

THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT COURT OF MONDULI AT MONDULI
DISTRICT.

ECONOMIC CAUSE NO. 8 OF 2009

THE REPUBLIC VERSUS: _____ ALPHONCE s/o SOGORE
2. JOHN s/o LEMAYANI

Before Hon. M.P.Mrio – R/Magistrate;

J U D G E M E N T.

The accused persons named ALPHONCE s/o SOGORE and JOHN s/o LEMAYANI are jointly charged with one offence to wit unlawfully possession of government trophy c/s 14(d) of the 1st schedule to and section 60(2) of the Economic and Organized Crimes Control Act, Cap.No.200 R.E. 2002 read together Section 70(1) and (2)(b) of the Wildlife conservation Act Cap.283 of the R.E.2002.

It was alleged that the accuseds are jointly and together charged on 15/2/2009 at about 16.00 hours, Lekeni area Selela village Monduli District in Arusha region were found with unlawfully possession of fresh wildbeest meat valued at 252 USD the property of Tanzania Government. The accused persons pleaded not guilty to the charge. Preliminary hearing was conducted and nothing much was agreed upon except accused's personal particulars.

The following were the prosecution witnesses who were called to prove prosecution case. The first prosecution witness was TABU d/o KITOJO who posed as PWI. PWI testified under oath as to the following; it was on 15/2/2009 when she was at Lekeni area while with Mwampondele and Magangda (who died after the incident), Fabian and Gregory they saw two people who were skinning wildbeest. They interrogated them as if they had permit but they said they didn't have. Those people had two bicycles, two bush knives, two wires and two knives and the bicycle rubber. They arrested them to Mtowambu police

eye witness

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station. They called a game officer to confirm the kind of meat which the accuseds were arrested with. Since the wildbeest had a skin it was easy for her to note the type of animal the accuseds killed. She identified the two accuseds in the dock as the the persons arrested with a wildbeest.

When PW1 was cross examined by the 1st accused person she told the court that she arrested while skinning wildbeest.

When PW1 was cross examined by the 2nd accused she told the Court that they had two bush knives, two knives and the bicycles were behind them.

The 2nd prosecution witness was GREGORY ALPHONCE who posed as PW2. PW2 testified under oath as to the following; It was on 15/2/2009 around 16.00 hours when they were at the inspection at Leken area with his fellow who were Mwampondele, Fabian Rwechungura and Tabu Kitojo. They arrested two people who were skinning wildbest. Those people had two knives, two bush knives, two bicycles and two wires. They took them to Mtowambu police and the meat was taken to the Primary Court for making inventory. They called a game officer to confirm the kind of animal killed. From his experience of work he noted that the said animal was trapped by those wires as they saw the wire at the leg of the animal. He pointed a finger to the accuseds in the dock as the persons they arrested.

When PW2 was cross examined by the 1st accused he told the court that they found him skinning the wilbeest and the animal had a wire at its leg. Since the meat perishable they made inventory.

When the 2nd prosecution was cross exasmined by the 2nd accused he told the Court that they had two bicycles.

The 3rd prosecution witness was Sgt. ABNIEL MWAMPONDELE who posed as PW3. PW3 testified under oath as to the following; That it was on 15/2/2009 around 16.00 hours when he was at Leken area Selela he was with Fabian Rwechungura. They had a binocular and they used it, they saw two people at the National Park skinning an animal. They went to them where they saw them skinning wildbeest. The said Wildbeest had a wire in its leg. The accuseds had two bush knives, two

knives, two bicycles. The accuseds had no permit to enter to the park and hunt animals. He pointed a finger to the accuseds who were in the dock as the person who they arrested while skinning the wildbeest. They went to the Primary Court and prepare an inventory. He tendered the said inventory and it was admitted as exhibit P.I. He tendered a report of game officer and it was received as exhibit P.II. He tendered two bush knives which were received as exhibit P.III. He tendered a trap wire and it was received as exhibit P.IV. He tendered two bicycles which were received as exhibit P.V. collectively.

When PW3 was cross examined by the 1st accused person he told the Court that the Magistrate saw the meat and made order since it was perishable and that was why she signed an inventory form.

When PW3 was cross examined by the 2nd accused he told the Court that he saw him clearly. They saw them by binocular and followed them arresting the ready handed. They took the meat to the Primary Court Magistrate to make an inventory and they arrested them in a park area while skinning a wildbeest.

