

IN THE DISTRICT COURT OF SAME
AT SAME
ECONOMIC CRIME CASE NO 13 OF 2013
REPUBLIC
VERSUS
JASPER PHILEMON MNGWULWI

J U D G E M E N T

BEFORE: G.N. KURWIJILA - RM

This is Economic Crime Case No 13 of 2013. The accused person is one Jasper s/o Philemon Mngulwi who stands charged with unlawful possession of Government Trophies c/s 86 (1) (2) (b) of the wildlife Conservation Act, No 5 of 2009 read together with section 14 (d) of the Economic and organised Crime Control Act [Cap 200 R.E. 2002].

It was stated that the accused person on the 25th day of August 2013 at Mheza – Maore village within Same District in Kilimanjaro Region, was found in unlawful possession of Government Trophy, to with one cheetah skin valued at Tsh. 7,942,900/= the property of the Government of the United Republic of Tanzania without permit or licence.

To prove the case prosecution side called four (4) witnesses who procured their evidence as follows: PW1 Raymond Lukas, PW2 Omary Bakari Hussein, PW3 Clede Stephano and D.9567 D/CPL Mohamed.

In the alternative, the defence side had two witnesses who were DW1 Jasper Philemon Mngulwi and PW2 Fatuma Hassani.

PW1 Raymond Lukas deponed that is a park ranger of Mkomazi National Park. On 25/8/2013 at 19.00 hrs they attended on patrol at Njiro area within the Park. He was accompanied with Omary Bakari Hussein, Stanslaus Augustino Ngewa and Christopher Mahende. They received information that accused was in possession of government trophy and forest product. Then informer is a resident of Mheza village at Gonja. They then traced the village chairman for Mheza one cledo Stephano. They arrived at 23.00 hrs where they told their mission as against the accused person.

After they had arrived at the accused resident, the village chairman introduced them to him. The Tanapa officers informed the accused that they needed to make a search to his residential house. The accused was allowed to satisfy himself if they had nothing in their possession. The accused was allowed to inspect and search them before were allowed to enter inside the dwelling house and the store. After were allowed, they entered into the store where they found one cheater skin (dried skin) and twelve pieces of timber. The accused failed to give clear explanation as to how he obtained or possessed them. They then prepared a search warrant order that was signed by eight (8) people including the accused person. The warrant was prepared by one Omary Bakari.

When the search exercise was over, the cheater skin was taken to Same police station and the 12 timbers were taken to the village chairman

for Mheza for safe custody. They failed to carry the timbers due to that their motor/vehicle could not manage to accommodate all as them.

At first the accused was found sleeping inside his dwelling house. The store was opened by the accused himself. At first the store was closed. The search was done as from at 24.00 hrs to 01.00 hrs of the following day. The accused was living with his family. The law called Wildlife Act of 2009 allows them to make search even during night hours.

PW2 Omary Bakari Hussein deponed that is a park ranger for Mkomazi National Park. His evidence was taken taken twice but in different dates. For the first time on 31/3/2014 but was compelled to adduce for the 2nd time on 15/5/2014 after was re-called by the prosecution side to clarify more facts and details.

The evidence given by PW2 Omary Bakari Hussein for the first time on 31/3/2014 was that on 25/8/2013 attended a patrol within the National Park at Mheza area, Gonja. He was accompanied with his fellow park ranger, namely: Augustino Nguve, Raymond Lukas, (PW1 Christopher Mahende, Laurent Kawawa and Amina Salumu. On the same day at 19.00 hrs they received information that accused was possessing and keeping government trophy at Kalemano – Gonja. Then they met with chairman for Mheza village at 23.00 hrs whose name is one Cledeo Stephano. They introduced themselves to him and told their mission. That were intended to make a search inside the house belonging to the accused one Jasper Philemoni.

The village Chairman led them towards the accused house where arrived at 24.00 hrs. Upon arrived, accused was introduced to them by the village chairman. He told their motives and mission that they needed to make a search. That they needed to make a search that night due that received information that accused was suspected to possess forest products like timber and cheater skin.

