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THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATE COURT OF KAMPALA AT BUGANDA ROAD
CRIMINAL CASE NO. 1312 OF 2019

UGANDA:..... PROSECUTOR

VERSUS

KYANAKYANYONYI JUSTUS AND ANOTHER ACCUSED.

JUDGMENT BEFORE HER WORSHIP AYO MIRIAM E.OKELLO

CHIEF MAGISTRATE

Kantumba David is charged with 2 Counts of CT1 and CTII Unlawful possession of protected species contrary to section 36(1) and 71(b) Uganda Wildlife Authority.

It is the prosecution case that Kantumba David on 14th/November/2019 at Kikingo Town Council- Kasese District was found in possession of 4 elephant ivory valued at approximately 36,096,074/= and 2 Hippo teeth valued at 400,684/= without any valid Uganda Wildlife Use Right.

The accused denied the charges and the burden remained on the prosecution to prove that he committed the offence.

An accused is always presumed innocent until proven guilty. And the prosecution bears the burden of proving beyond reasonable doubt that he committed the offence.

The prosecution must prove the following ingredients if they are to secure any conviction.

1. That there were wildlife protected species involved.
2. The accused without any valid use right, was found in possession of the wildlife protected species that is to say Ivory, and Hippo teeth.

The witness testified for the prosecution and accused gave sworn defence, called 2 witnesses.

Resolutions:

Whether there were wildlife protected species involved.

PW1 D/C Wilson Talemwa testified that an informant notified them that 3 people were along Hima Road and had a sack of Matooke. That inside the sack were ivory and Hippo teeth. So they moved to the scene, arrested the accused and brought them to Kasese Police Station.

The said bag was opened and inside there were 4 pieces of Ivory and 2 Hippo teeth.

These 4 Pieces of Ivory and 2 Hippo teeth were exhibited in Court and admitted as Prosecution exhibits. There were 3 cut pieces and one long ivory with 2 Hippo teeth.

PWII P.C Okello who received the exhibits from Kasese at CPS went further and forwarded them for examination by the experts. He testified that the examination report confirmed that the exhibits were ivory and Hippo teeth.

From the evidence adduced by the witness and the exhibit presented in Court there is no doubt that an elephant and a hippopotamus was killed and these are animals that are protected by Uganda Wildlife Authority. First ingredient is proved beyond reasonable doubt.

2. Whether the accused was found in possession of the ivory and hippo teeth without any valid use Right issued by Uganda Wildlife Authority.

The act establishes wildlife use Right and sections classes of such rights which includes amongst other trading in Wildlife and Wildlife Products.

Section prohibits amongst others trading in and wildlife products without first obtaining a grant of a wildlife use right.

Relevant to the case before Court now the Prosecution witness PW1 told Court that he was informed by an informant who never testified that some people were carrying ivory and Hippo teeth in a sack of Banana. Indeed they arrested them and found as said. The only question for resolution is whether accused was in possession of the same.

Accused in his defence clearly told Court that he is a boda boda ridder and his duties are to carry people and their goods. That he was arrested while negotiating with the owners of the sack of Matoke the price.

That he wanted them to allow him call a second boda in order to carry the sack and the two passenger. He denied knowledge of the ivory and Hippo teeth that was in the sack.

Both DWII the Vice Chairman of the area and accused's fellow Boda Ridder all from Kasese gave evidence to prove that indeed accused was just a boda Ridder without any knowledge of what the passenger was carrying inside the matooke.

I have evaluated the evidence on record and I have carefully read accused's statement recorded at Police on 15th/11/2019. His evidence was consistent. He was honest and proved/convinced Court that he was doing his job as a boda ridder. He was under no obligation to check what was inside the Matooke sack. He only negotiated the price and insisted there was need to call a second Boda.

The informant was not clear in making the notification which left doubt in the mind of Court.

I am satisfied that accused did not know what was in the sack. The owner of the goods A1 Justus who pleaded guilty knew the content. And honestly proved that he was a Boda Boda rider whose duty was to carry passengers and their goods at a fee.

I find the accused not placed at the scene and not in possession of the ivory and Hippo teeth. The case is dismissed and the accused acquitted forthwith on both Counts.

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M Okello
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Sgd: Ayo Miriam E. Okello
Chief Magistrate
17th /06/2020

17th/06/2020

Accused in Court

Mbaziira Counsel for accused

Peter Mugisha holding brief for Winnie UWA

Liz Clerk.

Court:

Judgment read in open Court.

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M Okello
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Sgd: Ayo Miriam E. Okello
Chief Magistrate
17th /06/2020