

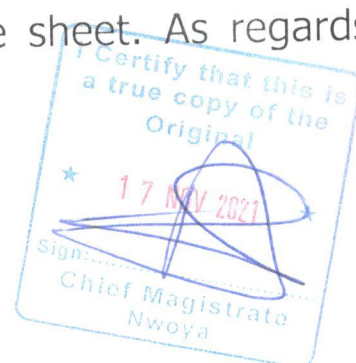
Unlawful killing and hunting of wildlife protected species contrary to section 21(a) and 75(a) of wildlife Act.

The particulars in respect of all the three counts are that accused and two others still at large on 9/3/2016 at about 1pm illegally entered in the area of river Kiboyo within Murchison falls which is within the protected area and that accused and others were also found when they have killed one female Uganda Kob worth 1,620,000/= Ug shs.

At plea taking when the charges were read to accused, he denied all the three counts and it is prompt to prosecution to load evidence prosecution then added evidence of two witnesses that is PW1 Ariko David, PW2 Oujuma David then closed its case. Accused was put to his defence, gave a sworn evidence but did not call any outer witness.

It is an established principle of law that in all criminal cases, prosecution bears the burden of proving the guilt of accused beyond reasonable doubt ***SEE UGANDA VS DICK OJOK (1992-93) HCB 54***

In the instant case, the accused is charged with three counts and will handle the counts as per the charge sheet. As regards the



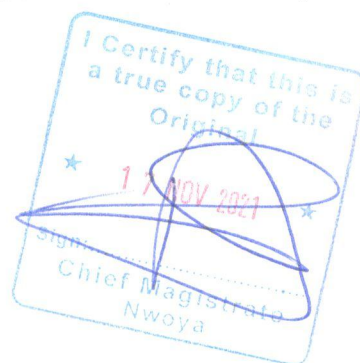
first count which is illegal entry into the wildlife protected area contrary to section 22(1) and 74(a) of the wildlife Act cap 200 and the following are the ingredients that the prosecutions needs to prove in order to secure a conviction against the accused.

1. That there was entry into the wildlife protected area.
2. That said entry was illegal.
3. That accused is responsible.

As for the first ingredient, PW1 told court that on 9/3/2018 while for patrols at a place called river Kibwoyo which is within Murchison Falls National Park and in the company of Pte. Akam Joseph Pte. Oujuma David, Pte Ongodia Fabiano and Pte Mugisha Geoffrey and at around 10;00 am, they arrested a person within the national park.

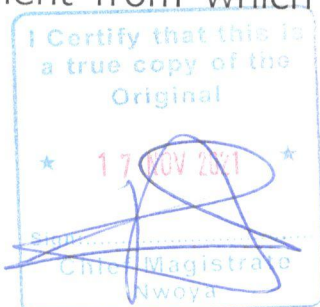
PW2 also in his testimonies confirms to count that while on patrol with PW1 and others, and when they had arrested a person called river Kibwoyo which is within Murchison falls national park, they arrested a person who was within the national park.

Accused in his sworn evidence denies over being arrested within a place called river Kibwoyo which is within the national park a



gazetted wildlife place. Section 18 of the wildlife Act though not very specific provides that an area is considered a wildlife conservation area only if it has been declared so and there are clear boundary marks of the same, however from the testimonies of PW1 and PW2, they told court that they arrested a person around the area of river Kibwoyo which they claim is within the protected wildlife conservation area of the Murchison falls national game park. However what needs to be noted is that there was no evidence led to show that the so called river Kibwoyo is within the gazetted wildlife conservation area and in my opinion this could have been proved by showing court the boundary of the so called wildlife conservation area using the coordinates points which was not the case here, thus court is left guessing whether or not the said river Kibwoyo is within the protected wildlife conservation area, thus prosecution failed to prove this ingredient accused the accused person.

As regards the 2nd and 3rd ingredients which is the illegal entry into the wildlife protected area and 3rd the participation of the accused, I would really not labour much to evaluate the evidence on record since prosecution since prosecution failed to prove the first ingredient from which the 2nd and 3rd ingredient would be



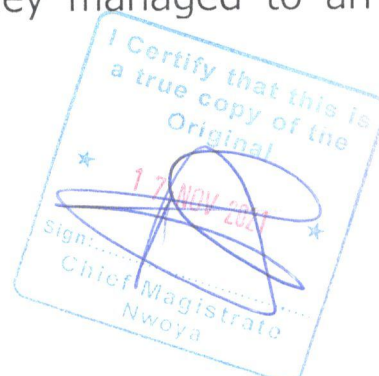
sustained, all in all stand that prosecution failed to prove the first count against the accused and I accordingly acquit him.

As regards the second count which is unlawful possession of devices capable of injuring, killing and capturing wildlife protected species, in order for prosecution to secure a conviction against the accused, it has to lead evidence to prove the following ingredients.

1. That there was possession of devices capable of injuring, killing and capturing wildlife protected species.
2. That the possession of those devices was unlawful.
3. That accused is unlawful.

As regards the first ingredient PW1 told court that 9/3/2018, while on patrol at a place placed called river Kibwoyo within the Murchison falls national park he cited three poachers and ran after them but only managed to arrest one and that later when they took the one person they had arrested and where they had seen them, they found one panga, one knife and one metal trap.