The 4th prosecution witness was FABIAN s/o RWECHUNGURA who posed as PW4. PW4 testified under oath as to the following; That it was on 15/2/2009 around 16.00 hours when they were patrolling at the National Park Leken area while with his fellow. They saw two people at the National Park Area while skinning wildbeest. They arrested them and they noted that the wildbeest was trapped by a wire. They arrested the accuseds with two bush knives, one trape wire, two bicycles and a knife. The accuseds had no permit to enter and hunt to the National Park.

When PW4 was cross examined by the 1st accused he told the Court that they took the said meat to the Court for inventory. They had no camera but they had binoculars. They arrested them with a wildbeest at the Park area and they were busy skinning it.

When PW4 was cross examined by the 2nd accused he told the Court that they arrested them with bicycles and he saw them clearly when they were arresting them.

After the testimony of prosecution witness I made a ruling that a *prima facie* case has been established. The accuseds were given an opportunity to defend themselves.

The first defence witness was ALPHONCE s/o SOGORE who posed as DWI.

DWI testified under oath as to the following; That it was on 15/2/2009 around 17.45 hours when he was in the village roaming around, he reached to a certain place where he saw a car parked and he saw security man of Tanapa; they asked him as to where did he sell the meat, he told them at Mkinga's place. They started to slap him and they seemed to be drunk. They arrested him to Mtowambu police. He found a police at the counter who asked him on his personal particulars and took him to the lockup. Later he wrote his statement. They were taken to the court. Prosecution witness named Gregory Alphonse and Tabu Kitojo told the Court that they found them skinning the wildbeest but they failed to tender the said skin as exhibit. Mwampondele came with unknown bicycle and a bush knives.

When DWI was cross examined by his fellow accused he said that he did not know him. When DWI was cross examined by the public prosecutor he told the Court that he told the Court that he never gave his statement to police but he was not taken to the police as he stole chicken. He never ate Zebra meat. He was arrested at his village.

When DWI was examined by the Court he told the Court that he was arrested at Majengo area Mtowambu. It was a place whereby no one was there.

The 2nd defence witness was JOHN s/o LEMAYANI who posed as DW2. DW2 testified under oath as to the following; that it was on 15/2/2009 when he was at Majengo Mtowambu with a bicycle on the road. He saw a car, the people from it stopped him asking him the whereabouts of HAMISI and RAJABU. They arrested him to police and at the police he was joined to his fellow accused who was not known to him. He gave his statement and he was told that his offence was unlawfully possession of a government trophy. On the said date he was not at Leken area. They took his bicycle monte sport which have no chair PC 92100 which he was cycling on that date. They failed to prove

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In the
evidence

that he was the owner of the bicycles brought in Court. He denied his offence and he said that Section 164 Tanzania Evidence Act and 161 I C 1985 R.E. 2002 that the statement of the witness should not differ from the evidence tendered. H

When DW2 was cross examined by his fellow accused he told the Court that he did not know him.

When DW2 was cross examined by the public prosecutor he told the Court that he was born at Majengo area Mtowambu and his fellow was coming from the same area but he did not know him. He had no conflict with prosecution witnesses. He was arrested 2.00 from home. From Leken area to his home was far away.

After the summary of evidence it is the duty of the court to make its findings by applying the law concerning the offence and the evidence so adduced. It is important to point out that it is not in dispute that the accused persons were arrested on 15/2/2009 around 16.00 hours. It is also important to take note that it is a cardinal principle of criminal law that prosecution side owes a duty of proving the case beyond reasonable doubt. ✓ pes.

The only issue is whether the accused jointly were found ~~with~~ ⁱⁿ unlawfully possession of government trophy to wit wildbeest.

According to the evidence of PW1 one TABU d/o KITOJO on 15/2/2009 she was at Leken area with her fellow when they saw the accused skinning wildbeest.

The accuseds had two bicycles, two trapping wires a bicycle rubber. They called a game officer to identify the type of animal and he confirmed to be wildbeest. PW1's testimony was very straight forward as a person who saw the accused at the National park area skinning the wildbeest. They had no permit to the effect. As far as the law no person is allowed to enter and hunt animals to the National Park. Their act of entering to the Park without a permit shows that they had evil intentions. As if a person wishes to watch animals he/she must obtain consent. Their act of skinning a wildbeest shows that they killed the said animal. I took her evidence of PW2 on the other hand supported the evidence of PW1 in a sense that on 15/2/2009 around 16.00 hours at

