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THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATE'S COURT OF KAMPALA AT BUGANDA ROAD
KLA - 00 - CR - CO - 0728 OF 2019
CRB - 1060 - 2019

UGANDA:..... PROSECUTION

VERSUS

A1 - ZUBAIR ALAHAI DRAMADRI

A2 - BYARUGABA ACHILEO:..... ACCUSED

BEFORE: MANGENI MARION - MAGISTRATE GRADE ONE

JUDGMENT

The accused persons, Zubair Alahai Dramadri (A1) and Byarugaba Achileo (A2) were jointly charged with unlawful possession of Protected Species Contrary to Section 30 and 75 (b) of the Uganda Wildlife Act, Cap. 200 Laws of Uganda.

The prosecution story has been briefly that Zubair Alahai Dramadri (A1), Byarugaba Achileo (A2) and another still at large on the 28th day of June, 2019 at Yowa Guest House Nakulabye in Kampala had in their possession 99.16 Kilograms of pangolin scales valued at approximately Ug. Shs. One Billion One Hundred Nineteen Million Seven Hundred Fourteen Thousand Seven Hundred and Twenty [UGX. 1,119,714,720/=] without a wildlife use right.

At the time of plea, only one accused person, Zubair Alahai Dramadri (A1) was arraigned before court. Byarugaba Achileo (A2) was never produced for trial despite the issuance of numerous warrants of arrest against him. Trial therefore, proceeded against one accused, Zubair Alahai Dramadri (A1). The accused, A1 denied the said charge against him prompting the prosecution to adduce evidence though witnesses.

Article 28 (3) (a) Constitution of the Republic of Uganda, 1995 lays down the presumption of innocence and provides thus;



'Every person who is charged with a criminal offence shall be presumed innocent until proved guilty or until that person has pleaded guilty'.

Section 101 (2) Evidence Act, Cap. 006 postulates that when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Further still, **Section 103 Evidence Act, Cap. 006** provides that the burden of proof as to any particular fact lies on that person that wishes the Court to believe its existence unless it is provided by Law that the proof of that fact lies on any particular person.

The celebrated case of **Woolmington V. DPP (1935) A.C 452** propounds that in all criminal matters, the prosecution bears the burden of proving the guilt of an accused person hence there is no burden placed upon the accused person to prove his innocence. It only suffices for him to raise a doubt as to his guilt.

The case of **Miller V. Minister of pensions (1947) 2 ALLER at P.373 - 374** discusses the standard of proof required in criminal cases and the implications thereto inter-alia. It expounds that the standard of proof required of the prosecution in discharging its legal burden is one beyond reasonable doubt however, proof beyond reasonable doubt does not necessarily imply proof beyond a shadow of doubt.

According to the case of **Alfred Tajar V. Uganda Criminal App. No. 197 of 1967**, in cases where Court is in doubt as to the guilt of an accused person, the same ought to be resolved in favour of the accused.

Turning to the provisions of the Law in issue, **Section 30** of the **Uganda Wildlife Act. Cap 200** prohibits utilization of wildlife and wildlife products without a wildlife use right. **Section 75 (b)** there-of stipulates the offences related to protected species and the penalty there-of thus;

M. M. Mungu

“Any person who is convicted of an offence involving possession of, selling, buying, transferring or accepting in transfer specimen of protected species is liable to a fine of not less than one million shillings or imprisonment for a term of not more than five years or both;- and in any case, the fine shall not be less than the value of the specimen involved in the commission of the offence”.

Worthy of notice is that the instant offence of unlawful possession of protected species is one of strict liability that requires the accused person to prove on a balance of probabilities that he was not in possession of, selling, buying, transferring or accepting in transfer specimen of protected species as enshrined in **Section 75 (b) Uganda wildlife Act, Cap. 200** or that he had a wildlife use right as captured under **Section 30**, same Act. This however, does not mean that the prosecution is relieved of its legal burden to prove the elements of the offence beyond reasonable doubt.

It therefore follows that prosecution has a task of adducing evidence to show Court the essential elements in the alleged offence to wit:-

- i. That there was possession of protected species that is, Pangolin Scales*
- ii. The possession was unlawful and without a wildlife use right.*
- iii. The accused is liable.*

Pursuant to this matter, the prosecution did lead five (5) witnesses thus, UWA No. 03684 PTE. Okwir Emmanuel (PW1), No. 44985 D/SGT. Ssebabi Christopher Isaac (PW2), UWA No. 01764 SGT. Makambo Abdallah (PW3), Nsanja Robert (PW4) and No. 24917 D/CPL. Igogo Simon (PW5).

The defense on the other hand, led One (1) witness, the accused person, Zubair Alahai Dramadri.