PW2 told court that on 8/3/19 while on patrol at a placed called river Kibwoyo they cited three people from a distance and that after the three people saw them, they managed to arrest one



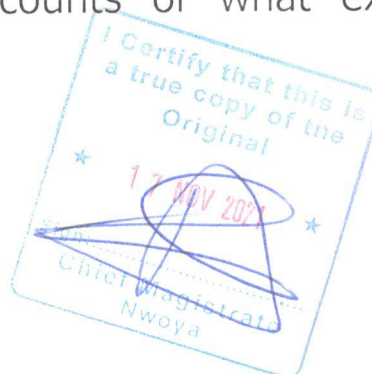
person they found had a panga in his hand, and upon interrogation, the person they arrested led them to where he laid a trap and they recovered and no further told court that he was together with PW1.

He said that items which include a panga, a knife, one wheel trap were exhibited and exhibit ship admitted as prosecution exhibit number one.

PEXH 1" accused in his sworn evidence does not make mention anything in relation to 2nd ingredient however. from the testimonies of PW1, he told court that the incident took place on 9/3/18 while PW2 says it took place on 8/3/18, secondly PW1 says they only discovered the exhibited items that is panga, knife and wheel trap after arresting the person while PW2 says at the time of arresting the person, he had a panga in his hand and he does not make mention of a knife.

Thirdly, none of these prosecution witnesses explained to court how these items are used to injure, kill or capture the wildlife species thus court is left guessing.

Fourthly, all these two witnesses claimed they were together when the alleged offences happened but what is sad to note is that, they all gave court different accounts of what exactly

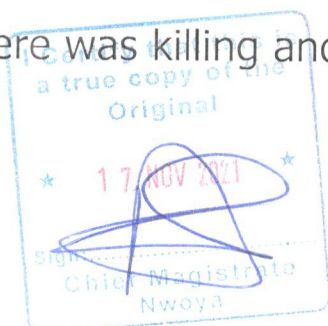


happened and this contradictions creates doubt in the mind since it goes to the root of the case, and it is settled law that where there are contradictions which is fundamental in proving of the case, it creates doubt in the mind of court, the doubt will be resolved in favour of the accused and in the instant case, court is not sure which items were recovered from the person. The two prosecution witnesses claimed they arrested since they all told court different stories yet they claimed they were together when the said offence took place, all in all I find that prosecution failed to prove the 1st ingredient and I resolved this in favour of the accused.

As regards the 2nd and 3rd ingredient, I would not want to waste time evaluating evidence since prosecution failed to prove the 1st ingredient from which the 2nd and 3rd ingredient depends or flows thus all in all I find that prosecution failed to prove the 2nd count against the accused and I accordingly acquit him.

As regards the 3rd count which is unlawful killing and hunting of wildlife protected species and the following are the ingredients that prosecution needs to prove in order to secure a conviction against the accused person.

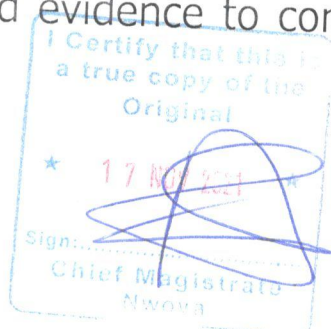
1. That there was killing and hunting of wildlife protected species.



2. That the said hunting or killing of wildlife protected species was unlawful.
3. That accused is liable.

As regards as the first ingredient, PW1 told court on 9/3/2018 while on patrol at an area called river Kibwoyo with one Pte Akam Joseph, Pte Ojuma David, Pte Ongodia Fabiano and Pte Mugisha Geoffrey and that as they continued out their patrol, they cited three poachers and that they later managed to arrest them and that they found a caucus of Uganda Kob. PW2 also told court that while on patrol, PW1 inclusive, they managed to see some poachers and they were three men and after chasing them, they managed to arrest one and they also recovered the caucus of Uganda Kob.

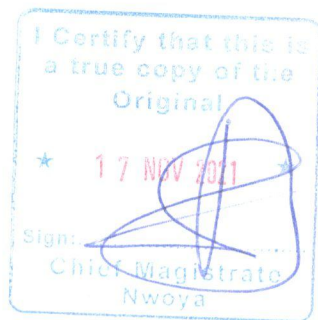
As regards the defence evidence, I have perused through and there is absolutely nothing stated as regard the first ingredient but as regards the evidence of the prosecution, the two prosecution witnesses that testified did not in way show court that the caucus of the Uganda Kob was killed. Secondly prosecution did not ever better to prove or show court over the photos of the dead Uganda Kob. All in all I find that prosecution did not load evidence to convince court that there was killing or



hunting of the wildlife protected species thus I resolved the first ingredient in favour of the accused.

As regards the 2nd and 3rd ingredient, I will not go into the evaluation of the evidence since prosecution failed to prove that there was killing or hunting of a protected wildlife species thus all in all I find prosecution failed to prove that accused committed the alleged offence and I find him not guilty and acquit him in all the three counts and discharge him.

Right of appeal explained.



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ANYEKO SUSAN
MAGISTRATE GRADE ONE
17/4/2019