

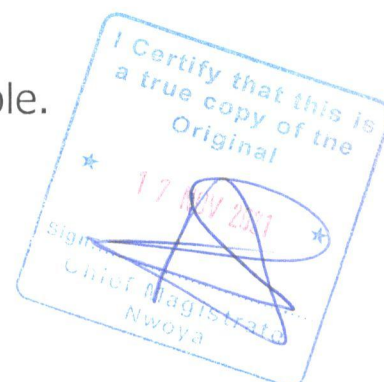
The 2nd count is unlawful possession of devices capable of killing, injuring and capturing wildlife protected species constrains Section 49(1)(a) and 74 of Wildlife Act Cap 200 and the particulars are that accused and one still at large on the 6th/05/2018 were found in possession of 1 wheel trap, a spear and 1 knife in the area of river Namunuda within Murchison falls protected area without authority.

At plea taking the accused denied both allegations. Prosecution adduced evidence of two witnesses that is PW1 Ocamo John and PW2 Odeke Charles and closed its case while accused on defence gave a sworn evidence but did not call other witnesses.

It's an established principle of law that in all criminal matters the prosecution bears the burden of providing the guilt of the accused except where there is a stationary provisions ***SEE UGANDA VS DICK OJOK (1992-93) HCB 54.***

Thus in the instant case prosecution needs to lead evidence to prove the following ingredients in respect to count I.

1. That there was as entry within the protected are.
2. That the said entry was illegal.
3. That it's the accused who is responsible.



As regards the first ingredient, PW1 told court that on 6/5/18 while on duty within the Murchison falls park at a place called Namunuda, he and his colleagues saw two people within the protected area.

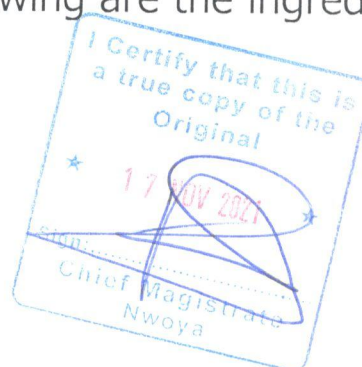
PW2 also told court that while on duty on 6/5/18 around river Ajayi, Kibwoya and Namunda, himself PW1 plus other colleagues who are also game rangers saw two people who were men and they were within the protected area that is Murchison falls national park. Accused on defence puts up a total denial, thus relating prosecution evidence to the 1st ingredient, I do not find any piece of evidence to show that there was an entry within the protected area. There was no attempt made by prosecution to prove or show to court the place i.e. river Namunda is within Murchison falls which is a protected area and secondly from the testimonies of two prosecution witnesses, PW1 told court he was at the area of river Namunuda and was with PW2 while he said he was with PW1 but within the areas of Ajayi, Kibwoya and Namunda from this evidence, I find that there is inconsistency between the evidence of the two witnesses and this leaves court to wonder/guess as to which particular place these two witnesses were on that particular date on which is an important factor in establishing whether or not the said offence was committed thus



relying on the principle laid down in the case of **SERAPIO TINKAMALIRE VS UGANDA SCCR APPEAL NO 27/1989** court stated that where there is inconsistency and contradictions which goes to the root of the matter, it must be resolved in favour of the accused thus from the facts at hand, the two prosecution witnesses does not seem to be sure of the place they were on 6/5/18 and thus I resolved this ingredient in favour of the accused.

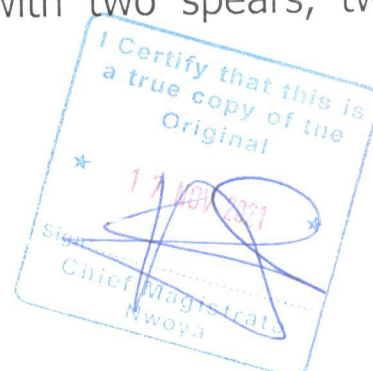
As regards the 2nd ingredient I would not want to indulge into evaluating the evidence since prosecution failed to prove to this court that there was an entry into the protected area from which this 2nd ingredient proved which is the participation of the accused. It's the same story here, I would not waste court's time evaluating the evidence to prove the same since prosecution failed to prove the 1st and 2nd ingredients on which the 3rd ingredient is dependant that means there was no offence committed and consequently one cannot be held responsible for actions that is not criminal offence thus all in all I find that the prosecution failed to prove the guilt of the accused in respect of the first count and accordingly I acquit him.

