify the person so arrested and that he could not tell the Court as the person so arrested were the same as those who were in Court.

The 3rd prosecution on the other hand corroborated PW1, PW2's testimony with minor difference on the persons so arrested while PW1 told the Court that the persons who ran by foot were the 1st and 5th accused person PW3 on the other hand told the Court that it was the 2nd and the 4th accused person who ran by foot. The variation of evidence from the witnesses who participated in the arrest but yet they were not sure as to whom they arrest when it came to joint testimony. As to the testimony of PW4 one Natashoo Msuya I had no problem with his testimony as his duty was to evaluate the trophies before him. He never participated in the arrest so he had no idea as who were arrested with the trophies which he evaluated.

PW5 one F 2256 Detective CPL Yassin was an investigator who investigated the said case. His duty was to file inventory only as it was evidenced in his testimony. Since the said animals were not brought before the Court as they were possible then inventory is as good as the trophies themselves. I took it with weight. PW5 as an investigator could not tell the Court as apart from filling an inventory what else did he do. On cross – examination he agreed to have visited the scene of the crime. He told the Court that the scene of the crime was inside the National Park area called Oltukai while the rest of the witnesses told the Court that the area in which the accused's were arrested was a residential area. PW5 never drew a sketch map over the said area. If at all the accused's were arrested and the investigator visited the scene of the crime then why varying in their testimony as to the place in which the accused's were arrested? The accused's made a general denial that they were never arrested with Zebra meat. They explained on how there were arrested and taken to the Police it is not necessarily to believe their defence but what matters first was the testimony from prosecution side as the law requires them to prove the charge beyond reasonable doubt.

As I have said earlier, it was evidence that the accused's were arrested ready handed with Zebra meat. They tried to ran away but they were arrested. Prosecution witnesses PW1, PW2, and PW3 testified to have not identified them. Identification was so important for the Court to note that the persons so arrested were the same as the persons in Court. The variation also form PW1's testimony and PW3's testimony as to the person they ran after and arrested and no one told the Court that the persons who ran by motorcycle were identified and they were the one in Court. Indeed prosecution evidence had a lot of doubts to be relied upon and in that the benefit of doubts goes to the accused's, as the issues was proved in negative way. It is my considered view that prosecution side failed to prove the charge beyond reasonable doubt. I hereby find the accused persons not guilty to the

offence charged. I hereby dismiss the charge against them and acquit them forthwith. It is ordered so.

Sgd: M. P Mrio – SRM
26/06/2014.



Certified true copy of the
judgment/order/document.


Magistrate

12/2/2015