

THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATE'S COURT OF BUSHENYI AT RUBIRIZI
BUS-24-CR-CO-0068 OF 2017 CRB 224 OF BUSHENYI

UGANDA PROSECUTOR

VERUSUS

TUJUNE VICENT ACCUSED

JUDGMENT DELIVERED IN OPEN COURT BEFORE THE PROSECUTOR AND
THE ACCUSED BY H/W BBOSA MICHAEL MAGISTRATE GRADE ONE

8th/ November 2017

The accused was charged with two counts of unlawful Possession of Wildlife Protected Species c/s 75(b) & 74 (a) as well as Unlawful Possession of Government Stores c/s 316 (2) of Penal Code Act.

According to the prosecution, the accused committed the said offence on 8th / 03/ 2017 at Katara Village in Rubirizi District where by following a search and seize operation at his home, several items including Wildlife Trophics and two empty magazines were allegedly found at his home.

At the hearing, the prosecutor called four witnesses and was represented by Counsel Bushendich Patrick. On the other hand the accused who appeared by himself called three witnesses.

PW1 testified that a search and seize operation was mounted at the home of the accused on 8th /3/2017 at 4:00am in the night.

Among the items that were recovered were two empty magazines, two spears, two set wire snares and three Porcupine thorns as well as one piece of ivory.

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RUBIRIZI COURT

21/10/2017

20/10/2017

On recovering the items, the accused was hand crafted and detained at ndekye Police Station.

Three people were found at his home, i.e the accused, his wife and his father (an old man).

Pw2 Ocaaya more of retaliated Pw1's testimony except that it is him who handled the exhibits. These he told court that although no entry was made of them at the scene of crime, an exhibit slip was made at Rubirizi Police Station after the operation.

Pw3's evidence mostly relates to events not of 8th/March/ 2017 but 23/07/2016. So is a part of Pw4's testimony, but of course the 1st part of latter's testimony relates a lot with evidence of Pw1 and Pw2's.

Note: The statement made by the accused at police was also exhibited in court.

Burden of proof lies upon the prosecution.

Standard of proof : Beyond reasonable doubt.

- See 101 of the Evidence Act.
- Also see Woolmington Vs Dpp

Elements of unlawful possession of Wild life Protected species C/S 75 (B) & 84 (A) UWA Act.

1. Suspect must be found to be in possession of the said items.
i.e He must have on himself the items alleged. Such items may also be in his custody perhaps not exactly on his body.

COUNT II

Ingredients of Unlawful Possession of Government Stores C/S 316 (2)

- 1) Being found with items belonging to government
- 2) The items referred to above must be those that should not be in the hands of private citizen except with express permission of government.

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21/10/2021
20/10/2021

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ISSUES

1. Whether the evidence on record is enough to sustain a conviction against the accused in respect of count I and Count II?
2. Remedies available?

RESOLUTIONS

Both counts will be delth with at the same time.

ISSUE I

Sufficiency of evidence to sustain the charges highlighted above.

According to Pwl one Kirundi James, the operation in which the suspect was arrested was prompted by an informant. It was mounted on 08/3/2017. During this operation at 4:00am several items were allegedly recovered at the suspect's home. Among others two empty magazines, two spears, two set wire snares and three porcupine thorns as well one piece of ivory weighing one and half kgs. These were all recovered at kataara in the presence of his father. See PEI the exhibits slip authorized by PE2 one Ocaaya Kennedy while at police after the said operation.

Note that all prosecution witnesses testified to this except pw3 whose testimony related to events of 23/07/2016.

In my opinion these events had nothing to do with the case at hand neither could they be connected as such in any way.

Further I must point out that the case for which the suspect was tried followed the operation mounted at his home on 08/3/2017.

The two events are not related.

In his defense the accused pointed out that while a search of his house was mounted at his house after he was arrested nothing was recovered. He goes on to deny that the items that were exhibited at police and thereafter court do not belong to him. But to the people who arrested him.

The 2nd and 3rd defence witnesses also testified not to have seen anything being recovered from the house.

This is of course not surprising being that the 2nd withness are uncle and wife to the accused respectively. *"It would be surprising if a monkey made a case for the burning of the forest"*.

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That notwithstanding however, the testimony of both parties (sides) brings into issue the question of how the exhibits were obtained especially the chain of exhibits.

In his defence, the accused points out that none of the items that were allegedly found at his place belonged to him.

According to him the officers who arrested him, brought the items with them or planted them at his home to incriminate him.

This view is shared by not only the accused but Dw2 as well as Dw3.

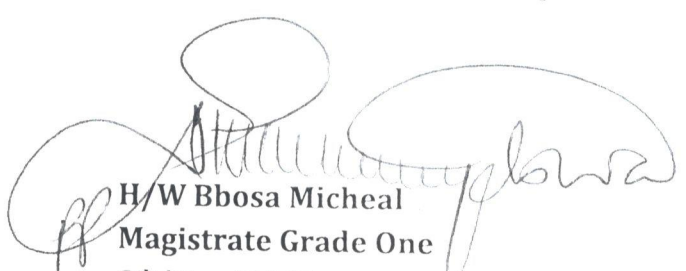
Note that according to Pw2 one Cadet ASP) Ocaaya Kenedy all the exhibits were found and picked from the accused ' home (also the Scene of Crime).

However no search slip was made immediately at the Scene of Crime as the only entries available were made in the exhibit slip at Rubirizi Police Station where the suspects were detained.

In Uganda Vs Mugisha Gregory Criminal Case No150 of 2010, the high court noted that it is the duty of every Police Officer to meticulously and jealously guard and store exhibits. The officer in charge should watch over exhibits the way mother hen watches over her young ones and that the movement of exhibits has to be recorded. The recording starts at the Scene of Crime and goes on to every step of the case.

Note : It is important for court to hear that all criminal cases are decided on proof beyond reasonable doubt. In scenario such as the fore going where doubt is cast on what exhibits were found at the Scene of Crime especially in the absence of a recording or entry of exhibits at the Scene of Crime, Court is constrained with such doubt I find it hard to convict the accused person.

The prosecution therefore failed at job and I quit the accused person on both court I and court II. Since both cases were premised on the exhibits allegedly found at his place.


H/W Bbosa Micheal
Magistrate Grade One
8th/Nov/2017.


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