

**THE REPUBLIC OF UGANDA**  
**IN THE CHIEF MAGISTRATE'S COURT OF BUSHENYI AT RUBIRIZI**  
**BUS-24-CR-CO- 0259 – 2017- CRB – 639 - 2017**

UGANDA ..... PROSECUTOR

**VERUSUS**

RUTAGATINA JOHN ..... ACCUSED

**JUDGMENT BEFORE HIS WORSHIP BOSSA MICHAEL MAGISTRATE GRADE ONE.**

The accused was charged with one count of unlawful possession of wild life species of c/s 75 (b) of the UWA Act.

Briefly the allegations are that accused and another still at large on 8<sup>th</sup> 07.17 while at Ngoro village in Rubirizi district were found in possession of 6 wild life trophies to wit ivory turks of elephant without authority. The prosecution in this matters was represented by counsel Maureen, Bushendki Patrick – specialized prosecutors for wildlife. On the other hand the accused who totally denied the charges was un represented and called 3 witnesses for the defence including himself.

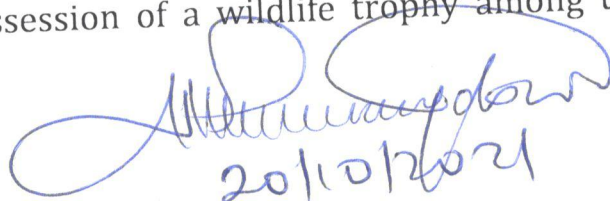
All 3 prosecution witnesses except one testified to have found the accused in possession of 6 pieces of ivory. PW4 on the other hand provided expertise evidence as to the identification of the 6 trophies as indeed being ivory.

B.O.P – Rest on the prosecution as a principle underscoring criminal liability.  
S.O.P – the burden imposed on prosecution as highlighted above is discharged at a standard beyond reasonable doubt.

- See S. 101 Evidence Act.
- Woolmington Vs DPP

**Element of unlawful possession of wild life species.**

1. Being found in possession of a wildlife trophy among the prohibited species.

  
20/10/2021

2. Possession must be unlawful without permission.

### Issues

- a) Whether the accused person was found in unlawful possession of the alleged items.
- b) Whether the evidence on record is enough to sustain the charge and conviction of the accused for unlawful possession of wildlife species.

### RESOLUTION

Prosecution witnesses 1,2,& 3 including DC constable Tego Muhangi Celestine, Muhumuza Emmanuel as well as January all testified to have gone for an operation in Katerera - They allegedly got to what they all described as the home of the accused. It is where they allegedly found the accused .

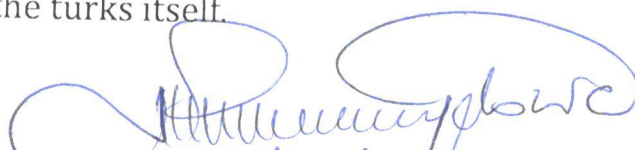
He then presented them with 6 turks which he attempted to sell to them. The trio further testifies when they attempted to arrest them, one of them identified as Mugyenzi then took off leaving only the accused.

Note that in his defence, the accused person does not deny being arrested . He argues that he was wrongfully arrested . The accused testified that in fact he had spent the day brewing local brew with his colleagues and that when the operation took place, he was only passing by Mugyenzi's house and that he was netted wrongfully as he was not part of the crew that were selling the the 6 turks in issue.

With due respected to the accused, his defense is totally unbelievable and I will prove out why. If it were true he had spent the day making local blew as he alleges then at least one of his witnesses should have been part of those with whom he was brewing.

Note that Criminal law Alibi is allowed as complete defence . However the person who raises it bares the burden to prove it while the prosecutions only duty when the defence raises Alibi is to produce evidence placing him at the S.O.C. under the circumstance, while the prosecution place the accused at the S.O.C. the accused fails to explain the circumstances of his Alibi.

At the S.O.C several items were recovered i.e 6 turks - see PE2 ie the exhibit slip and PE 1 which is the turks itself.

  
20/10/2021

Note that the items were subjected to scientific tests by PW4 an expert in wild life health management and forencis. He identified the items to be ivory turks coming from elephants. That having been done so I dare mention that it is clear to me that indeed no doubt the accused was found in possession of 6 elephant turks. (ivory).

As to whether the evidence on record is enough to sustain a charge and conviction of the accused person for unlawful possession of wild life species, it is important to mention now that the accused does not mention. How or which authority he came to be in possession of the said ivory. In other words his possession of the ivory (a listed items among the prohibited species) was un lawful. Accordingly therefore just like issue I, the question whether the evidence on record is enough to sustain a conviction against the accused is also answered in the affirmative.

Therefore I find the accused of unlawful possession of wild life species and I convict him of the same.

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**H/W BOSA MIICHAEL**  
**MAGISTRATE G.1**  
**6/2/2019**

Accused :Present

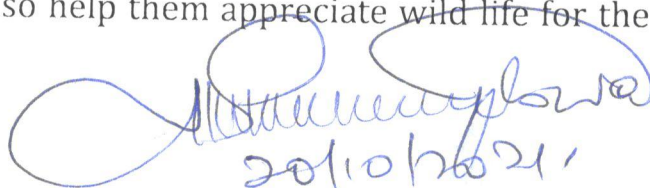
State :Maureen

Total :C/C

Pros : Matter is for judgment

CT :This judgment delivered is open court before the prosecution, the accused and the public.

Pros :The convict is a first time offender. This offence is however becoming very rampant in society and putting in mind that the elephants from which turks are extracted are protected species and shall be extinct if the vice is not checked. This particular case we had six turks meaning we had 3 elephants less the wild . These animals form part of our tourist portolio which is the largest foreign exchanges earners for the country. We pray 4 a custodial sentence to act as a lesson to the rest of the public not to engage in such unlawful acts and to also help them appreciate wild life for the betterment of the courts.

  
20/10/2019

**Convict** - I pray for a lenient sentence because I have children for which I am the sole bread winner. My children are of school going age, if I am given a custodial sentence they will drop out of school.

**Sentence**

Being found in unlawful possession of prohibited wildlife species attracts a maximum sentence of 5 years or not less than 1m or both. According to <sup>Sec</sup> 75 of cap 200.

The convict is a first time offender. He seems remorseful although has wasted a lot of court time. Further it is important to note that elephants are listed as one of the protected species and if the trade in ivory does not stop these face extinction as already pointed out by the prosecution.

Last the convict is a father of 8 children for whom he is the sole bread winner 6 of whom are of minority age.

All the above said and put into consideration, the convict is sentenced to a fine of 4.2m or serve a prison sentence of 1 year and 6 months.

Right of appeal explained.

  
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**H/W BOSA MICHAEL**  
**MAGISTRATE G.1**

27/02/2019

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