PW1 narrated before court that he received information through their technical advisor on the 28th day of June, 2019 that there were people in Nakulabye, Kampala looking for market for Pangolin scales. That he and others then set off from Entebbe to Kampala. That he and a one Mwanje met up with the seller at Total Petrol Station, Nakulabye. That the seller told them that the “things” were at Yowa Guest House. That Byarugaba Achileo (A2) who was the then seller took them to the said Guest House. That he was later asked by Mwanje while at the Guest House to go in and bring out the “things” from the Guest House. That he entered and brought out two sacks containing Pangolin scales. That it was at that point that the arresting team moved in and arrested Byarugaba Achileo (A2) who later named the person that had given him the said items to sell. That the person was followed and later arrested.

PW2 related before Court that he knows the accused person (A1) because of this case. That on 29/06/2019 while at CPS – Kampala, he was instructed by PW5 and the O/C – Operations, CPS – Kampala to go with them and arrest the accused (A1). That he asked for the case reference number and it was availed to him. That none of them knew the accused so Byarugaba Achileo (A2) who had earlier been arrested led them to Zubair Alahai Dramadri (A1).

That in the process, Byarugaba (A2) asked for his phone, it was handed to him and he communicated to someone on the other end saying,

“Our rich man has arrived but only has USD 400 on him. Come and we receive this money and then wait for tomorrow since the banks are not working on a Sunday”.

That Zubair (A1) then asked Achileo (A2) for the meeting point and Achileo (A2) suggested King Fahad along Kampala road and Equatorial Hotel. That then A1 suggested that they meet up at Equatorial mall parking. That they moved to the meeting place before A1 and when he arrived, he was arrested.

PW3 testified before Court that on 29/06/2019 while he was at the Uganda Wildlife Headquarters – Kiira Road, Kampala, he received a phone call from PW5 who asked him to move to CPS – Kampala and identify items suspected to be wildlife products. That he was presented with two sacks containing what he later found to be giant pangolin scales. That he examined the exhibits, confirmed that they were pangolin scales and made some markings on them. That he also weighed the scales and found that they weighed 99.16 kilograms. That he handed the exhibits back to PW5 and documented his findings (See: **P.EXH.1**). In addition, PW3 mentioned to Court that he participated in the arrest of A1 following the lead of Byarugaba Achileo (A2).

PW4 narrated that he knows the first accused person (A1) having seen him at Yowa Guest House before this case. That A1 took things to their Guest House. He also said that he knew Byarugaba Achileo (A2). That A2 had stayed at Yowa Guest House for a month. He further narrated that on 28/06/2019, A1 went to Yowa Guest House and entered into Room Number 7 where A2 was. That A1 spent between 30 to 35 minutes with Byarugaba (A2) and then moved out of the room. That at about 5:00 p.m., A1 returned with two sacks containing some things. That the items were offloaded and taken to A2's room by A1 with the aid of the boda boda cyclist who had brought A1. That on that same day, police officers went to Yowa Guest House and entered into A2's room with the help of a canine. That the two sacks were found in A2's room, opened and he saw things that looked like nails, big and flat.

PW5 testified that he was the investigating officer in the instant matter. That he exhibited two sacks containing pangolin scales in this case (See: **P.EXH 2** and **P.EXH 3**). That he interacted with A2 and PW4. That A2 said he had been found with pangolin scales in his guest room at Nakulabye. That the pangolin scales had been taken there by Zubair (A1) for custody and marketing.

That he also interacted with Zubair (A1) who admitted having transferred the pangolin scales to A2 and that A1 said he had gotten the pangolin scales from Umar. That when tasked to lead PW5 to Umar, A1 failed to do so.

The accused - A1, Zubair Alahai Dramadri was the only witness for the defence and denied having committed the said offence. He stated that he was dealing in timber business before his arrest and used to transact with A2 before this incident. That he received a call from A2 who said he needed logs and he agreed to meet A2 at the Equatorial parking yard over the same hence his arrest.

Needless to say, both parties filed written submissions within the agreed time frame and since the submissions are on the record, I shall not reproduce them but it suffices to note that I have read them and will refer to them when resolving the issues raised. Therefore, turning to the elements of the offence;-

1. That there was possession of and or transfer of protected species.

Blacks' Law Dictionary, 8th Edition at P.1201 defines possession as the fact of having or holding property in one's power; the exercise of dominion over property. Possession is noted to take a number of dimensions that include but are not limited to; actual, constructive, etc.

The term transfer is given quite a number of definitions. It means any mode of disposing of or parting with an asset or an interest in an asset, including a gift, the payment of money, release, or creation of a lien or other encumbrance. This could be through a direct or indirect, absolute or conditional, voluntary or involuntary methods (See: **Blacks' Law Dictionary, 8th Edition at P.1535**).

It is also reflected as meaning to convey or remove from one place or one person to another; to pass or hand over from one person to another especially to change

over the possession or control. To sell or give (See: **Blacks' Law Dictionary, 8th Edition at P.1536**)

The term protected species connotes any plant or animal declared a protected species under Section 27 (**See**: Section 1 (bb) Uganda Wildlife Act, Cap.200).

Section 1 (ii) Uganda Wildlife Act, Cap. 200 defines a wild animal as any animal which is rerae naturae, but does not include any domestic animal. Wildlife on the other hand is defined to mean any wild animals which migrate through Uganda as per Section 1 (jj) thereof.

