

Ct.II: Bringing devices capable of killings, capturing or wounding any protected species of wildlife contrary to section 49 (1) and 74 (a) of the Wildlife Act.

At plea taking, accused denied both counts which prompted prosecution to discharge burden lead on it by law. Prosecution of one witness PW1 Guma Silvio and closed its case. Its an established principle of law that at the close of prosecution case, court has to make a ruling whether or not a prima facie case have been established against the accused person.

A prima facie case is defined for mean one where a tribunal properly directing its mind to the law and evidence would convict if no explanation is offered by defence. **SEE BHATT = VS = R (1957) EA 332.**

Thus for prosecution to establish whether or not a prima facie case have been established against the accused. It has evaluate the prosecution evidence on record against the ingredients of the alleged offence.

The case before has two counts and I will handle them the way they appear. Count one, the following are the ingredients:-

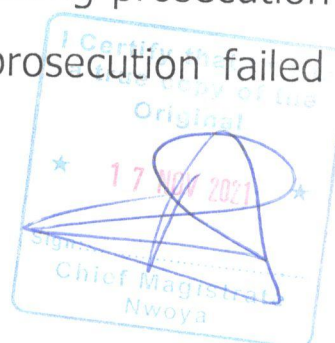
- (1) Entering wildlife protected area.



- (2) That the said entry was unlawful or illegal.
- (3) That accused is responsible.

As regards the first ingredient PW1 told court on 17/1/2018 him being a game ranger he arrested accused with other colleague within the area of Ayago one and "Kulu Ongera" a place within the Murchison falls national park and even in cross examination, he still told court he arrested accused within the park, however, from the evidence of PW1 whom prosecution relied on solely, there is no proof adduced to show that the area which PW1 claimed he arrested accused from that is Ayago one and Kulu Ongera falls within the definition of wildlife protected area as defined under section (18) of the wildlife Act cap 2000 ordinarily there should have been coordinates showing the boundary of the national park which was not done in the instant case thus, court is left guessing whether or not the place from which accused was arrested falls within the wildlife protected area thus I do not find the evidence of PW1 sufficient to prove the first ingredient and thus it fails.

As regards the 2nd and 3rd ingredient which is unlawful or illegal entry into the national park and the liability of the accused respectively. I find it is no need evaluating prosecution evidence against those said ingredients since prosecution failed to prove



that there was entry into the wildlife protected area, and this in other words would mean there was no illegal or unlawful entry and no one can be held responsible for an act which did not take place at all, I find that prosecution failed to establish a prima facie case against the accused on count one and I accordingly acquit of the same. Ingredients for count two.

1. Bringing devices into the wildlife protected area.
2. That those devices are capable of killing, injuring or having the wildlife protected species.
3. That the accused is responsible.

As regards the first ingredient PW1 told court that on 17/1/2018 he arrested the accused and his colleague Watmon with wheel trap, eleven spears, three pangas, knives, two wire snares and that he was within the wildlife protected area. S.18 of the wildlife Act Cap 200 defines a wildlife protected area or national park as an area gazetted for protection of wildlife and for one to tell whether or not they are within the national park, coordinates points are taken and it will show whether or not the person was within the national park, in the instant case there is nothing to show that the accused was arrested within.



Secondly, PW1 told court that accused was arrested with devices which include wheel traps, spears, pangas, wire snares and knives, but none of these were tendered in court to confirm the same nor even the exhibit slip because ordinarily one would believe that these so called devices if indeed they were recovered from the accused, it should have been tendered in court and this has not been done thus court is left wondering whether those said devices were really got with the accused at the time of arrest, with all these I do not find the prosecution story sufficient to support the first ingredient.

As regards the 2nd and 3rd ingredient, I would not waste time in evaluating the prosecution evidence since prosecution evidence failed to prove that the said devices were arrested with the accused within the wildlife protected area, it does not then makes any sense establishing whether or not the non-existent devices were capable of injuring, hunting or killing the wildlife protected species/animals and thirdly, a person cannot be held responsible for an action which did not take place.

All in all, I find that prosecution failed to establish a prima facie case against the accused in respect of the 2nd count and I accordingly acquit him.



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ANYEKO SUSAN
MAGISTRATE GRADE I
18/2/2019

27/2/2019

Akoko for state.

Okidi Clerk.

Accused absent.

Pros : Matter for judgment.

Court : Ruling delivered and accused acquitted.

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ANYEKO SUSAN
MAGISTRATE GRADE I
27/2/2019