As regards the second count the following are the ingredients;



1. Unlawful possession of devices capable of killing, injuring and capturing Wildlife protected species.
2. That there was unlawful entry into wildlife protected area.
3. That accused is responsible.

As regards the first ingredient PW1 told court on the 6/5/18 while deployed on duty at a place called river Ajayi, Kibwoyo and while at river Namunuda himself and his colleagues Pte Buteni Sunday and Pte Odeke Charles they arrested a man with a spear and upon interrogation the man took them where he had laid a metal trap and a spear and a knife and he further told court after arresting the man, he did not have any authority/licence in the wildlife protected area. PW2 also told court that on 6/5/18 while deployed on duty around river Ajayi, Kibwoyo and Namunuda river and while at Namunuda river, they arrested a man and found him with two spears and two wheel traps and that after the arrest, the man did not have any document allowing him to enter within the wildlife protected area. Accused on defence puts up a total denial, however from the testimonies of PW1 and PW2, it is not clear as to what item the said man was arrested with. PW1 says he was arrested with a spear, metal trap, a knife while PW2 says the same man was arrested with two spears, two metal

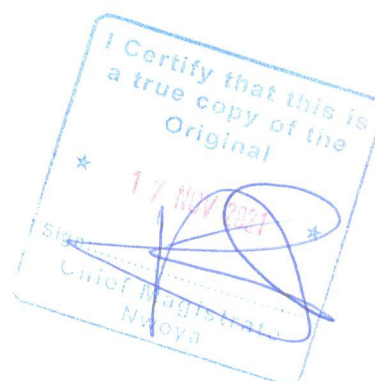


traps, thus already I find there is inconsistency and contradictions in the testimonies of two prosecution witnesses.

Secondly none of the items mentioned by the two prosecution witnesses was ever tendered in court even for identification, thus I do not find any truth in the prosecution evidence to prove the first ingredient and I resolved it in favour of the accused.

As regards the 2nd ingredient, PW1 told court they arrested the said man within the area of river Namunuda which is a place within Murchison nation park.

PW2 also told court that they arrested the said man within the area of river Namunuda which is within the protected area of Murchison falls national park, he further told court after arresting the said man, they took hi photos with a GPS which showed the coordinates that he was within the protected area. Accused on defence puts up a total denial, however from the testimonies of two prosecution witnesses there is completely nothing to prove to this court that the said river Namunuda is within the protected area and even to make the story worst, PW2 told court that the GPS coordinates were taken to prove the same but this was never tendered in court, all in all there is no slightest piece to prove the 2nd ingredient and it falls.



As regards the 3rd ingredient PW1 in his testimony confirm to this court that it's the accused in court whom they arrested on 6/5/18 within the wildlife protected area without authority. PW2 also confirms to court in his testimony that accused in court is the man whom they arrested on 6/5/18 within the wildlife protected area, accused in his defence states that he was arrested while from his garden in Olimlim an area which is not within the protected area.

However, since prosecution failed to prove the first two ingredients from which the 3rd ingredient follows, I thus find that all in all prosecution failed to prove its case against the accused and I accordingly acquit him on the 2nd count.

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ANYEKO SUSAN
MAGISTRATE GRADE 1
9/11/18

14/11/18

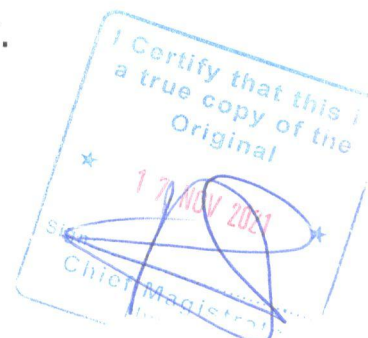
Akoko for state.

Okidi Clerk/Interpreter.

Accused in Court.

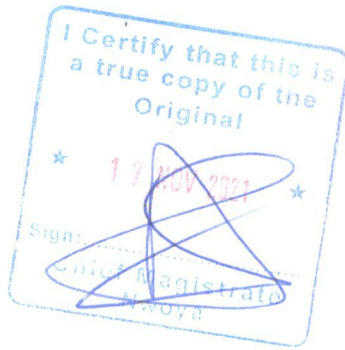
Prosecutor:

Matter for judgment.



Court:

Judgment delivered in open court and
accused acquitted.



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ANYEKO SUSAN
MAGISTRATE GRADE 1
14/11/18