When the accused came out he was with his wife and a child. That period it was at 01.00 hrs and accused consent for his house to be search. Before doing it, he was allowed to inspect their physical bodies. They entered in the house led by the accused followed by the village chairman (Cledo Stephano) and others like Amina Salum. (conservator), Raymond Lukas (park ranger) and himself. They found nothing inside the first house.

Thereafter they left outside that house and then entered inside the adjacent house which is also belonging to accused person. When they entered into the 2nd house, they found 13 timbers and one skin of cheater animal placed top of those timber. It was a died cheater skin. The accused failed to produce permit to possess or own all of them. PW2 Omary Hussein prepared a search warrant order and all of them signed in it including the accused person.

This witness prayed to tender the search warrant order which was not objected by the accused. The very document was rightly admitted and marked as exhibit P1. That he told the accused that it was a punishable offence to possess them.

PW2 Omary Hussein went on to testify that at first the 2nd house had been closed with a locker before. It was opened by the accused person. Then distance from the 1st house towards the 2nd house was not measured. The trophy is usually identified by the District Game Officer and it was so done. They detected to be cheater skin due to that they have wildlife knowledge and skin. Thereafter the accused was taken with the animal skin to the police station. The 13 timbers were left to the village chairman the motor/vehicle they had could not carry all of them. The accused introduced them that both houses belonged to him and as the rightful owner. The distance between the two house is approximately five (5) paces.

When PW2 Omary Bakari Hussein was recalled by the court to give evidence for the second time on 15/5/2014, he stated similar evidence though adduced new facts into it. That he has experience of five (5) years in conservation services. He attended wildlife course at Pansiasi college at Mwanza where he held a certificate wildlife technician in 2010.

Other confidential facts appears to be similar and the same as regards the date, time and place where they conducted a search the reef Mheza village. He gave a similar evidence as to the whole team participated to the search, the manner and means the search was made and even the person who approved to have been involved into the search on 25/8/2013

The most significant evidence given by this witness (PW2 Omary Hussein) relates to the knowledge and skill. He had in identifying and studying all the physical appearance form and internal and external make

Omary Hussein prayed to tender as exhibit and was not objected by the accused person. It was accordingly admitted and marked as exhibit P3.

PW2 Hussein when cross examined clarified that he was compelled to adduce evidence for the 2nd time due to that was summoned by the court. At the scene of crime there was no watchman. The skin was not brought by outsiders but was found at his residential area. The very of the store was brought by the accused from the main house. It was opened by the accused himself and the store belonged to accused person.

PW3 Cleo Stephano deposed that is the village chairman for Mheza – Gonja. The accused person is a resident into his village. That on 25/8/2015 at 23.00 hrs was at residential home. While still there, he met with TANAPA soldiers (Park rangers) who needed to see the accused person. They told him that accused was dealing with timber business. When they arrived at the accused house, he introduced him about those quests. The accused then opened the door and was with his wife. Then TANAPA Park rangers told him what they intended to do. The accused then stated that he had few timbers inside his house. Then accused consented for the search to be made.

The search began into his big house and were led by the accused himself. The house door was opened by the accused opened by the accused. PW3 Cleo Stephano also entered inside the house together with a female park ranger. After they had searched the big house, they found nothing. Then, the accused opened the store room. After they had entered into it, they found about 13 pieces of timber and one (1) cheater

skin. It was placed on those timbers. The accused told them that the skin was given to him by another person whose name was not disclosed.

Thereafter the search warrant was prepared and all of them were required to sign it. The accused was taken for further steps. Before the store was opened, it was closed by a locker. Nowadays the very store does not exist and it has been demolished after 25/8/2013.

PW4 D. 9567D/CPL Mohamed told the court that is a police officer in the CID department at Same. On 25/8/2013 at 13.00 hrs was at place of work. He then received a case file relating to possession of Government Trophy. That period the accused was already been arrested and detained it's the lock-up.