Paramount to note is that Section 1 (pp) Uganda Wildlife Act, Cap. 200 defines Wildlife use right to mean a right granted to a person, community or organization to make some extractive utilization of wildlife in accordance with a grant under Part VI of the Act.

In the instant case, PW1 testified before Court that he received information that there were people in Kampala looking for market for pangolin scales. That he and Mwanje met up with the seller (here-in A2) at Total Petrol Station-Nakulabye. That the seller told them that the "things" were at Yowa Guest House. That they moved to Yowa Guest where from two sacks containing pangolin scales were brought out of A2's room.

This evidence is corroborated by PW3 who was called in to examine items suspected to be wildlife products or species. He moved to Cps-Kampala where he was presented with two sacks, examined the contents that he later found to be giant pangolin scales, made markings on them and eventually compiled a report on his findings (**P.EXH.1**).

PW4 also stated before Court that he saw A1 take "things" that were in sacks to A2's room at Yowa Guest House with the help of a boda boda rider. That he later

Mwanje

learnt that the sacks contained Pangolin Scales whereas PW5 exhibited two sacks containing pangolin scales.

The accused denied having had pangolin scales in his possession let alone transferring them to any other person.

It should be noted that Pangolins are listed as animals that should not be hunted or captured except under special permit (**See:** The Game (Preservation and Control) Act, Cap. 198 Laws of Uganda specifically the first schedule part A, Item 31).

The fore-going information clearly comes out in the submissions filed by both parties. From the submissions, it is generally agreed that A2 was arrested at Yowa Guest House with sacks containing pangolin scales and counsel for the accused only challenges A1's participation.

It is therefore crystal clear from the articulations of the prosecution witnesses' testimonies and the submissions by both parties that pangolin scales qualify as wildlife protected species and are the subject of this case. I have no doubt that there was possession of and or transfer of protected species in this case. The prosecution has sufficiently proved that there was possession of and or transfer of protected species.

2. That the possession of and or transfer of protected species was unlawful and without a wildlife use right.

Section 30 and **75 (b)** of the Uganda Wildlife Act, Cap. 200 as well as the Convention on International Trade in Endangered Species (CITES) restrict or prohibit trade in pangolins, pangolin scales among others.

Section 27 of the Uganda wildlife Act, cap. 200 makes reference to the **Game (Prevention and control) Act, Cap. 198** that provides for animals that should not be hunted or captured without a special permit and these include pangolins (See: **Part A, Item 31 under the First Schedule**).

PW1, PW2, PW3, PW4 and PW5 testified to the effect that pangolin scales were recovered from Yowa Guest House on the lead of A2 who later named A1 as having taken the said items to him for marketing purposes. PW4 saw A1 take the said items to A2's room at Yowa Guest House. The accused person-A1 denied having had the said pangolin scales in his possession let alone taking them to Yowa Guest House in his defence.

None of the prosecution witnesses relates having been showed a use right or permit by the accused (A1). A1 did not present any use right or permit authorizing him to handle the said species during his defence.

I have considered submissions from both the prosecution and the defence and do agree with the prosecution that the only logical conclusion given the fore going evidence is that the possession of and or transfer of the said pangolin scales was unlawful and without a wildlife use right in the absence of a permit from the defence. I find that the prosecution has sufficiently proved this ingredient.

3. That the accused is liable.

PW1 narrated before Court that he and Mwanje met up with the then seller (A2) who advised them that the "things" were at Yowa Guest House. PW2 narrated that A2 led them to the arrest of A1 whom he said had forwarded the said items to him for marketing. PW4 saw A1 take the said items with the help of a boda boda cyclist to A2's room at Yowa Guest House.

Mwanje

The accused (A1) denied having passed on any items to A2. The defence argued in their submissions that the prosecution failed to prove A1's participation in the offence of possession of pangolin scales, protected species and argued that all that was presented was hearsay evidence.

However, the million dollar questions are; Why did A1 respond to A2's call when asked to come get the proceeds from the sale? Why was he the only person apprehended at the equatorial parking yard yet there were many others? The only viable explanation is that he knew about the pangolin scales and had transferred the same to A2 for purposes of marketing. PW4 clearly stated that he saw A1 take two sacks containing things to A2's room at Yowa Guest House. The same sacks were gotten from Yowa Guest House and contents proved to be pangolin scales.

Following from the above, it is vivid that the accused (A1) had in his possession pangolin scales that he subsequently transferred to Byarugaba Achileo (A2) for purposes of sale despite his denial.

I am therefore convinced that despite the accused's denial, he is liable. The accused is guilty of transferring specimen of protected species (pangolin scales) to A2 for sale and is accordingly convicted as charged.


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MANGENI MARION

Magistrate Grade One

16/10/2020

Delivered in open Court.

Right of Appeal Explained to the parties.

Accused present

Namayenje Winnie for State

Kashoke Rashul – Counsel for Accused

Rachel Tuyisabe – Court Clerk

Namayenje