

THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATE COURT OF KAMPALA AT BUGANDA ROAD
CRIMINAL CASE NO.0738 OF 2020

UGANDA..... PROSECUTOR

VERSUS

MUKASA MUHAMUD

.....

ACCUSED.

JUDGMENT BEFORE HER WORSHIP AYO MIRIAM E.OKELLO

CHIEF MAGISTRATE

Mukasa Muhamud is charged with unlawful possession of protected species contrary to section 36(1) and 71 (b) Uganda Wildlife Authority.

The particulars are that Mukasa and others still at large on the 04/08/2020 at Total Kabusu, Rubaga Division in Kampala District had in his possession ivory (elephant fusk) weighing 14.5 Kgs without a valid wildlife Use Right.

Accused denied the charge. The prosecution bears the burden of proving his guilt. An accused is always presumed innocent until proven guilty and in all criminal cases the standard of proof is beyond reasonable doubt.

To succeed the prosecution must prove the following ingredients.

1. That the accused had in his possession elephant tusk.
2. That the tusk is a protected species.
3. Accused had no valid licence.

Whether accused was in possession of tusk:

PW1 David Okori narrated to Court that they met at Total Kabusu after a telephone conversation and personal engagement with him in a hotel. The accused had ivory parked in a sisal bag which was exhibited as P.E.1 seven pieces.

PWII Silver Guloba who was present told Court that he was present when the accused was picked from the car and the ivory was parked in 2 sacks. He participated in the arrest of the accused. He confirmed in cross-examination that accused negotiated the price with PW1 and he was in possession of ivory.

Accused in his defence testified that he was called to do the job of a middle man. That some people were selling ivory and he demanded for a pay of 1 Million. He does not deny meeting PW1 and some three other persons.

The accused also admitted he was arrested from a car after he had picked the ivory. He did not explain where the people he was connecting disappeared.

Possession is defined under section 1 Uganda Wildlife Authority to mean having ownership, custody or control of an item coupled with intentions to posses.

Accused was found in the car sitted and 7 pieces of ivory was picked in the car. He told court he picked the ivory from Masajja Kibiri. This is a clear evidence that he remained in possession and was arrested with the same. Ingredient is proved.

Whether elephant tusk is protected species.

Both the State and Counsel for the defence did not dispute the expert report presented by PWIII the expert Sgt Major Twinamasiko Harriet. She examined the 7 pieces of ivory and confirmed to they belong to an elephant and elephants are protected species with Uganda Wildlife Authority.

I am not in doubt that the same fall among the protected species.

Whether accused had a valid Wildlife Use Right.

Section 36(1) Ugand Wildlife Authority prohibits utilization of wildlife without a wildlife Use Right. The officer who arrested accused told Court that he did not

have valid Wildlife Use Right. Accused himself told Court he is just a middle man for a pay. Implying he did not have any licence.

Having evaluated the evidence on record together with the exhibit tendered, I am satisfied the prosecution proved that accused was in possession of the elephant tusk without a valid Wildlife Use right.

Accused in his defence told Court uncoordinated lies. He was not honest and yet he was the one looking for buyers. It is unfortunate that he dealt with people who are in the enforcement of the accused.

I find him guilty and convict him accordingly.

.....*MOkello*.....
Sgd: Ayo Miriam E. Okello
Chief Magistrate
24th /03/2021

24th/03/2021

Accused in Court

Akello for state

Mbazira Counsel for accused

Liz Clerk

Court:

Judgment read in Open Court.

Respond:

The convict is a first offender. He is not remorseful. He told Court lies.

The offence is rampant in nature. The quantity of the ivory and the fact the elephants lost life.

We pray for a deterrent sentence that will enable him reform.

I pray for order handing over the exhibits

Mitigation:

The convict is a first offender, spent 8 months on remand. He is middle aged with chances of reforming. I pray for appropriate sentence.

SENTENCE:

The convict is a first offender, he should learn to be honest. He was a dealer who should reform.

I have considered the prayers of both parties and the fact that elephant are being killed by greedy citizen who want ready money.

I have considered the 8 months spent on remand and I sentence him to 12 months imprisonment.

I so order.

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Sgd: Ayo Miriam E. Okello
Chief Magistrate
24th /03/2021