Thereafter PW4 CPL Mohamed released the accused out as to record his statements by way of cautioned statements. Before it, he explained all the rights available to him as per S. 10 (5) of the Evidence Act, 1967. The accused was asked to call his Advocate relative or friend but he consented his statement to be recorded without all of the above persons. After he had completed to do so, the accused endorsed with signature.

That the accused was accused or charged to have been found in possession of cheater skin and timbers. The accused admitted to have found with those cuticles that were kept into his store at his residential home there at Mheza village, Gonja. PW4 Mohamed then prepared the charges and accused was taken to court. He identified the very document of cautioned statement of which he had recorded. He prayed to tender

them as exhibit. Since the same was not objected by the opposite party, it was admitted as exhibit and marked as exhibit P4.

PW4 CPL Mohamed went on to state that on 18/10/2013 at 13.00 hrs went at Mhezi, at the accused residence to inspect the scene of crime and draw the sketch plan of the scene. He visited the whole area. The accused was not present but he found his wife and children and the village chairman. In drawing the sketch map, PW4 was led by the village chairman and other park rangers. The map was properly drawn due to that was introduced by accused family members. The very document was witness and he prayed to tender it as exhibit.

The document of sketch plan of the scene of crime was objected by the accused person on ground that he was not present at the moment was drawn. Despite the objection raised by the defence side, the court held that the very document be admitted pending the final determinative of the case. It was admitted and marked as Exhibit P5.

PW4 CPL Mohamed went on to clarify that he never knew the accused elier before he had no grudges with him. He was not present at the time of arrest. He saw the animal skin on 25/8/2013 at the police at 16.00 hrs. he found the timbers placed at house of the village chairman. He was satisfied that both animal skin and timbers belongs to the accused. The accused wife did not write any document.

At the end of the prosecution evidence, the accused was held that he has a case to answer. He was therefore required to prepare his defence.

DW1 Jasper Philomen Mngulwi deponed that on 25/8/2013 was at his home while sleeping. He then heard people who were knocking the door outside the house one of them was introduced to be the village chairman for Mheza one Cledo. After the accused had opened the door he saw about 10 people, all of them were armed with fire arms except the village chairman. He was ordered to be under arrest and was told to sit down.

Thereafter he was asked to disclosed where the timber had been kept. They stated as that "Tuambie hizo mbao umezificha wapi.?" Then accused denied to possess the said timbers but except the chairs placed inside the house. Thereafter the accused Jasper Mngwulwi was shows an animal skin placed on the house.

They stated as that "ona hili unalifahamu lililopo juu ya mti.?"

For sure, accused denied to know such item. Later on he realized that it was an animal skin. It was when he was taken to range heard office. It is not true that his house was searched by either the police or park rangers. He just with one room and a sitting room. He do not own two houses.

The said animal cheater skin is usually found in the wilderness of Mkomazi National Park and not in the residential avers. The skin was brought by Mkomazi Park Officer. He had personal grudges with their informer called Peter. The grudges are originated through Peter's younger brother called Ijumaa, a resident of Mheza village. He is the accused close neighbor. The allegation against him are not true.

During cross examination DW1 Mngulwi stated that he happened to lodge complaints between him and Peter to the village chairman. The evidence of one PW4 CPL Mohamed as regard existence of two houses is not true. He never posed any questions to witness as to the existence of 2nd house as shown by the sketch map drawn on 18/10/2013. He did not take key from his wife. He suspected that the skin could be brought by TANAPA Park rangers. He had personal grudge with the village chairman one Cledo Stephano.

DW2 Fatuma Hassan deponed that the accused is her husband who lives at public area in Mheza village on 25/8/2013 at area hrs was at her while sleeping with her husband, the accused. Then the village chairman one Cledo knocked the door and stated that there were quests outside the house. After the door was opened the accused was accordingly arrested. There were about 10 people who were armed with fire arms.

DW2 Fatuma Hassan was forced to write her name to a certain document. The accused was asked if he recognised a certain item like a skin the that was held by those people. The accused denied to know such skin. The accused was taken that night and they disappeared with him.