Lekeni area they arrested the accused while skinning wildbeest. They saw a trapping wire in the leg of the wildbeest which shows that they hunted a wildbeest by a trap wire. Infact the evidence supported clearly that the accuseds were all found in unlawfully possession of wildbeest while skinning and the wire they used to trap it. I took his evidence clearly with weight as I have analyzed in PWI's testimony. ✓

The 3rd prosecution witness one ABNIEL MWAMPONDELE (PW3) who corroborated the evidence of PWI and PW2 as to the effect on 15/2/2009 around 16.00 hours they arrested the accused with wildbeest while skinning wildbeest. He tendered exhibits P.I. – P.IV to prove what has been said. Exhibit P.I. shows that the game officer confirmed the animal to be wildbeest and its value was 210 USD and exhibit P.I. shows inventory which was confirmed the meat to be of wildbeest and the Magistrate who signed it ordered it to be disposed off. Indeed I also saw bush knives and the knives which were alleged to be used skinning the animal and the bicycle they had as their means of transport they used to enter in the National Park.

The evidence was direct that PW3 saw the accused skinning the wildbeest. I took it with weight.

The 4th witness one FABIAN RWECHUNGURA supported the same evidence as it was adduced by PWI, PW2, PW3.

From prosecution evidence the evidence so adduced is so clear that the accuseds were jointly arrested in unlawful possession of wildbeest while skinning it. The equipment used for skinning like bush knives, knives were brought to confirm the same and taking into account that they are not allowed to enter and enter to the National Park. Their presence in the National Park area without a permit by itself was an offence, so I took prosecution evidence with weight as was proved beyond reasonable doubt.

In their defence DWI one ALPHONCE SOGORE stated that on 15/2/2009 around 17.45 he was just in the village reaming around where TANAPA security men stopped him and started to slap him they took him to police where he was taken to the lockup and he denied the offence. I doubt his defence in a sense that Tanapa's security men are not crazy, just finding someone on the road and started beating him, if

that was a case a lot of people could have been brought to the count for the offence of that nature and there could be a flood gate of litigations of the same nature. I never saw such a defence since I started this job. He countered evidence of prosecution simply because the skin was not brought as exhibit. The inventory which was signed by a magistrate indicating to have seen the wildbeest was enough. In his cross examination he said he was arrested at Majengo. Majengo area is a busy place why didn't he even raise alarm to alert people to help him? In alternative he failed even to buy a witness who saw him been beaten. I did not took his defence with weight it was just a cooked.

DW2 one JOHN s/o LEMAYANI stated that on 15/2009 he was at Majengo where he was stopped and asked the whereabouts of Hamisi and Rajabu. He said he do now know them. He was arrested to the police where he was joined with unknown person. He had a bicycle too. He was not arrested while committing the offence. Again I can say the same as I have analyzed in DW1. The accused testified to have all arrested at the same date, place and time but they did not know each other. Indeed his evidence had nothing to negate was proved beyond reasonable doubt by prosecution side. I did not consider his evidence with weight.

From the above analysis I am on the considered view that prosecution side proved beyond reasonable doubt that the accused committed the offence jointly as they were charged. I hereby find them guilty to the offence charged.

(NO conviction!)

Sgd: M.P.Mrio – R/Magistrate
15/4/2011

Court:- Delivered before the public prosecutor and the accuseds this 15th April, 20121 under Court seal.

Sgd: M.P.Mrio – R/Magistrate
15/4/2011

Mitigation:

Ist accused: I pray for leniency. I am sick I was operated. I as never sued at any Court of law.

Sgd: M.P.Mrio – R/Magistrate
15/4/2011

2nd accused: I pray for leniency since I am the first offender. I have dependant, since 2009 I am in the jail todote.

Sgd: M.P.Mrio – R/Magistrate
15/4/2011

S E N T E N C E.

I have considered the fact that the convicts are first offender. I did don't consider the mitigation of the accused of being operated taking into account that he is still in good health and operation is not a sickness, I have not considered the mitigation of the 2nd accused of have defendants since if he knew that he could refrain from doing offences. I have considered that they have stayed in jail for so long but the animal so killed falls under Ist schedule which encounter minimum sentence of 20 years jail.

Court: Right of appeal fully explained.

Sgd: M.P.Mrio – R/Magistrate
15/4/2011

Ist accused: We pray to be given a copy of judgement.

Sgd: M.P.Mrio – R/Magistrate
15/4/2011



Certified true copy of the
judgment/order/document.


Magistrate

16/4/2012