On the next date of 26/8/2013 at 20.00 hrs she saw one Peter Chediel who arrived to her home. He stated as that "sasa unaona mkono wangu"? DW2 Hassan did reply and he left away.

DW2 Fatuma went on to state that at their residential area, houses are two houses. The first house big one and the 2nd house is a smaller one, that is a kitchen when the quest came they entered into both two

houses during that night. They claimed to search timbers where by that managed to find three (3) pieces of timber. The kitchen does still exist.

There is hatred between the accused and one Ijumaa who is the younger brother of Peter Chediell. The hatred is caused by land dispute. That Ijumaa happened to cause leg fracture to the accused person. The kitchen was not locked.

The relevant issues in this particular case are as follows:

1. Whether the accused person is liable to the offence he stands charged.
2. Whether there are persons who witnessed the whole event when the accused was found in possession of the alleged Trophy to wit, animal skin where, when and how?
3. Whether the place where the accused resides there are one two or more houses and if yes, one of them is or was designed as a store?
4. Whether the document of cautioned statement tendered by the prosecution side was really prepared by him or another person and how?
5. Whether the animal skin (cheater skin) alleged to be found into the accused store belong to the accused or was brought there by Mkomazi National Park rangers and how?
6. Was the accused person had hatred or personal grudges with the village chairman far Mheza or another person a resident of that village and to what extent.

According to the evidence adduced both sides of the case it is obvious that the most controversial issue relates to an item that is an animal skin of cheater said to have been found into the accused residential home. I need not to re-visit in deep the material evidence given by both sides as regards to existence or now existence of that particular product on the day when the search activity was made as per above state testimony. Taking into account the evidence given by all prosecution witnesses (PW1 Omary Lucas, PW2 Omary Bakari Hussein, PW3 Cledo Stephano and PW4 D/CPL Mohamed) together with the statements adduced by the accused and partly by his witness one.

DW2 Fatuma Hassan it implies that the search was conducted at the accused residence on 25/8/2013 to the time stated herein before.

Apart from the accused denying or disputing that his house was not searched by a team of park ranger led by the village chairman, PW3 Cledo Stephano, the evidence of his wife (DW2 Fatuma) gives the contrary position. This witness seems to give similar testimony that the two houses owned by the accused were all searched and the TANAPA officers had access to enter into both two houses. In this respects the issue No 3 is answered in affirmative that at the place where the accused resides there are two residential or dwelling houses and one of the operates as a store. The second house was designated as a store where the timbers and an animal skin (cheater skin) was found placed on top of those timbers.

Since the evidence of PW1, PW2 and PW3 appears to be sound and with full of merits and substantial, I am satisfied that these are them

persons who really and rightly witnessed all the events transpired before and after the search activity was made.

It can be truly stated that these person witnessed how and the way they found the timber and in particular animal skin kept inside the store located at the accused residence. By so saying, I think the issue No 2 is properly answered in affirmative and with certainty.

The accused person in his defence tried to exonerate himself from liability that one had personal grudges with one Ijumaa a resident of Mheza village. It is very unbecoming and unbelievable to see that accused did not raise any question to prosecution witnesses especially to PW3 Cleo Stephano if at all was among as the persons he had grudges. Such allegations have no basis and can not be accepted due to lack of supportive evidence and reality. There is nowhere accused has specifically and clearly shown of he had hatred with the above listed person that led him to be unlawfully involved into this particular allegations this shows that issue No 6 have been clearly proved to a satisfactory extent.

The issue whether the tendered animal skin (cheater skin) belonged to the accused or was brought by Mkomazi park rangers, this is an easy question. So long as it has been proved that there are person who witnessed the very skin taken from the second house designed by accused as a stores there is no doubt that such product (skin) was hidden, kept or placed there by the accused person. It is not true that such thing was brought by TANAPA park ranges as alleged by the accused in his defence. In here taken into account the evidence of the document produced as

warrant of as search marked as Exhibit P1 which proves that an animal skin was among of the things found into the accused store in the night of 25/8/2013. A number of the person who attended the search have been written therein.

To support what have been stated above, the prosecution side have tendered a copy of certificate of valuation of Trophy which contains several particulars relating to the typed of Trophy, number of pieces, a animal, number of species unlawfully killed, its weight, value of the Trophy killed and total amount in us Dollars. In fact it is evade of that it was an animal skin of cheetah whose value is at Tsh. 7,942,900/= . It seems that the entire valuation was made, studied and approved by the District Game Officer whose name one Thomas B. Katunz.

Despite the fact that the document was not produced by the respective officer but yet still it apparent that the article is an animal skin of cheater of which was witnessed by the person who attended the search and the one who had sufficient knowledge and skills to identify and produce wildlife products like as he did PW2 Omary Bakari Hussein who is a park ranger for Mkomazi.

Finally, the issue whether the document of a cautioned statements produced was really prepared by the PW4 Mohamed and therefore a valid document or not upon perusal of the very document it appears that its contents shows that accused was admitting to have been found with both timbers and one animal skin. The accused here seems to confess all the truth the skin was found inside the store of which belong to him as has

personal property. But the accused tries to evade that the skin could have been brought there by other person including the village chairman one Clede Stephano, Juma Calist and Jumaa Ramadhani.

Indeed, I have no doubt with the contents as said to be prepared by the police one PW4 CPL Mohamed but names of the one who was recording seems to be contradictory and uncertain. In all the two pages it appears that at first the person who recorded it is one F.2159 at CPL Godlisten. But to the same spaces there is alteration of names and instead inserted another name of one D.9567 D/CPL Mohamed. For sure it is not certain and clear to believe of the person who recorded the cautioned statement was either PW4 D/CPL Mohamed or one D/CPL Godlisen as it sometimes appears been altered to that documents. With the above doubts it makes me to disbelieve it entirely and discredit it if for warrant accused admission confession. In the respect, the issue No 4 have responded in negative that the cautioned statement was not prepared by PW4 Mohamed but by another person else.

As regards to the document of sketch map produced as Exhibit P5, I have no doubt with it. The document depict all what was released by PW4 Mohamed at the moment he visited the locus in quo on 18/10/2013. To me, that is what the real structures of the buildings existed at the scene of crime when the search was made and the days after. It evident that the store located at a place marked with capital "A" to illustrate where the skin was kept. Through the map, capital letter "B" is where the big house is located, "C" is where the kitchen is and "D" is where the house of a neighbor is located. I think all the details explained by the sketch map

gives a clear picture that the evidence adduced by other prosecution witnesses is true and is full of merits and logic. That the allegation against the accused are based a true facts and ought to be considered.

In the find results therefore. I hold that the prosecution side have sufficiently proved its case to the required standards. I find the accused guilty of the offence he stands charged and he is hereby convicted.

G.N. KURWIJILA

RM

4/8/2014

PREVIOUS CONVICTIONS

We have no previous convictions as against the accused person.

MITIGATIONS

I pray for lenient due to that I have a family who depends on me. I have a wife and children who are still at school.

That my physical health is not good due I have sustained leg fracture.

SENTENCE

In view of the accused mitigations I think he deserves reasonable penalty. I so order that he should serve six (6) years to imprisonment.

G.N. KURWIJILA

RM

26/8/2014

Order - That the accused/convict is ordered to pay compensation to the value of one wild animal called cheater killed by the accused person. That the compensation to be at 7,947,900/=.

The very compensation to be paid after the accused has completed to serve the sentence. I so order.

G.N. KURWIJILA

RM

26/8/2014

Court - Judgement delivered this 26th day of August 2014 in the presence of both parties.

- R/A are fully explained to any aggrieved party.

G.N. KURWIJILA

RM

26/8/2014



I hereby certify this to be a true copy
of the original

[Signature] 12/10/2015
Resident/District Magistrate
Same/1